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**SB-310 Name and gender change: prisons and county jails.** (2017-2018)

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**Senate Bill No. 310**

**CHAPTER 856**

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

[ Approved by Governor October 15, 2017. Filed with Secretary of State October 15, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 310, Atkins. 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 Secretary of the Department 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, commencing September 1, 2018, would remove those limitations on a petition for a change of name filed by a person imprisoned in a state prison. The bill would instead establish the right of a person under the jurisdiction of the department or sentenced to county jail to petition the court to obtain a name or gender change. The bill would require the department 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. This bill would also require that the person petitioning for a name change provide a copy of the petition to the department or sheriff's department at the time of filing. 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 Local Program: yes

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

**SECTION 1.** The Legislature finds and declares the following:

(a) 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 Secretary of the Department 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.

(b) In *Norsworthy v. Beard* (N.D.Cal. 2014) 74 F.Supp.3d 1100, 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.

(c) In Delaware, effective June 2015, an incarcerated individual has 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), or (e), nothing in this title shall be construed to 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.

(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.

(f) This section shall become inoperative on September 1, 2018, and, as of January 1, 2019, is repealed.

**SEC. 3.** Section 1279.5 is added to the Code of Civil Procedure, to read:

**1279.5.** (a) Except as provided in subdivision (e) or (f), this title does not abrogate the common law right of a person to change his or her name.

(b) A person under the jurisdiction of the Department of Corrections and Rehabilitation or sentenced to county jail has the right to petition the court to obtain a name or gender change pursuant to this title or Article 7 (commencing with Section 103425) of Chapter 11 of Part 1 of Division 102 of the Health and Safety Code.

(c) A person under the jurisdiction of the Department of Corrections and Rehabilitation shall 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 shall 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.

(d) 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.

(e) Notwithstanding any other law, a court shall deny a petition for a name change pursuant to this title 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.

(f) 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 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 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 required to register as a sex offender pursuant to Section 290 of the Penal Code.

(g) This section shall become operative on September 1, 2018.

**SEC. 4.** 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.