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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 990                      **Hearing Date:** April 10, 2018  
**Author:** Wiener  
**Version:** March 14, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Inmates*

### HISTORY

**Source:** American Civil Liberties Union of California  
Equality California  
Lambda Legal

**Prior Legislation:** SB 310 (Atkins), Ch. 856, Stats. of 2017  
SB 176 (Atkins), Ch. 853, Stats. of 2017  
AB 633 (Ammiano), vetoed in 2010  
AB 382 (Ammiano), vetoed in 2009

**Support:** ACCESS Women's Health Justice; AIDS Project of the East Bay; California Public Defenders Association; National Council of Jewish Women; The LGBTQ Center of Long Beach; Nevada County Citizens for Choice; Positive Women's Network-USA; Root & Rebound; Silicon Valley Stonewall Democratic Club; 1 individual

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to: 1) require that all staff and contractors of the California Department of Corrections and Rehabilitation (CDCR) or a county jail use the new name of a person who has obtained a name change in all verbal communications to or regarding the person; 2) require that during the initial intake and classification process, CDCR or jail staff, whichever is applicable, afford each individual entering into custody an opportunity to specify the person's gender identity, preferred first name, gender pronoun and honorific, as defined; and 3) require that a person in the custody of CDCR or a county jail who is placed for more than 5 days in a setting other than general population housing, as specified, have equal access to programming and work opportunities as provided to individuals housed in general population; and 4) require that staff and contractors of CDCR and the county jails consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding that individual.*

*Existing law* provides that a petition for name change must be filed in the superior court of the county where the person whose name is proposed to be changed resides and signed by the person whose name is to be changed. (Code Civ. Proc., § 1276, subd. (a).)

*Existing law* provides that a petition for name change for a person under 18 years of age is signed by one of the person's parents, or by any guardian of the person. If the petition is signed by neither parent, the petition shall name, as far as known to the person proposing the name change, the parent(s) of the person and their place of residence. (Code Civ. Proc., § 1276, subd. (b).)

*Existing law* provides that if the person whose name is proposed to be changed is under 18 years of age and the petition is signed by only one parent, the petition shall specify the address, if known, of the other parent if living. (Code Civ. Proc., § 1276, subd. (c).)

*Existing law* provides that if a proceeding for a change of name to conform the petitioner's name to the petitioner's gender identity is commenced by the filing of a petition, the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed, and the name proposed. The order shall direct all persons interested in the matter to make known any objection to the change of name by filing a written objection, which includes any reasons for the objection, within six weeks of the making of the order, and shall state that if no objection showing good cause to oppose the name change is timely filed, the court shall, without hearing, enter the order that the change of name is granted. (Code Civ. Proc., § 1277.5, subd. (a)(1).)

*Existing law* provides that the proceeding for a change of name to conform the petitioner's name to the petitioner's gender identity is exempt from any requirement for publication. (Code Civ. Proc., § 1277.5, subd. (a)(2).)

*Existing law* provides that a hearing date shall not be set in the proceeding unless an objection is timely filed and shows good cause for opposing the name change. Objections based solely on concerns over the petitioner's actual gender identity shall not constitute good cause. At the hearing, the court may examine under oath any of the petitioners, remonstrants, or other persons touching the petition or application, and may make an order changing the name or dismissing the petition or application as the court may deem right and proper. (Code Civ. Proc., § 1277.5, subd. (b).)

*Existing law* provides that a person under the jurisdiction of CDCR or sentenced to county jail has the right to petition the court to obtain a name or gender change, as specified. (Code Civ. Proc., § 1279.5, subd. (b).)

*Existing law* requires a person under the jurisdiction of CDCR to provide a copy of the petition for a name change to the department, in a manner prescribed by the department, at the time the petition is filed. A person sentenced to county jail is required to provide a copy of the petition for name change to the sheriff's department, in a manner prescribed by the department, at the time the petition is filed. (Code Civ. Proc., § 1279.5, subd. (c).)

*Existing law* requires that in all documentation of a person under the jurisdiction of the CDCR or imprisoned within a county jail, the new name of a person who obtains a name change to be used, and prior names to be listed as an alias. (Code Civ. Proc., § 1279.5, subd. (d).)

*Existing law* requires, notwithstanding any other law, a court to deny a petition for a name change pursuant to this title made by a person who is required to register as a sex offender, unless the court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety. If a petition for a name change is granted for an individual required to register as a sex offender, the individual must, within five working days, notify the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and additionally with the chief of police of a campus of a University of California or California State University if he or she is domiciled upon the campus or in any of its facilities. (Code Civ. Proc., § 1279.5, subd. (e).)

*Existing law* 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. (Health & Saf. Code, § 103425, subd. (a).)

*Existing law* requires CDCR to consider certain factors in their inmate classification and housing assignment procedures to prevent sexual violence and promote inmate safety. (Cal. Code Regs., tit. 15, § 3269.)

*Existing law* requires inmate housing in county jails to use a classification procedure that is based upon objective criteria, including consideration of criminal sophistication, seriousness of crime charged, presence or absence of assaultive behavior, age, and other criteria that will provide for the safety of the inmates and staff. (Cal. Code Regs., titl. 15, § 1050.)

*Existing federal law*, the Prison Rape Elimination Act, establishes a zero-tolerance standard for the incidence of prison rape in prisons in the United States, provides for the development and implementation of national standards for the detection, prevention, reduction, and punishment of prison rape, and mandates the review and analysis of the incidence and effects of prison rape. (34 U.S.C. § 30301 et seq.)

*This bill* requires that in all verbal communications to or regarding a person under the jurisdiction of CDCR or imprisoned within a county jail, department staff, facility staff, and contractors use the new name of a person who has obtained a name change.

*This bill* requires that a person in the custody of CDCR or a county jail who is placed for more than five days in a setting other than general population housing because the person is deemed to be at high risk for sexual victimization or other forms of assault or harassment, or because of an investigation not resulting from the person's own alleged violation of criminal laws or institutional rules, have equal access to programming, as specified, and work opportunities as provided to individuals housed in the general population.

*This bill* requires that during the initial intake and classification process, CDCR or the county jail, whichever is applicable, afford each individual entering into custody an opportunity to specify the person's gender identity, preferred first name, gender pronoun and honorific.

*This bill* provides that a person under the jurisdiction of CDCR or a county jail who has obtained a court ordered gender change or changed the gender marker on their birth certificate may submit documentation of the change to the department and thereafter the department or facility staff is required to promptly repeat the process of offering the individual an opportunity to specify the gender pronoun and honorific most appropriate for staff to use in reference to that individual.

*This bill* defines “gender pronoun” as a third-person singular personal pronoun such as “he,” “she,” or “they.”

*This bill* defines “honorific” as a form of respectful address typically combined with an individual’s surname, such as “Mr.,” “Ms.,” or “Mrs.”.

*This bill* requires that staff and contractors of CDCR or a county jail consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding that individual.

*This bill* prohibits an incarcerated individual under the jurisdiction of CDCR or a county jail from being issued an identification card or identification wristband reflecting a gender marker different from the gender identity the individual has most recently specified, as specified.

## COMMENTS

### 1. Need for This Bill

According to the author:

Transgender incarcerated individuals do not have the opportunity to affirm their own gender identity, preferred first name, gender pronoun, or honorific when entering a facility. Current law also does not clearly require staff to refer to the individual by their specified name, gender identity, gender pronoun or honorific. This demeans the dignity, and erases the authentic identity, of transgender individuals.

Due to circumstances outside of their control, Lesbian Gay Bisexual Transgender and Queer (LGBTQ) people are typically at much greater risk for sexual victimization and other forms of assault or harassment in custody. Because they are at heightened risk, prison and jail staff often remove LGBTQ people from the general population and place them in housing placements with limited or no access to rehabilitative programming, educational programming, religious programming and work opportunities. Access to programming and work opportunities is critical for successful rehabilitation and for earning credits towards release. As a result of current housing practices, LGBTQ people experience more isolation, spend more time in custody, and leave custody less prepared to succeed.

## 2. CDCR Policies—Intake and Classification

Penal Code section 2900 provides that defendants sentenced to state prison shall be delivered to the custody of the Secretary at the place designated by the Secretary to serve the term of imprisonment ordered by the court. Chapter 6 of CDCR's Department Operations Manual (DOM) establishes the procedures for the reception, processing, and transfer of inmates into CDCR institutions.

When a person is committed to CDCR, the person first goes to a Reception Center where he or she goes through the reception and classification process. Several institutions have been designated as Reception Centers. Reception Center processing staff is responsible for collecting social and criminal history information for each inmate received by CDCR, as well as interviewing and testing newly received inmates. (DOM § 61010.4.) Classification of inmates is typically made pursuant to the CDCR Inmate Classification Score System. A staff member reviews all relevant documents available during the Reception Center process to complete the score sheet. The placement score generally determines the security level and the institution to which an inmate will be assigned. The inmate is interviewed during this process and has an opportunity to verbally contest specific score items or case factors. Certain case factors require a minimum mandatory score. For example, an inmate sentenced to a life term is subject to the mandatory minimum score requirement. (DOM § 61010.11.5.)

An inmate's placement score will fall within one of four placement score ranges, each of which corresponds to a security level. CDCR facilities are categorized into four levels, from Level I to Level IV with Level I being the lowest security level and Level IV being the highest security level. For example, an inmate with a placement score of 0-18 will be assigned to a Level I facility, an inmate with a placement score of 19-35 will be assigned to a Level II facility, and so forth. After the inmate is recommended for placement at a specific institution, endorsement to the institution must be approved before the inmate is transported to that institution.

Each institution has an initial classification committee that reviews and establishes a suitable program for each inmate within 14 days after arrival at the institution. (DOM § 62010.8.3.) Inmates are evaluated on an ongoing basis and the DOM requires staff to document significant case information in the inmate's central file. The DOM also requires an inmate's case to be reviewed at least annually to consider the accuracy of the inmate's placement score, custody designation, program, work and privilege group, and facility placement. (DOM § 61020.14 & 61020.19.2.) An inmate has the opportunity to reduce his or her score if he or she has been programming and has not received any disciplinary actions. However, an inmate's score and subsequent housing level can be increased due to receiving disciplinary actions.

Each determination affecting an inmate's placement within an institution or facility, transfer between facilities, program participation, work group, or custody designation is made by a classification committee. There are two types of classification committees. A Unit Classification Committee (UCC) is held for initial and subsequent program assignments, changes, or transfers and composed of three members chaired by staff at the level of Facility Captain or Correctional Captain. Typical actions that the UCC may take include placing an inmate on a job, academic, or vocational waiting list or establishing an inmate's custody level. Inmates appear before a UCC at least annually to adjust the classification score and reevaluate his or her housing status.

The Institutional Classification Committee (ICC) is an institution's highest level of committee and consists of at least three members and is chaired by the Warden or Chief Deputy Warden of the institution. Events that require ICC review include behavior resulting in an Administrative Segregation placement, issues referred by lower committees, and review of Security Housing Unit term assessment, among others.

The DOM provides that inmates shall be present at the initial classification hearing and at other classification committee hearings which may result in an adverse effect upon the conditions of confinement, except as specified. (DOM § 62010.4.) The DOM also lists the circumstances under which an in absentia hearing is authorized.

### **3. CDCR Policies—Inmate Housing Assignments**

#### **a. Types of Inmate Housing Assignments**

Most inmates are housed in a general population setting. General population housing units are characterized as those that house minimum to medium custody inmates where work, vocational, academic, and self-help programming opportunities are available. Other types of housing include a Sensitive Needs Yard (SNY) and the Administrative Segregation Unit (ASU). SNY was designed to provide additional protection to inmates with particular safety needs (e.g., an inmate with a disability, an inmate convicted of a sex offense, an inmate who had debriefed from a prison gang, etc.) ASU primarily houses inmates who have been accused of or found guilty of engaging in some type of misconduct. However, ASU may also be used to house inmates who are alleged to be the victim of an assault, or who CDCR has identified as being vulnerable to an attack. ASU is a restrictive housing setting in which inmates remain in their cells for most of the day and must be escorted by a staff member when leaving their cell.

#### **b. Specific Housing Assignment Policies**

CDCR policy provides that inmates accept all inmate housing assignments. The DOM provides: "The Warden/Administrator of the institution/facility shall be responsible for maximizing proper bed utilization, ensuring inmates are appropriately housed at the institution, implementing departmental policy in accordance with prison design and institution safety and security. Staff must use correctional experience and training, correctional awareness, and a sense of correctional reasonableness to determine suitability for dormitory, celled, and single-celled housing." (DOM § 54046.3.) Staff involved in the review and approval of an inmate's housing assignment is required to consider all available factors prior to determining an inmate housing assignment. In making a decision about an inmate's housing assignment, the deciding authority must consider, but is not limited to, the following: length of sentence; enemies and victimization history; criminal influence demonstrated over other inmates; vulnerability of the inmate due to medical, mental health, and disabilities; reason(s) for segregation; history of "S" suffix determination; history of in-cell assaults and/or violence; prison gang or disruptive group affiliation and/or association; and nature of commitment offense. (DOM § 54046.4.)

In addition to the above, "[s]taff involved in the review of an inmate's case factors must be particularly aware of case factors that indicate an inmate has been either the victim of, or the

perpetrator of, a sexual assault, and must screen for appropriate housing pursuant to Chapter 5, Article 44.” (*Id.*) The DOM further provides:

A classification committee and/or the screening authority shall review the Central File (C-file) and other available information to determine if the inmate has a history of in-cell assaultive, abusive, or predatory behavior towards a cellmate, or has been the victim of a sexual assault. A staff member at the level of a correctional supervisor or above shall be designated as the screening authority. Staff shall weigh circumstances documented in the C-file such as documented reports from a prior cellmate the inmate intimidated, threatened, forced, and/or harassed him or her for sex, documentation the cellmate refused to return to a cell occupied by the inmate because of fear, threats, or abuse perpetrated by the inmate, documentation the inmate has been the victim of a sexual assault, and adjudicated department Rules Violations Reports (RVR) where the inmate was found guilty as a perpetrator in an act of physical abuse, sexual abuse, sodomy, or other act of force against a cellmate. (*Id.*)

#### **4. Transgender Inmates are Particularly Vulnerable to Assault**

Nearly one in six transgender people, and one in two black transgender people, has been incarcerated. (<[https://www.lambdalegal.org/sites/default/files/2015\\_transgender-incarcerated-people-in-crisis-fs-v5-singlepages.pdf](https://www.lambdalegal.org/sites/default/files/2015_transgender-incarcerated-people-in-crisis-fs-v5-singlepages.pdf)> [as of Apr. 4, 2018].) This population is particularly vulnerable to being assaulted while incarcerated. A UC Irvine study found that transgender inmates were 13 times more likely to be sexually assaulted in prison than non-transgender inmates. (Valerie Jenness, *Transgender Inmates in California Prisons: An Empirical Study of a Vulnerable Population* <<http://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf>>.) In order to maintain the safety of inmates who are particularly vulnerable to assault, including transgender inmates, CDCR and county jails sometimes remove these inmates from the general population. The removal of vulnerable inmates from the general population is subject to various laws and department policies.

#### **5. Prison Rape Elimination Act (PREA)**

##### **a. Federal Law**

PREA was passed by Congress in 2003. It applies to all correctional facilities, including prisons, jails, and juvenile facilities. Among the many stated purposes for PREA are: to establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States; to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape; to increase of the available data and information on the incidence of prison rape to improve the management and administration of correctional facilities; and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape. (34 U.S.C. § 30301 et seq.) The act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

### **b. PREA Standards**

The PREA standards developed by the National Prison Rape Elimination Commission were issued as a final rule by the U.S. Department of Justice in 2012. (77 Fed.Reg. 37106 (Jun. 20, 2012).) Among other things, the standards require each agency and facility to: designate a PREA point person to coordinate compliance efforts; develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse; and train staff on key topics related to preventing, detecting, and responding to sexual abuse. In addition, the standards provide requirements regarding the avenues for reporting sexual abuse, investigation of sexual abuse, and access to medical and mental health care for inmate victims of sexual abuse.

The PREA standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. (*Id.* at 37149-37154.) The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by the inmate's LGBTI identification, status, or perceived status. In addition, the standards do not allow placement of LGBTI inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. Such placement is not allowed at all in juvenile facilities.

The standards impose a complete ban on searching or physically examining a transgender inmate for the sole purpose of determining the inmate's genital status. Agencies are required to train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender inmates. In deciding whether to assign a transgender inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding his or her own safety. In addition, the standards require that transgender inmates are given the opportunity to shower separately from other inmates.

### **c. CDCR PREA Policy**

AB 550 (Goldberg), Chapter 303, Statutes of 2005, established the Sexual Abuse in Detention Elimination Act. The Act made several legislative findings and declarations regarding sexual abuse at CDCR institutions and required CDCR to adopt specified policies, practices, and protocols related to the placement of inmates, physical and mental health care of inmate victims, and investigation of sexual abuse.

CDCR's PREA policy provides guidelines for the prevention, detection, response, investigation, and tracking of sexual violence, staff sexual misconduct and sexual harassment against CDCR



inmates. (DOM §§ 54040.1-5404.22.) The policy applies to all offenders and persons employed by CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole. With respect to inmates who are at a high risk for sexual victimization, CDCR's PREA policy provides:

*Offenders at high risk for sexual victimization, as identified on the electronic Initial Housing Review, shall not be placed in segregated housing unless an assessment of all available alternatives has been completed, and a determination has been made that there is no available alternative means of separation from likely abusers.*

Offenders at high risk for sexual victimization shall have a housing assessment completed immediately or within 24 hours of placement into segregated housing. If temporary segregation is required, the inmate shall be issued an Administrative Segregation Placement Notice, explaining the reason for segregation is the need to complete a housing assessment based on the high risk for sexual victimization. If a determination is made at the conclusion of the assessment that there are no available alternative means of separation from likely abusers, the inmate will be retained in segregated housing and issued an Administrative Segregation Placement Notice, explaining the reason for retention. The assigned counseling staff shall schedule the offender for appearance before the Institution Classification Committee for discussion of his/her housing needs. The offender's retention in segregation should not ordinarily exceed 30 days. (Italics added) (DOM § 54040.6.)

The policy further provides:

Based on information that the offender has been a victim of sexual violence or victimization, the custody supervisor conducting the initial screening shall discuss housing alternatives with the offender in a private location. *The custody supervisor shall not automatically place the offender into administrative segregation.* Consideration shall be given to housing this offender with another offender who has compatible housing needs. If single cell status is appropriate, the custody supervisor may designate the offender for single cell housing pending a classification review.

An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. (DOM § 54040.7.)

## **6. County Jail Policies**

County jails are governed by Title 15 of the California Code of Regulations which provides:

Each administrator of a temporary holding, Type I, II, or III facility shall develop and implement a written classification plan designed to properly assign inmates to housing units and activities according to the categories of sex, age, criminal

sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive behavior and other criteria which will provide for the safety of the inmates and staff. Such housing unit assignment shall be accomplished to the extent possible within the limits of the available number of distinct housing units or cells in a facility. The written classification plan shall be based on objective criteria and include receiving screening performed at the time of intake by trained personnel, and a record of each inmate's classification level, housing restrictions, and housing assignments. (Cal. Code Regs., tit. 15, § 1050.)

Apart from the minimum standards established under state law, each of the state's county jail systems has flexibility in creating its own policies regarding the intake, classification and housing of its inmates. As noted above, county jails are subject to PREA requirements. Some counties, including San Francisco and Santa Clara Counties, have developed or are in the process of developing a policy with respect to housing, classification, searches, privacy, and interactions with transgender people in custody that complies with PREA and the PREA standards. (<<http://www.ktvu.com/news/san-francisco-sheriff-pioneers-2-new-transgender-policies-at-jail>>; <<https://www.sccgov.org/sites/sheriff/Documents/Custody%20Policy%202014.17%20-%20Inmate%20Rights%20LGBTQI%20Inmates.pdf>> [as of Apr. 4, 2018].)

## 7. Effect of this Legislation

SB 310 (Atkins), Chapter 856, Statutes of 2017, established the right of a person under the jurisdiction of CDCR or sentenced to a county jail petition a court for a name or gender change without the approval of CDCR or county. SB 310 also requires that CDCR or county jail use the new name of a person who obtains a name change in all documentation of the person, and to list the prior name as an alias.

This bill would require that all staff and contractors of CDCR and a county jail staff use the new name of a person who has obtained a name change in all verbal communications to or regarding the person. This bill would additionally require that during the initial intake and classification process, CDCR or jail staff, whichever is applicable, afford each individual entering into custody an opportunity to specify the person's gender identity, preferred first name, gender pronoun and honorific, as defined. Further, this bill would require that a person in the custody of CDCR or a county jail who is placed for more than 5 days in a setting other than general population housing, as specified, have equal access to programming and work opportunities as provided to individuals housed in general population. Finally, this bill would require that staff and contractors of CDCR and the county jails consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding that individual.

It does not appear that there is comprehensive data maintained on the total number of transgender and gender-nonconforming inmates housed in CDCR. As of 2015, the California Correctional Health Care Services agency reported that there were approximately 400 inmates being treated for gender dysphoria, a diagnosis required in order for an inmate to receive certain medical procedures, including hormone therapy or surgery. (<<https://www.nytimes.com/2015/10/22/us/california-is-first-state-to-adopt-sex-reassignment->

surgery-policy-for-prisoners.html?mwrs=Email&\_r=0 > [as of Apr. 4, 2018].) Due to the lack of data on this population, the scope of this bill is unknown.

This bill raises a number of questions and issues, including:

How will the requirement that CDCR and county jail staff and contractors use the new name of a person who has obtained a name change in all verbal communications to or regarding the person be enforced? What remedies are available to a person who has obtained a name change and whose new name is not used in verbal communications?

Will CDCR and the state's county jails be able to satisfy the requirement that inmates housed in a setting other than a general population setting have equal access to work and programming opportunities given the nature of restrictive housing settings?

Is the timeline provided in the equal access mandate (i.e., 5 days) appropriate?

One of the goals of this bill is to ensure LGBTQ inmates who are at risk of victimization and placed in housing other than general population for their safety are not penalized by that placement and have access to various programming opportunities. However, the bill provides that "a person in the custody of the department who is placed for more than five days in a setting other than general population housing because the person is deemed to be at high risk for sexual victimization *or other forms of assault or harassment*, or because of an investigation not resulting from the person's own alleged violation of criminal laws or institutional rules, shall have equal access to programming and work opportunities as provided to individuals housed in general population." In its current form, this mandate would apply to inmates who are deemed to be at high risk for assault or harassment due to a drug debt, informant status, or other reason not related to gender identity, gender expression, etc. as the author intends. Should this language be narrowed?

What unique challenges may the county jails face, particularly those in counties with smaller populations and fewer facilities, or space within those facilities, in satisfying the equal access mandate in the bill?

## 8. Argument in Support

According to the ACLU of California, a co-sponsor of the bill:

SB 990 will ensure that the dignity and identity of transgender people is honored in incarceration settings and that LGBTQ people and others at high risk of sexual assault and harassment have an equal opportunity to access rehabilitative, educational and work programs that will help them succeed upon release.

SB 990 will require that people entering jails and prison be given an opportunity to specify their preferred first name, gender identity, gender pronoun, and honorific (e.g., Mr., Ms., Mx.) and will require all facility staff to use the designated name, pronoun and honorific when addressing the person. SB 990 will further require that people housed outside of the general population for their own

safety be provided equal access to rehabilitative, religious and educational programs.

Due to circumstances outside of their control, LGBTQ people are typically at much greater risk for sexual victimization and other forms of assault or harassment in custody. Because of this, prison and jail staff often remove LGBTQ people from the general population and house them with limited or no access to rehabilitative programming, educational programming, religious programming and work opportunities that are critical for successful rehabilitation and for earning credits towards release. As a result, LGBTQ people experience more isolation, spend more time in custody, and leave custody less prepared to succeed. Transgender incarcerated individuals suffer the additional indignity of not having the opportunity to affirm their own gender identity when entering a facility. Current law does not clearly require staff to refer to the individual by their specified name, gender identity, gender pronoun or honorific. This demeans the dignity, and erases the authentic identity, of transgender individuals.

...SB 990...[is] an important step forward to protect the dignity and ensure equality for LGBTQ people...

-- END --