
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 310 **Hearing Date:** March 28, 2017
Author: Atkins
Version: February 13, 2017
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Name and Gender Change: Prisons and County Jails*

HISTORY

Source: The Transgender Gender-Variant Intersex Justice Project
The Transgender Law Center
St. James Infirmary
Western Regional Advocacy Project
Women's Foundation of California
Women's Policy Institute
Equality California

Prior Legislation: AB 2782 (Boland) --Chapter 557, Statutes of 1994

Support: American Civil Liberties Union; American Friends Service Committee; BEAM, Inc.; California Coalition for Women Prisoners; California Public Defenders Association; Center on Gender Equity and Health, UC San Diego School of Medicine; Justice Now; Los Angeles Community Action Network (LA CAN); Riverside Temple Beth El; Voices for Progress Education Fund; one individual

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this legislation is to provide individuals under the jurisdiction of the California Department of Corrections (CDCR) the ability to seek a name change, without CDCR approval, as specified.

Existing law provides that all applications for change of names be filed in the superior court and signed by the person whose name is to be changed. (Code of Civil Procedure § 1276(a).)

Existing law provides that all applications for change of names for a person under 18 years of age is signed by one or both of the person's parents, or by any guardian of the person. (Code of Civil Procedure § 1276(a).)

Existing law provides that petitions to change the name of a person under 18 which are not signed by one or both parents, 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 of Civil Procedure § 1276(b) and (c).)

Existing law provides that if a proceeding for a change of name is commenced by the filing of a petition, except as otherwise specified, the court must 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 must direct all persons interested in the matter to appear before the court at a time and place specified, which cannot be less than 6 weeks and not more than 12 weeks from the time of making the order, unless the court orders a different time, to show cause why the application for change of name should not be granted. The order must direct all persons interested in the matter to make known any objection that they may have to the granting of the petition for change of name by filing a written objection, which includes the reasons for the objection, with the court at least two court days before the matter is scheduled to be heard and by appearing in court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, if no written objection is timely filed, the court may grant the petition without a hearing. If the petition seeks to conform the petitioner's name to his or her gender identity and no objection is timely filed, the court shall grant the petition without a hearing. (Code Civ. Proc. Sec. 1277(a)(1).)

Existing law provides that a copy of the order to show cause shall be published in newspaper of general circulation. Four weekly publications is sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks is sufficient. (Code Civ. Proc. Sec. 1277(a)(2) and (a)(3).)

Existing law states that the petition or application for a name change must be heard at the time designated by the court, only if objections are filed by a person who can, in those objections, show to the court good reason against the change of name. At the hearing, the court may examine on 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 seem right and proper. If no objection is filed at least two court days before the date set for hearing, the court may, without hearing, enter the order that the change of name is granted. If the petition seeks to conform the petitioner's name to his or her gender identity and no objection is timely filed, the court must grant the petition without a hearing. (Code of Civil Procedure § 1278(a).)

Existing law states that, notwithstanding any other law, no person imprisoned in the state prison and under the jurisdiction of the Director of Corrections is allowed to file a petition for change of name, except as permitted at the discretion of the Director of Corrections. (Code of Civil Procedure § 1279.5(b).)

Existing law requires a court to deny a petition for a name change made by a person who is under the jurisdiction of the Department of Corrections, unless that person's parole agent or probation officer grants prior written approval. Before granting that approval, the parole agent or probation officer is required to determine that the name change will not pose a security risk to the community. (Code of Civil Procedure § 1279.5(c).)

Existing law requires, notwithstanding any other law, a court to deny a petition for a name change 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 of Civil Procedure § 1279.5(d).)

Existing law states that whenever a person has undergone clinically appropriate treatment for the purpose of gender transition, the person may file a petition with the superior court in any county seeking a judgment recognizing the change of gender. If requested, the judgment shall include an order that a new birth certificate be prepared for the person reflecting the change of gender and any change of name accomplished by an order of a court of this state, another state, the District of Columbia, or any territory of the United States. (Health and Safety Code § 103425.)

This bill would delete the provision that prohibited persons imprisoned in state prison from applying for a name change without being permitted by the Direction of Corrections.

This bill would delete the provision that requires a court to deny a petition for a name change made by a person who is under the jurisdiction of the Department of Corrections, unless that person's parole agent or probation officer grants prior written approval.

This bill adds a provision stating that individuals imprisoned in prison, or a county jail, have the right to petition the court for a name or gender change. And, requires the California Department of Corrections and county jails to use the individuals new name in all documentation, and specifies that the prior names shall be listed as an alias.

This bill includes the following findings and declarations:

- Sixteen percent of transgender people who have been in jail or prison report being physically assaulted and 15 percent report being sexually assaulted.
- Nationally, of transgender people who have transitioned in gender, only 21 percent report being able to update all of their identifications and records with their new gender.
- Forty percent of those transgender people who presented identification, when it was required in the ordinary course of life, that did not match their gender identity or expression reported being harassed, 3 percent reported being attacked or assaulted, and 15 percent reported being asked to leave.
- Section 1279.5 of the Code of Civil Procedure states that incarcerated people are not allowed to file name changes unless permitted under the discretion of the Director of Corrections and Rehabilitation. Under Section 1279.5 of the Code of Civil Procedure, there remains a common law right to change one's name. People charged with a sex offense are prohibited unless the court determines it is in the best interest of justice to grant the petition.
- In *Norsworthy v. Beard*, 74 F.Supp.3d 1100 (N.D. Cal. 2014), a transgender woman incarcerated in a California State Prison was denied a legal name change. The denial prompted her to file suit showing a violation of her equal protection rights, as required for an official capacity suit under Section 1983 of Title 42 of the United States Code for prospective injunctive relief. She alleged that prison officials denied her request based upon a policy that people incarcerated in men's prisons should not be allowed to legally

adopt a normatively feminine name until they met the criteria for transfer to a woman's prison. The federal court ruled in favor of a preliminary injunction ordering the Department of Corrections and Rehabilitation to provide adequate medical care, including gender-affirming surgery, to Michelle-Lael Norsworthy.

- There is precedent set by an amendment to the Civil Code in Delaware, effective June 2015, that includes the ability to change a name and gender marker while incarcerated when motivated by gender identity or religious belief.

COMMENTS

1. Need for This Bill

According to the author:

SB 310, the Name and Dignity Act, will help ensure that transgender people are legally recognized for who they are while incarcerated, and it will increase the likelihood of their successful reentry into society upon release from custody.

Transgender people, who identify as a gender different than the one they were assigned at birth, face significant discrimination both inside and outside of prison. The paradox of their struggle is that they are often hyper-visible for their lack of conformity to gender norms, and, at the same time, are often denied formal legal recognition of who they are, placing them at great risk of discrimination and harassment.

Due to this discrimination, too many transgender people are pushed out of traditional employment, housing, and healthcare. As a result, many transgender people end up incarcerated, criminalized for existing, as they must find alternative ways to survive. Transgender women of color are the most significantly impacted.

The discrimination faced by transgender people in our society is only amplified in prison. According to a 2015 national survey of 25,000 transgender individuals, 30% of incarcerated respondents were physically and/or sexually assaulted while in custody.

Upon their release from incarceration, transgender people face added difficulties reentering society – especially in finding employment – when their gender presentation does not match their identification documents. A significant number of transgender people have reported verbal harassment, denial of benefits or services, being asked to leave, or being assaulted after presenting identification documents that do not match their gender identity.

Current law establishes the common law right of any person to change their name as well as procedures for a person to apply to the court for an official change of name and/or gender. However, people incarcerated in state prison or otherwise under CDCR jurisdiction face significant barriers to accessing the courts for name and gender changes.

Specifically, before petitioning the court for a name change court order or a name and gender change court order, an incarcerated transgender person must first obtain approval from the warden of their facility and then the approval of the Division of Adult Institutions Regional Administrator as well as a Corrections Case Manager. (*See* Cal. Code Civ. Proc. §1279.5.) This belabored process often results in either a denial or no response from corrections officials.

Additionally, many transgender people imprisoned in state prisons or county jails report that custodial staff often refuse to refer to them by their preferred name and gender. This causes them emotional distress and violates their right to be free from discrimination on the basis of their gender identity and expression.

SB 310 establishes the right of people imprisoned in state or county facilities to obtain a name or gender change. It also requires CDCR and county jails to use the new name of a person who obtains a name change, referring to their prior name only as an a.k.a or alias.

2. History of Code of Civil Procedure 1279.5

In 1994, the legislature passed Assembly Bill 2782 (Boland), which added the provision that prohibits inmates from seeking a name change without CDCR permission. According to the Senate Public Safety Committee analysis:

The San Francisco Chronicle highlighted a specific instance of an inmate harassing alleged former victims in a June 1, 1993 article which states:

‘Despite being locked away in California’s most remote and secure prison, a child molester and killer has waged a war of harassment against a San Francisco mother who was responsible for his arrest nearly a decade ago.’

The Assembly Committee on Public Safety further highlighted the case during a special hearing on July 20, 1993, which revealed that Ms. Linda Pride and her daughter Jennifer had been harassed over a period of almost a decade from behind bars by a man whom Ms. Pride had accused of molesting Jennifer years before. The inmate, Herbert Bruce Lemont, had: filed change of address forms five times and had Pride family’s mail forwarded to him in prison; mailed forged power-of-attorney forms to the IRS and obtained her tax returns; fraudulently obtained her credit report; and acquired the Social Security earnings statement for Pride’s daughter, Jennifer.

His harassment of the Prides was reportedly facilitated by his legal adoption of the name Walter Borovkoff -- that of Pride’s ex-husband and Jennifer’s father. According to the San Francisco Chronicle, he was ‘claiming in court records and to prison authorities’ that Jennifer was his daughter and Pride his ex-wife. The prisoner also secured photos of Jennifer and her yearbook from her school. The Prides moved on several occasions, had an unlisted address and sealed DMV records, but still received threatening calls and letters.

The IRS and postal service declined Pride's requests to have Lemont prosecuted, partly because he was already serving a long sentence.

Ms. Pride tried unsuccessfully to get lawyers in Del Norte County, where Lemont is imprisoned, to have his name change expunged. She says they were unwilling to antagonize an inmate.

Only after the Chronicle article publicized Ms. Pride's ordeal did a Del Norte County judge rescind the name change.

Shortly thereafter, despite increased monitoring of Lemont by the CDC, he managed to get another threatening letter through to Pride.

3. Delaware Law

Under Delaware law, an inmate under the supervision of the State of Delaware Department of Corrections may seek a name change if the name change is motivated by a religious belief or gender identity. Section 5901 of Title 10 of the Delaware Code states, in part:

(c) The common law right of any person to change his or her name is hereby abrogated as to individuals subject to the supervision of the State of Delaware Department of Correction. Such individuals may only effect a name change by petitioning the Court of Common Pleas as follows:

- (1) Individuals subject to the supervision of the Department of Correction shall be prohibited from adopting any names other than their legal names or otherwise effecting name changes, except as provided in this subsection.
- (2) When, based upon testimony or sworn affidavits, the Court finds that a petition for a name change of an individual subject to the supervision of the Department of Correction is motivated by a sincerely held religious belief or gender identity, the Court may grant such petition. In any case in which an individual subject to the supervision of the Department of Correction petitions the Court of Common Pleas for a change of name, the Court shall provide notice and opportunity to oppose the name change to the Department of Correction and shall permit it to submit any appropriate documentation in support of its opposition.
- (3) If an individual is granted a name change pursuant to paragraph (c)(2) of this section, he or she must provide all names previously held or adopted, as well as his or her legal name when signing any legal document or providing information to a law-enforcement officer.
- (4) The granting of any name changes pursuant to this subsection shall not restrict the Department of Correction from maintaining institutional files or otherwise referring to individuals by the names under which they became subject to the Department's supervision.

The provision that allows inmates to change their names because of gender identity was added in 2015.

4. Effect of This Legislation

The legislation would allow inmates at CDCR, as well as individuals on probation or parole, to file a request for a name change without CDCR or county approval. This legislation would, additionally, require CDCR and counties to utilize the inmate's new name. Given that there is at least one incident in which a CDCR inmate changed his name for the purpose of harassing his victim, members may wish to consider recommending an amendment that would require the individuals under the jurisdiction of CDCR to provide CDCR with a copy of the application for a name change when it is filed. This amendment will afford CDCR the opportunity to object to a name change, should a name change be sought for a nefarious purpose.

5. Argument in Opposition

According to the California State Sheriffs' Association:

While we are sensitive to the issues highlighted by this bill, it raises numerous logistical and policy concerns. SB 310 provides no limit on the number of times a person may petition for a name and/or gender change. Also, there is no differentiation in the bill between a person who may be serving a short commitment, including a pre-trial inmate, and an inmate sentenced to a multi-year term of incarceration. SB 310 includes no requirement that a person actually be transgender to undertake the name change process contemplated by the bill. Gender changes that happen during incarceration will ostensibly create classification and housing issues within the jail.

Additionally, allowing inmates to change names and gender while in the facility could complicate identification issues when it comes to other pending criminal matters, interactions with other government agencies like those responsible for health services and child welfare, or reconciling criminal history data with other agencies.

In addition to the concerns listed above, SB 310 creates the obligation for counties to undertake more unfunded local duties.

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