

**OFFICE OF LEGISLATIVE COUNSEL
DRAFT BILL**

RN: 1704940

This request was prepared for you in accordance with instructions provided to us by Sarah Boot.

LCB Deputy Contact: Thomas Dombrowski at 341-8243.

The boxes checked below, if any, apply to this request:

- Cover letter:** This request is accompanied by a cover letter, to bring to your attention legal or practical issues that may be raised by this bill, if introduced.
- Unbacked bill:** The attached bill draft has **not** been backed for introduction. When a Member has decided to introduce this bill draft, the draft should be returned to the Office of Legislative Counsel as soon as possible so that it can be prepared for introduction by that Member.
- Spot bill:** This bill, if introduced, may not be qualified for referral to a committee, if it is deemed a bill that makes no substantive change in or addition to existing law, or that would not otherwise affect the ongoing operations of state or local government (see, for example, Assembly Rule 51.5).
- Bill related to the budget:** In order for this measure to be deemed a bill “providing for appropriations related to the budget” within the meaning of Section 12 of Article IV of the California Constitution, thereby allowing the measure to be passed by a majority vote and to take effect immediately upon enactment, it is necessary that this measure contain an appropriation and be identified in the Budget Bill as a measure related to the state budget.
- Reintroduced bill:** This bill, if introduced, may violate the rule that, except as specified, a Member may not author a bill during a session that would have substantially the same effect as a bill he or she previously introduced during that session (Joint Rule 54(c)).

AUTHOR'S COPY

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Atkins.

General Subject: Name and gender change: prisons and county jails.

Existing law allows a person to apply for a change of name or gender, as specified. Existing law prohibits a person imprisoned in the state prison from filing a petition for a change of name unless permitted by the Director of Corrections and Rehabilitation. Existing law requires a court to deny a petition for a name change made by a person under the jurisdiction of the Department of Corrections and Rehabilitation, unless that person's parole agent or probation officer determines that the name change will not pose a security risk to the community and grants prior written approval.

This bill would remove those limitations on a petition for a change of name filed by a person imprisoned in the state prison. The bill would instead establish the right of a person under the jurisdiction of the Department of Corrections and Rehabilitation or imprisoned within a county jail to petition the court to obtain a name or gender change. The bill would require the Department of Corrections and Rehabilitation or



county jail to use the new name of a person who obtains a name change, and to list the prior name only as an alias. By increasing the duties of county jails, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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AUTHOR'S COPY

An act to amend Section 1279.5 of the Code of Civil Procedure, relating to name and gender changes.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) Sixteen percent of transgender people who have been in jail or prison report being physically assaulted and 15 percent report being sexually assaulted.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

SEC. 2. Section 1279.5 of the Code of Civil Procedure is amended to read:

1279.5. (a) Except as provided in subdivision ~~(b)~~, ~~(c)~~, ~~(d)~~, ~~(d)~~ or (e), ~~nothing~~ in this title ~~shall be construed to~~ does not abrogate the common law right of any person to change his or her name.

~~(b) Notwithstanding any other law, no person imprisoned in the state prison and under the jurisdiction of the Director of Corrections shall be allowed to file a petition for change of name pursuant to Section 1276, except as permitted at the discretion of the Director of Corrections.~~

~~(c) A court shall deny a petition for a name change pursuant to Section 1276 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 shall determine that the name change will not pose a security risk to the community.~~

(b) A person under the jurisdiction of the Department of Corrections and Rehabilitation or imprisoned within a county jail has the right to petition the court to



obtain a name or gender change pursuant to Section 1276 or Section 103425 of the Health and Safety Code.

(c) In all documentation of a person under the jurisdiction of the Department of Corrections and Rehabilitation or imprisoned within a county jail, the new name of a person who obtains a name change shall be used, and prior names shall be listed as an alias.

(d) Notwithstanding any other law, a court shall deny a petition for a name change pursuant to Section 1276 made by a person who is required to register as a sex offender under Section 290 of the Penal Code, 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 shall, 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.

(e) For the purpose of this section, the court shall use the California Law Enforcement Telecommunications System (CLETS) and Criminal Justice Information System (CJIS) to determine whether or not an applicant for a name change ~~is under the jurisdiction of the Department of Corrections~~ or is required to register as a sex offender pursuant to Section 290 of the Penal Code. Each person applying for a name change shall declare under penalty of perjury that he or she is ~~not under the jurisdiction of the Department of Corrections~~ or is required to register as a sex offender pursuant



to Section 290 of the Penal Code. If a court is not equipped with CLETS or CJIS, the clerk of the court shall contact an appropriate local law enforcement agency, which shall determine whether or not the petitioner is ~~under the jurisdiction of the Department of Corrections or is~~ required to register as a sex offender pursuant to Section 290 of the Penal Code.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



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