

AMENDED IN SENATE AUGUST 26, 2013

AMENDED IN SENATE JULY 9, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1121

**Introduced by Assembly Member Atkins
(Coauthors: Assembly Members Garcia and Stone)**

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1121, as amended, Atkins. Gender identity: 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 a petition for a change of name is sought to conform the petitioner's name to his or her gender identity, and no timely objection is filed, the court is required to grant the petition without a hearing. The bill would exempt the petition action from a specified publication requirement ~~and would require that the petition~~

~~and order of the court indicate that the proposed name is confidential.~~
 The bill would authorize a court, at the request of the petitioner to, issue an order reciting the name of the petitioner as a result of the court’s granting of the petition. The bill would make these provisions operative on July 1, 2014.

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 *reflecting a change of sex* 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 *any change of 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

1 may have to the granting of the petition for change of name by
2 filing a written objection, which includes the reasons for the
3 objection, with the court at least two court days before the matter
4 is scheduled to be heard and by appearing in court at the hearing
5 to show cause why the petition for change of name should not be
6 granted. The order shall state that, if no written objection is timely
7 filed, the court may grant the petition without a hearing.

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

17 Four weekly publications shall be sufficient publication of the
18 order to show cause. If the order is published in a daily newspaper,
19 publication once a week for four successive weeks shall be
20 sufficient.

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

35 (b) (1) If the petition for a change of name alleges a reason or
36 circumstance described in paragraph (2), and the petitioner is a
37 participant in the address confidentiality program created pursuant
38 to Chapter 3.1 (commencing with Section 6205) of Division 7 of
39 Title 1 of the Government Code, the action for a change of name
40 is exempt from the requirement for publication of the order to

1 show cause under subdivision (a), and the petition and the order
2 of the court shall, in lieu of reciting the proposed name, indicate
3 that the proposed name is confidential and will be on file with the
4 Secretary of State pursuant to the provisions of the address
5 confidentiality program.

6 (2) The procedure described in paragraph (1) applies to petitions
7 alleging any of the following reasons or circumstances:

8 (A) To avoid domestic violence, as defined in Section 6211 of
9 the Family Code.

10 (B) To avoid stalking, as defined in Section 646.9 of the Penal
11 Code.

12 (C) The petitioner is, or is filing on behalf of, a victim of sexual
13 assault, as defined in Section 1036.2 of the Evidence Code.

14 (3) For any petition under this subdivision, the current legal
15 name of the petitioner shall be kept confidential by the court and
16 shall not be published or posted in the court’s calendars, indexes,
17 or register of actions, as required by Article 7 (commencing with
18 Section 69840) of Chapter 5 of Title 8 of the Government Code,
19 or by any means or in any public forum, including a hardcopy or
20 an electronic copy, or any other type of public media or display.

21 (4) (A) A petitioner may request that the court file the petition
22 and any other papers associated with the proceeding under seal.
23 The court may consider the request at the same time as the petition
24 for name change, and may grant the request in any case in which
25 the court finds that all of the following factors apply:

26 (i) There exists an overriding interest that overcomes the right
27 of public access to the record.

28 (ii) The overriding interest supports sealing the record.

29 (iii) A substantial probability exists that the overriding interest
30 will be prejudiced if the record is not sealed.

31 (iv) The proposed order to seal the records is narrowly tailored.

32 (v) No less restrictive means exist to achieve the overriding
33 interest.

34 (B) On or before January 1, 2010, the Judicial Council shall
35 develop rules of court and forms consistent with the requirements
36 of this paragraph.

37 (c) A proceeding for a change of name for a witness participating
38 in the state Witness Protection Program established by Title 7.5
39 (commencing with Section 14020) of Part 4 of the Penal Code
40 who has been approved for the change of name by the program is

1 exempt from the requirement for publication of the order to show
2 cause under subdivision (a).

3 (d) If application for change of name is brought as part of an
4 action under the Uniform Parentage Act (Part 3 (commencing with
5 Section 7600) of Division 12 of the Family Code), whether as part
6 of a petition or cross-complaint or as a separate order to show
7 cause in a pending action thereunder, service of the application
8 shall be made upon all other parties to the action in a like manner
9 as prescribed for the service of a summons, as is set forth in Article
10 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of
11 Part 2. Upon the setting of a hearing on the issue, notice of the
12 hearing shall be given to all parties in the action in a like manner
13 and within the time limits prescribed generally for the type of
14 hearing (whether trial or order to show cause) at which the issue
15 of the change of name is to be decided.

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

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

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

26 (f) This section shall remain in effect only until July 1, 2014,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before July 1, 2014, deletes or extends that date.

29 SEC. 2. Section 1277 is added to the Code of Civil Procedure,
30 to read:

31 1277. (a) (1) If a proceeding for a change of name is
32 commenced by the filing of a petition, except as provided in
33 subdivisions (b), (c), and (e), the court shall thereupon make an
34 order reciting the filing of the petition, the name of the person by
35 whom it is filed, and the name proposed. The order shall direct all
36 persons interested in the matter to appear before the court at a time
37 and place specified, which shall be not less than six nor more than
38 12 weeks from the time of making the order, unless the court orders
39 a different time, to show cause why the application for change of
40 name should not be granted. The order shall direct all persons

1 interested in the matter to make known any objection that they
2 may have to the granting of the petition for change of name by
3 filing a written objection, which includes the reasons for the
4 objection, with the court at least two court days before the matter
5 is scheduled to be heard and by appearing in court at the hearing
6 to show cause why the petition for change of name should not be
7 granted. The order shall state that, if no written objection is timely
8 filed, the court may grant the petition without a hearing. If the
9 petition seeks to conform the petitioner's name to his or her gender
10 identity and no objection is timely filed, the court shall grant the
11 petition without a hearing.

12 (2) A copy of the order to show cause shall be published
13 pursuant to Section 6064 of the Government Code in a newspaper
14 of general circulation to be designated in the order published in
15 the county. If no newspaper of general circulation is published in
16 the county, a copy of the order to show cause shall be posted by
17 the clerk of the court in three of the most public places in the
18 county in which the court is located, for a like period. Proof shall
19 be made to the satisfaction of the court of this publication or
20 posting, at the time of the hearing of the application.

21 (3) Four weekly publications shall be sufficient publication of
22 the order to show cause. If the order is published in a daily
23 newspaper, publication once a week for four successive weeks
24 shall be sufficient.

25 (4) If a petition has been filed for a minor by a parent and the
26 other parent, if living, does not join in consenting thereto, the
27 petitioner shall cause, not less than 30 days prior to the hearing,
28 to be served notice of the time and place of the hearing or a copy
29 of the order to show cause on the other parent pursuant to Section
30 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot
31 reasonably be accomplished pursuant to Section 415.10 or 415.40,
32 the court may order that notice be given in a manner that the court
33 determines is reasonably calculated to give actual notice to the
34 nonconsenting parent. In that case, if the court determines that
35 notice by publication is reasonably calculated to give actual notice
36 to the nonconsenting parent, the court may determine that
37 publication of the order to show cause pursuant to this subdivision
38 is sufficient notice to the nonconsenting parent.

39 (5) *If the petition for a change of name is sought in order to*
40 *conform the petitioner's name to his or her gender identity, the*

1 *action for a change of name is exempt from the requirement for*
2 *publication of the order to show cause under this subdivision.*

3 (b) (1) If the petition for a change of name alleges a reason or
4 circumstance described in paragraph (2), and the petitioner is a
5 participant in the address confidentiality program created pursuant
6 to Chapter 3.1 (commencing with Section 6205) of Division 7 of
7 Title 1 of the Government Code, the action for a change of name
8 is exempt from the requirement for publication of the order to
9 show cause under subdivision (a), and the petition and the order
10 of the court shall, in lieu of reciting the proposed name, indicate
11 that the proposed name is confidential and will be on file with the
12 Secretary of State pursuant to the provisions of the address
13 confidentiality program.

14 (2) The procedure described in paragraph (1) applies to petitions
15 alleging any of the following reasons or circumstances:

16 (A) To avoid domestic violence, as defined in Section 6211 of
17 the Family Code.

18 (B) To avoid stalking, as defined in Section 646.9 of the Penal
19 Code.

20 (C) The petitioner is, or is filing on behalf of, a victim of sexual
21 assault, as defined in Section 1036.2 of the Evidence Code.

22 ~~(3) If the petition for a change of name is sought in order to~~
23 ~~conform the petitioner's name to his or her gender identity, the~~
24 ~~action for a change of name is exempt from the requirement for~~
25 ~~publication of the order to show cause under subdivision (a), and,~~
26 ~~at the request of the petitioner, the petition and order of the court~~
27 ~~shall, in lieu of reciting the proposed name, indicate that the~~
28 ~~proposed name is confidential.~~

29 ~~(4)~~

30 (3) For any petition under this subdivision, the current legal
31 name of the petitioner shall be kept confidential by the court and
32 shall not be published or posted in the court's calendars, indexes,
33 or register of actions, as required by Article 7 (commencing with
34 Section 69840) of Chapter 5 of Title 8 of the Government Code,
35 or by any means or in any public forum, including a hardcopy or
36 an electronic copy, or any other type of public media or display.

37 ~~(5)~~

38 (4) Notwithstanding paragraph ~~(4)~~ (3), the court may, at the
39 request of the petitioner, issue an order reciting the name of the
40 petitioner at the time of the filing of the petition and the new legal

1 name of the petitioner as a result of the court’s granting of the
2 petition.

3 ~~(6)~~

4 (5) A petitioner may request that the court file the petition and
5 any other papers associated with the proceeding under seal. The
6 court may consider the request at the same time as the petition for
7 name change, and may grant the request in any case in which the
8 court finds that all of the following factors apply:

9 (A) There exists an overriding interest that overcomes the right
10 of public access to the record.

11 (B) The overriding interest supports sealing the record.

12 (C) A substantial probability exists that the overriding interest
13 will be prejudiced if the record is not sealed.

14 (D) The proposed order to seal the records is narrowly tailored.

15 (E) No less restrictive means exist to achieve the overriding
16 interest.

17 (c) A proceeding for a change of name for a witness participating
18 in the state Witness Protection Program established by Title 7.5
19 (commencing with Section 14020) of Part 4 of the Penal Code
20 who has been approved for the change of name by the program is
21 exempt from the requirement for publication of the order to show
22 cause under subdivision (a).

23 (d) If application for change of name is brought as part of an
24 action under the Uniform Parentage Act (Part 3 (commencing with
25 Section 7600) of Division 12 of the Family Code), whether as part
26 of a petition or cross-complaint or as a separate order to show
27 cause in a pending action thereunder, service of the application
28 shall be made upon all other parties to the action in a like manner
29 as prescribed for the service of a summons, as is set forth in Article
30 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of
31 Part 2. Upon the setting of a hearing on the issue, notice of the
32 hearing shall be given to all parties in the action in a like manner
33 and within the time limits prescribed generally for the type of
34 hearing (whether trial or order to show cause) at which the issue
35 of the change of name is to be decided.

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

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

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

6 (f) This section shall become operative on July 1, 2014.

7 SEC. 3. Section 1278 of the Code of Civil Procedure is
8 amended to read:

9 1278. (a) Except as provided in subdivisions (c) and (d), the
10 petition or application shall be heard at the time designated by the
11 court, only if objections are filed by any person who can, in those
12 objections, show to the court good reason against the change of
13 name. At the hearing, the court may examine on oath any of the
14 petitioners, remonstrants, or other persons; touching the petition
15 or application, and may make an order changing the name, or
16 dismissing the petition or application, as to the court may seem
17 right and proper.

18 If no objection is filed at least two court days before the date set
19 for hearing, the court may, without hearing, enter the order that
20 the change of name is granted.

21 (b) If the provisions of subdivision (b) of Section 1277 apply,
22 the court shall not disclose the proposed name unless the court
23 finds by clear and convincing evidence that the allegations of
24 domestic violence or stalking are false.

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

31 (d) If the petition for a change of name is filed by a guardian
32 on behalf of a minor ward, the court shall first find that the ward
33 is likely to remain in the guardian's care until the age of majority
34 and that the ward is not likely to be returned to the custody of his
35 or her parents. Upon making those findings, the court shall consider
36 the petition and may grant the petition only if it finds that the
37 proposed name change is in the best interest of the child.

38 (e) This section shall remain in effect only until July 1, 2014,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before July 1, 2014, deletes or extends that date.

1 SEC. 4. Section 1278 is added to the Code of Civil Procedure,
 2 to read:

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

12 (2) If no objection is filed at least two court days before the date
 13 set for hearing, the court may, without hearing, enter the order that
 14 the change of name is granted. If the petition seeks to conform the
 15 petitioner’s name to his or her gender identity and no objection is
 16 timely filed, the court shall grant the petition without a hearing.

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

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

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

35 (e) This section shall become operative on July 1, 2014.

36 SEC. 5. Section 103426 is added to the Health and Safety Code,
 37 to read:

38 103426. The State Registrar shall issue a new birth certificate
 39 *reflecting a change of sex* without a court order for any person
 40 born in this state who has undergone clinically appropriate

1 treatment for the purpose of gender transition and submits directly
2 to the State Registrar the ~~documentation~~ *affidavit* described in
3 subdivision (a) of Section 103430 *that includes the signature and*
4 *physician license number of a licensed physician.* Upon receipt of
5 the documentation and the fee prescribed by Section 103725, the
6 State Registrar shall establish a new birth certificate reflecting the
7 person's correct sex and *any change in name, if applicable,*
8 ~~pursuant to subdivision (d) of Section 103430 and Sections 103440~~
9 ~~and 103445 if accompanied by a court order for a change of name.~~

O