

ASSEMBLY BILL

No. 1121

Introduced by Assembly Member Atkins

February 22, 2013

An act to amend Sections 1277 and 1278 of the Code of Civil Procedure, and to add Section 103426 to, the Health and Safety Code, relating to civil proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1121, as introduced, Atkins. Civil proceedings: petition for change of name.

Existing law sets forth the requirements and procedures for proceedings commenced by the filing of a petition for a change of name. Existing law authorizes a court to grant the petition without a hearing if no written objection to the change of name is timely filed and imposes publication requirements with respect to the court hearing of the change of name petition. Existing law also requires that the current legal name of the petitioner be kept confidential by the court under prescribed circumstances.

This bill would provide that if no written objection is timely filed, the order reciting the filing of the petition, the petitioner's name, and the proposed name shall state that the court is required to grant the petition without a hearing. The bill would repeal the publication requirements relating to the order to show cause and would repeal and recast the provisions specifying the conditions under which the current legal name of the petitions be kept confidential by the court, including a situation where the petition for a change of name is sought in order to conform the petitioner's name to his or her gender identity. The bill would make conforming changes.

Existing law authorizes a person to file a petition with the superior court in any county to seek a judgment recognizing a change of gender whenever that person has undergone clinically appropriate treatment for the purpose of gender transition. Existing law requires that if requested, the judgment include an order that a new birth certificate be prepared to reflect the change of gender and any change of name. Existing law requires that the State Registrar transmit a certified copy of a birth certificate newly established pursuant to these provisions.

This bill would require the State Registrar to issue a new birth certificate without a court order for any person born in the state who has undergone clinically appropriate treatment for the purpose of gender transition and submits to the State Registrar an affidavit of a physician attesting that the person has undergone that treatment, as specified. Upon receipt of the documentation and a prescribed fee, the State Registrar would be required to establish a new birth certificate reflecting the person’s sex and name, if applicable.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 1277 of the Code of Civil Procedure is
 2 amended to read:
 3 1277. (a) If a proceeding for a change of name is commenced
 4 by the filing of a petition, except as provided in subdivisions (b),
 5 (c), and (e), the court shall thereupon make an order reciting the
 6 filing of the petition, the name of the person by whom it is filed,
 7 and the name proposed. The order shall direct all persons interested
 8 in the matter to appear before the court at a time and place
 9 specified, which shall be not less than six nor more than 12 weeks
 10 from the time of making the order, unless the court orders a
 11 different time, to show cause why the application for change of
 12 name should not be granted. The order shall direct all persons
 13 interested in the matter to make known any objection that they
 14 may have to the granting of the petition for change of name by
 15 filing a written objection, which includes the reasons for the
 16 objection, with the court at least two court days before the matter
 17 is scheduled to be heard and by appearing in court at the hearing
 18 to show cause why the petition for change of name should not be

1 granted. The order shall state that, if no written objection is timely
2 filed, the court ~~may~~ *shall* grant the petition without a hearing.

3 ~~A copy of the order to show cause shall be published pursuant~~
4 ~~to Section 6064 of the Government Code in a newspaper of general~~
5 ~~circulation to be designated in the order published in the county.~~
6 ~~If no newspaper of general circulation is published in the county,~~
7 ~~a copy of the order to show cause shall be posted by the clerk of~~
8 ~~the court in three of the most public places in the county in which~~
9 ~~the court is located, for a like period. Proof shall be made to the~~
10 ~~satisfaction of the court of this publication or posting, at the time~~
11 ~~of the hearing of the application.~~

12 ~~Four weekly publications shall be sufficient publication of the~~
13 ~~order to show cause. If the order is published in a daily newspaper,~~
14 ~~publication once a week for four successive weeks shall be~~
15 ~~sufficient.~~

16 If a petition has been filed for a minor by a parent and the other
17 parent, if living, does not join in consenting thereto, the petitioner
18 shall cause, not less than 30 days prior to the hearing, to be served
19 notice of the time and place of the hearing or a copy of the order
20 to show cause on the other parent pursuant to Section 413.10,
21 414.10, 415.10, or 415.40. If notice of the hearing cannot
22 reasonably be accomplished pursuant to Section 415.10 or 415.40,
23 the court may order that notice be given in a manner that the court
24 determines is reasonably calculated to give actual notice to the
25 nonconsenting parent. In that case, if the court determines that
26 notice by publication is reasonably calculated to give actual notice
27 to the nonconsenting parent, the court may determine that
28 publication of the order to show cause pursuant to this subdivision
29 is sufficient notice to the nonconsenting parent.

30 ~~(b) (1) If the petition for a change of name alleges a reason or~~
31 ~~circumstance described in paragraph (2), and the petitioner is a~~
32 ~~participant in the address confidentiality program created pursuant~~
33 ~~to Chapter 3.1 (commencing with Section 6205) of Division 7 of~~
34 ~~Title 1 of the Government Code, the action for a change of name~~
35 ~~is exempt from the requirement for publication of the order to~~
36 ~~show cause under subdivision (a), and the petition and the order~~
37 ~~of the court shall, in lieu of reciting the proposed name, indicate~~
38 ~~that the proposed name is confidential and will be on file with the~~
39 ~~Secretary of State pursuant to the provisions of the address~~
40 ~~confidentiality program.~~

1 ~~(2) The procedure described in paragraph (1) applies to petitions~~
2 ~~alleging any of the following reasons or circumstances:~~
3 ~~(A) To avoid domestic violence, as defined in Section 6211 of~~
4 ~~the Family Code.~~
5 ~~(B) To avoid stalking, as defined in Section 646.9 of the Penal~~
6 ~~Code.~~
7 ~~(C) The petitioner is, or is filing on behalf of, a victim of sexual~~
8 ~~assault, as defined in Section 1036.2 of the Evidence Code.~~
9 ~~(3) For any petition under this subdivision,~~
10 ~~(b) Upon the petitioner’s request, in situations where a person’s~~
11 ~~safety or privacy is at risk, the current legal name of the petitioner~~
12 ~~shall be kept confidential by the court and shall not be published~~
13 ~~or posted in the court’s calendars, indexes, or register of actions,~~
14 ~~as required by Article 7 (commencing with Section 69840) of~~
15 ~~Chapter 5 of Title 8 of the Government Code, or by any means or~~
16 ~~in any public forum, including a hardcopy or an electronic copy,~~
17 ~~or any other type of public media or display, if any of the following~~
18 ~~conditions is met:~~
19 ~~(1) Confidentiality is necessary to avoid domestic violence, as~~
20 ~~defined in Section 6211 of the Family Code.~~
21 ~~(2) Confidentiality is necessary to avoid stalking, as defined in~~
22 ~~Section 646.9 of the Penal Code.~~
23 ~~(3) The petitioner is, or filing on behalf of, a victim of sexual~~
24 ~~assault, as defined in Section 1036.2 of the Evidence Code.~~
25 ~~(4) The petition for a change of name is sought in order to~~
26 ~~conform the petitioner’s name to his or her gender identity.~~
27 ~~(4) (A)–~~
28 (c) (1) A petitioner may request that the court file the petition
29 and any other papers associated with the proceeding under seal.
30 The court may consider the request at the same time as the petition
31 for name change, and may grant the request in any case in which
32 the court finds that all of the following factors apply:
33 (i)
34 (A) There exists an overriding interest that overcomes the right
35 of public access to the record.
36 (ii)
37 (B) The overriding interest supports sealing the record.
38 (iii)
39 (C) A substantial probability exists that the overriding interest
40 will be prejudiced if the record is not sealed.

1 ~~(iv)~~
2 (D) The proposed order to seal the records is narrowly tailored.

3 ~~(v)~~
4 (E) No less restrictive means exist to achieve the overriding
5 interest.

6 ~~(B)~~
7 (2) On or before January 1, 2010, the Judicial Council shall
8 develop rules of court and forms consistent with the requirements
9 of this paragraph.

10 ~~(c) A proceeding for a change of name for a witness participating~~
11 ~~in the state Witness Protection Program established by Title 7.5~~
12 ~~(commencing with Section 14020) of Part 4 of the Penal Code~~
13 ~~who has been approved for the change of name by the program is~~
14 ~~exempt from the requirement for publication of the order to show~~
15 ~~cause under subdivision (a).~~

16 (d) If application for change of name is brought as part of an
17 action under the Uniform Parentage Act (Part 3 (commencing with
18 Section 7600) of Division 12 of the Family Code), whether as part
19 of a petition or cross-complaint or as a separate order to show
20 cause in a pending action thereunder, service of the application
21 shall be made upon all other parties to the action in a like manner
22 as prescribed for the service of a summons, as is set forth in Article
23 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of
24 Part 2. Upon the setting of a hearing on the issue, notice of the
25 hearing shall be given to all parties in the action in a like manner
26 and within the time limits prescribed generally for the type of
27 hearing (whether trial or order to show cause) at which the issue
28 of the change of name is to be decided.

29 (e) If a guardian files a petition to change the name of his or her
30 minor ward pursuant to Section 1276:

31 (1) The guardian shall provide notice of the hearing to any living
32 parent of the minor by personal service at least 30 days prior to
33 the hearing.

34 (2) If either or both parents are deceased or cannot be located,
35 the guardian shall cause, not less than 30 days prior to the hearing,
36 to be served a notice of the time and place of the hearing or a copy
37 of the order to show cause on the child's grandparents, if living,
38 pursuant to Section 413.10, 414.10, 415.10, or 415.40.

39 SEC. 2. Section 1278 of the Code of Civil Procedure is
40 amended to read:

1 1278. (a) Except as provided in subdivisions (c) and (d), the
 2 petition or application shall be heard at the time designated by the
 3 court, only if objections are filed by any person who can, in those
 4 objections, show to the court good reason against the change of
 5 name. At the hearing, the court may examine on oath any of the
 6 petitioners, remonstrants, or other persons, touching the petition
 7 or application, and may make an order changing the name, or
 8 dismissing the petition or application, as to the court may seem
 9 right and proper.

10 If no objection is filed at least two court days before the date set
 11 for hearing, the court ~~may~~ shall, without hearing, enter the order
 12 that the change of name is granted.

13 (b) If the provisions of subdivision (b) of Section 1277 apply,
 14 the court shall not disclose the proposed name unless the court
 15 finds by clear and convincing evidence that the allegations of
 16 domestic violence ~~or~~, stalking, *sexual assault*, or *gender identity*
 17 in the petition are false.

18 (c) If the application for a change of name is brought as part of
 19 an action under the Uniform Parentage Act (Part 3 (commencing
 20 with Section 7600) of Division 12 of the Family Code), the hearing
 21 on the issue of the change of name shall be conducted pursuant to
 22 statutes and rules of court governing those proceedings, whether
 23 the hearing is conducted upon an order to show cause or upon trial.

24 (d) If the petition for a change of name is filed by a guardian
 25 on behalf of a minor ward, the court shall first find that the ward
 26 is likely to remain in the guardian’s care until the age of majority
 27 and that the ward is not likely to be returned to the custody of his
 28 or her parents. Upon making those findings, the court shall consider
 29 the petition and may grant the petition only if it finds that the
 30 proposed name change is in the best interest of the child.

31 SEC. 3. Section 103426 is added to the Health and Safety Code,
 32 to read:

33 103426. The State Registrar shall issue a new birth certificate
 34 without a court order for any person born in this state who has
 35 undergone clinically appropriate treatment for the purpose of
 36 gender transition and submits directly to the State Registrar the
 37 documentation described in subdivision (a) of Section 103430.
 38 Upon receipt of the documentation and the fee prescribed by
 39 Section 103725, the State Registrar shall establish a new birth
 40 certificate reflecting the person’s correct sex and name, if

- 1 applicable, pursuant to subdivision (d) of Section 103430 and
- 2 Sections 103440 and 103445.

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