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Prisoner Name Changes

Contents

"What's in a name? That which we call a rose
By any other name would smell as sweet;" –Juliet, in William Shakespeare's *Romeo and Juliet*.

❖ Introduction

In the United States, in most jurisdictions, while there may be formal legal procedures to change one's name, a person is free to adopt the use of a different name for a variety of purposes, so long as it is not done with fraudulent intent.

Prisoners sometimes express a desire to change their name, and some initiate court proceedings to have such changes legally recognized. Many such changes are for religious reasons, while some are for other assorted personal reasons. This article briefly looks at some of the caselaw concerning how prisons and jails respond to prisoner name changes.

Prisoners come into prisons and jails with a particular name under which they have been arrested or prosecuted, often referred to as their "committed" name. When prisoners ask to be known under a different name, under what circumstances have courts ruled that such requests be honored? And what are some of the circumstances in which correctional facilities are justified in limiting the ability of prisoners to be known under their preferred new name? What problems can the use of a new name create in the context of mail

delivery, record keeping, sex offender registration, victim notification, and institutional security?

The issue of name changes also arises in the context of prisoner marriage and divorce, particularly for female prisoners, and the normal practices as to women automatically adopting their spouse's last name upon marriage have altered considerably in recent years. Name change issues also arise for transsexual prisoners who wish to transition to a different gender identity. These issues are not discussed in this article.

At the conclusion of the article, there is a listing of some relevant resources and references.

❖ Religious Names

The vast majority of case law concerning prisoner name changes involves the adoption of religious names, often upon conversion to a religion. This practice is common in a number of religions, including a number of Christian sects, Judaism, Islam, Hinduism, Buddhism, Sikhism, and Paganism. Some of these religions may encourage the substituting of the new religious name for the individual's prior identity, while in other instances; the religious name is a secondary identity, used for more limited purposes, such as in connection with certain religious ceremonies.

A prison may refuse to recognize a prisoner's newly adopted religious name, under the legal standards courts will enforce concerning the First Amendment's free exercise of religion guarantee, so long as the refusal is "reasonably and substantially justified by considerations of prison discipline and order." In *Barrett v. Virginia*, #82-6047, 689 F.2d 498 (4th Cir. 1982), the court concluded that a state statute enforcing an absolute ban on the recognition of religious names was unreasonable.

The court noted, in reaching this conclusion, that many prisoners were already known by several names, including aliases, nicknames, etc., so that adding an adopted religious name to the established system of records would not necessarily destroy the "reliability and efficiency of correctional records" which already had to cope with the problem.

Courts applying the First Amendment legal standard may be more likely to recognize some right of prisoners to be called by their new religious name if they have gone through a formal name changing procedure in state court. In *Salahuddin v. Coughlin*,

#80-7217, 591 F. Supp. 353 (S.D.N.Y. 1984), for instance, the court upheld the legality of a prison policy providing recognition for court ordered name changes, but not for religious names that prisoners simply decide on their own to adopt. The court reasoned that there was a legitimate governmental interest thereby served in "avoiding confusion" and simplifying the keeping of records.

In *Malik v. Brown*, #94-35529, 71 F.3d 724 (9th Cir. 1995), the court found that a prisoner had a constitutional interest in being able to use his legally adopted religious name, in addition to his committed name. This did not result in the court ordering the prison to change its filing/records system, but merely in recognizing a prisoner's right to include his religious name along with his committed name on his outgoing mail. The appeals court reasoned that this placed a minimal burden on the prison, and that there was no legitimate "penological interest" in forbidding a prisoner from listing his religious name along with his committed name on his outgoing correspondence.

Congress, in adopting two statutes concerning the religious rights of prisoners, has imposed a stricter standard than the First Amendment's "reasonable relationship" test. They are the Religious Freedom Restoration Act (RFRA), 42 U.S.C. Sec. 2000bb, applicable in federal prisons, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc, applicable in state, county, and local correctional institutions and detention facilities that receive federal funds.

The differences between the First Amendment legal standard and the standard under these two statutes is described in more detail in Religious Freedom in Correctional Facilities (I)--Legal Standard, 2007 (3) AELE Mo. L.J. 301. Essentially, however, these statutes require that correctional officials trying to enforce rules that impose a "substantial burden" on prisoner religious exercises show that the rule is justified by a "compelling" (rather than merely reasonable or legitimate) governmental interest, and use the "least restrictive means" to further that interest.

A number of courts have been unconvinced that a prison's refusal to recognize a prisoner's religious name imposed a "substantial" burden on the prisoner's practice of their religion. See, for instance, *Amun v. Culliver*, #04-0131, 2006 U.S. Dist. Lexis 75949 (Unpub. S.D. Ala.). The court in that case upheld the refusal to add the plaintiff prisoner's religious name to the prison's visitor list, prisoner location list, and prisoner correspondence list, ruling that this did not substantially burden the prisoner's ability to practice his religion.

Two court decisions suggested that factors that may result in a conclusion that failure to recognize a prisoner's religious name may impose a "substantial" burden are if the prisoner can show that using only his original committed name would exclude him from religious ceremony participation, result in "harsh treatment" or ostracism by fellow believers, or bar the prisoner from rising "through the ranks" in their faith. See *Scott v. California Supreme Court*, #04-2586, 2008 WL 2788346 (Unpub. E.D. Cal.), and *Ashanti v. Cal. Dept. of Corr.*, #03-0474, 2007 U.S. Dist. Lexis 10612 (Unpub. E.D. Cal.).

Even if such a substantial burden is found, however, courts will often uphold a requirement that the prisoner's committed name be used along with his religious name. See *Fawaad v. Jones*, #95-6094, 81 F.3d 1084(11th Cir. 1996). The court in that case pointed out that maintaining prison security is a compelling governmental interest, with the control of the flow of contraband in and out of the facility a fundamental part of maintaining that security. Requiring that prisoners put both their committed and religious names on incoming and outgoing mail, the court concluded, was the "least restrictive" means of serving this compelling interest.

In *United States v. Baker*, #05-10525, 415 F.3d 1273 (11th Cir. 2005), a Florida federal prisoner had his name legally changed for religious reasons, and went to court to seek the issuance of a new commitment order to reflect his legal name change.

This request was denied. While prisoners retain the right to free exercise of their religion, the court stated, a "dual-name" policy under which an inmate is permitted to use a religious name in conjunction with his commitment name is always sufficient to satisfy an inmate's free exercise claim involving the use of a religious name.

The appeals court noted that two other federal appeals courts had previously held that an inmate who legally changes his name does not have a constitutional right to have his pre-existing prison records altered to reflect his newly adopted name. See *Barrett v. Va.*, #82-6047, 689 F.2d 498 (4th Cir. 1982) and *Imam Ali Abdullah Akbar v. Canney*, 634 F.2d 339 (6th Cir. 1980).

The appeals court agreed with the reasoning of these prior cases. It held that while an inmate is entitled to "prospective recognition" of a legal name change, by means of a "dual-name" policy, the plaintiff was not entitled to have documents which pre-dated his legal name change altered.

Some other cases of interest in this area include:

- *Shidler v. Moore*, #3:05-CV-804, 409 F. Supp. 2d 1060 (N.D. Ind. 2006). In this case, a prisoner stated a claim under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. Sec. 2000cc, for money damages and injunctive relief based on the refusal to allow him to use his Islamic religious name to send or receive mail. But the trial court declined to issue a preliminary injunction requiring that he be allowed to use that religious name on his mail because the merits of his claims were "tenuous," and he could obtain damages if he prevailed. Further, any harm he suffered was not "irreparable," since he could still receive mail under his incarceration name, and could use his religious name inside the mail. While a prisoner had a legitimate interest in recognition of the new, legally adopted name he obtained for religious reasons, he was not entitled to have pre-existing documents which pre-dated the name change altered.
- *State of Wis. v. Green*, #2005AP289, 707 N.W.2d 580; 2005 Wis. App. Lexis 992, holding that when a prisoner sought only to supplement his birth name with his spiritual name on the record of his conviction, and the record was devoid of any evidence that such a change would have burdened prison authorities, the court abused its discretion in denying his request.
- *Ephraim v. Angelone*, #01-610, 313 F. Supp. 2d 569 (E.D. Va. 2003), holding that a prison did not violate "Charismatic Christian" inmate's right to religious freedom by failing to use his new "religiously inspired" name. Use of his commitment name in prison computers used when preparing money orders and official documents was justified by legitimate penological interest in holding down costs, since computers were programmed with commitment names.
- *Hakim v. Hicks*, #98-3062, 223 F.3d 1244 (11th Cir. 2000), ruling that a Florida prison's initial refusal to put a death row prisoner's legally adopted religious name on his identification card together with the name under which he had been imprisoned violated his right to exercise his religion.
- *Felix v. Rolan*, #87-2069, 833 F.2d 517 (5th Cir. 1987), holding that a requirement that a prisoner sign both his committed name and legal Muslim name when entering library did not violate religious freedom.

❖ Name Changes, Sex Offender Registration, and Victim Notification

Allowing a prisoner to be known under a new name, whether legally adopted or not, may create some problems in the context of the purposes to be served by sex offender registration or victim notification or protection procedures.

In one case, a state court grappled with this problem. *In Matter of Application of Guttkaiss*, #9864-05, 806 N.Y.S.2d 402 (Sup. Ct. Columbia County, 2005). The case involved a prisoner convicted of sodomy on his nephew, a child less than twelve years-old.

The court concluded that the prisoner could not be granted a requested name change he wanted to assume his deceased mother's maiden name to honor her. Despite the fact that he would be required, following his sentence, to register as a sex offender, people who knew him by the name used prior to his incarceration might not get alerted to his presence and sex offender status unless his name remained the same.

Often, prisoners are required, as a condition of parole, not to contact their crime victims, and in some instances, crime victims are supposed to be notified when prisoners who have previously victimized them are being released. The adoption of a new name for a prisoner may make it more likely that there will be inadvertent gap in such measures because original court documents and other records will only bear the prisoner's original committed name.

"Prisoner/Parolee Name Changes," a policy directive issued by the Michigan Department of Corrections (March 7, 2011), includes requirements that a crime victim be notified "whenever the prisoner or parolee who committed the crime against the victim changes his/her name, corrects his/her name as set forth in Paragraph H, or reverts to his/her commitment name."

The policy indicates that it will only recognize court ordered name changes (after a designated date), that staff members are required to address prisoners by their legal names, but that the failure of a staff member to do so "does not excuse a prisoner or parolee from obeying an order or directive given by the employee."

❖ Name Changes and Prison Security

Name changes by prisoners may have an adverse impact on prisoner security, or impose additional record keeping burdens on prison administrators.

At the same time, the court that decided *In re Arnett*, #F049847, 148 Cal. App. 4th 654, 56 Cal. Rptr. 3d 1, 2007 Cal. App. Lexis 359 (5th Dist.), found that no law explicitly prohibited an inmate incarcerated in a California county jail while waiting to be sentenced in federal court on federal convictions from legally changing his name.

The prisoner, Timothy Wayne Arnett, asked to change his name to August Damian Kokopelli because he does not like the name his parents gave him.

The trial court erred in deciding that such a name change would necessarily be illegal. On remand, the trial court was required to determine whether there were any substantial reasons for denying the name change petition.

One request by a New Jersey prisoner for recognition of a new name amply illustrates the havoc that such recognition could result in, given particular circumstances. See "For Convicted Murderer, No Escaping His Name," New York Times (Dec. 31, 1993),

A convicted murderer named Robert R. Reldan, serving time in a state prison in Trenton, New Jersey for killing two women (and also known as the "Susan Strangler," as both of the women he murdered were named Susan) tried to get a court to change his name to Howard Beyor Junior. He argued that this request had absolutely nothing to do with the fact that the prison's warden, until a few months before, had been Howard I. Beyor.

Rejecting the proposed change, an intermediate state appeals court found that there was a substantial potential for fraud. The prisoner had already engaged in two prior escape attempts, and it was thought that allowing him to adopt a name similar to a warden might create avenues for hatching another escape plot. Additionally, the warden deserved protection "from the harassment inherent in an inmate's parody of the prison administrator's name."

Had the name change been allowed, it was even possible that mail intended for the former warden could have been diverted to the prisoner, or that the prisoner could have incurred expenses for which bills could have resulted for the former warden.

The adoption of a new name might have also served to hide his criminal record if he was ever released.

❖ Conclusion

Correctional facilities have compelling security interests at stake in making sure that prisoners are accurately tracked in all necessary records systems. Crime victims and members of the public also have important interests at stake in seeing to it that prisoners and parolees and their criminal records are accurately recorded and utilized in such systems as sex offender registration, victim notification, disqualification for various professional licenses, and disqualification for firearms purchases.

Many records systems must already cope with the difficulties presented by prisoners' aliases, gang monikers, or organized crime or other nicknames. Policies and planning for record systems should be well thought out and anticipate the need for reasonable accommodation of prisoner name changes adopted for sincere religious or other legitimate reasons.

It is suggested that it may be best to adopt a policy that only recognizes prisoner name changes in the context of a court approved change. It is further suggested that even then, a "dual name" policy that maintains the use of both the new legal name alongside the original "committed" name can best ensure accuracy and proper tracking of prisoners and parolees.

A policy that requires prisoners to inform prison authorities of any pending court proceeding seeking a name change may also be a good idea, giving correctional officials an opportunity to intervene to object when the requested change would create security issues or raise the possibility that the name change requested might facilitate harassment or insult to crime victims, correctional officials or employees, or indicate gang affiliation.

❖ Resources

- Name Change. Wikipedia article.

- Name Change. Wisconsin State Law Library.
- Name Change in Texas.
- Prisoner Change of Name. Summaries of cases reported in AELE publications.
- "Prisoner/Parolee Name Changes," Policy Directive, Michigan Department of Corrections (March 7, 2011).
- "Prisoners Blocked From Frivolous Name Changes," press release of the Minister for Police and Emergency Services, State Government, Victoria, Australia (Nov. 11, 2004).

❖ Relevant Prior Monthly Law Journal Articles

- Prisoner Mail Legal Issues, 2007 (6) AELE Mo. L.J. 301.
- Religious Freedom in Correctional Facilities (I)--Legal Standard, 2007 (3) AELE Mo. L.J. 301.

❖ References:

- Elizabeth F. Emens, "Changing Name Changing: Framing Rules and the Future of Marital Names," 74 Univ. of Chicago Law Review Number 3, pps. 763-863 (Summer 2007).
- Birgit Vollm, Liz Jameson, Harvey Gordon, and Pamela J. Taylor, "Name Change Among Offender Patients: an English High Security Hospital Sample," 12 Criminal Behaviour and Mental Health Issue 4, pps. 269-281 (Nov. 2002). Abstract.
- "For Convicted Murderer, No Escaping His Name," New York Times (Dec. 31, 1993),

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