

This revised analysis replaces the analysis dated 5-11-95.



**House
Legislative
Analysis
Section**

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CRIMINAL NAME CHANGES

House Bill 4693 (Substitute H-1)
House Bill 4694 (Substitute H-2)
Sponsor: Rep. Charles Perricone

Committee: Judiciary and Civil Rights

Senate Bill 318 with House committee
amendment

Sponsor: Sen. William Van Regenmorter

Senate Bill 346 (Substitute H-2)

Sponsor: Sen. Glenn Steil

Senate Committee: Judiciary
House Committee: Judiciary and Civil
Rights

Revised First Analysis (5-17-95)

THE APPARENT PROBLEM:

It is relatively easy in Michigan for a person to change his or her name, either through probate court proceedings or through the simple exercise of the common law right to do so. Changing names can allow an individual to secure a new birth certificate, which, in turn, can enable the person to obtain a new Social Security number. Reportedly, it is not uncommon for prisoners to take advantage of these simple procedures to change their names while incarcerated. Some people believe that, to ensure accurate accounts of criminal records, and to make sure that crime victims are notified of information regarding their assailants, steps should be taken both to make it harder for criminals to change their names and to put in place a system for keeping track of criminal name changes.

THE CONTENT OF THE BILLS:

The bills would prohibit "administrative" name changes by prisoners, require criminal record checks of people who petitioned the probate court for a name change, and require notification of victims and reporting to certain state and local agencies when criminals changed their names.

House Bill 4693 would amend the probate code (MCL 711.1) to prohibit probate courts from allowing a prisoner to change his or her name while incarcerated, unless the person was a participant in the witness protection program. In addition, the bill and Senate Bill 346 would amend the probate code (MCL 711.1) to require that anyone 22 years or older who petitioned the probate court for a name change undergo a criminal records check. If a petitioner had a criminal record, he or she would be presumed to be seeking a name change with a fraudulent intent, and the burden of proof would be on the petitioner to rebut the presumption.

A person 22 years or older who petitioned to have his or her name changed would be required to have two complete sets of fingerprints taken at a local police agency. The fingerprints, along with a copy of the petition and the required processing fees, would be forwarded to the Department of State Police, who would compare the fingerprints with its records and forward a complete set of fingerprints to the Federal Bureau of Investigation (FBI) for comparison with its records. The state police would be required to report to the court information (from

House Bills 4693, 4694 and Senate Bills 318 and 346 (5-17-95)

its files and from the FBI) on any pending charges or record of convictions of the applicant. The court would be prohibited from acting on a name change petition until the state police reported the required information.

If the court entered an order to change the name of someone with a criminal record, the court would be required to forward the order to the central records division of the state police and to one or more of the following: (1) The Department of Corrections (DOC), if the person named in the order was in prison, on parole, or had been imprisoned or released from parole in the immediately preceding two years; (2) the sheriff of the county in which the person was last convicted, if the person was incarcerated in a county jail or released from a county jail within the immediately preceding two years; or (3) the probate court that had jurisdiction over the person named in the order, if he or she was under the court's jurisdiction or had been discharged from its jurisdiction within the immediately preceding two years.

The bill would specify that a false statement that was intentionally included in a petition for a name change would constitute perjury under the Michigan Penal Code.

House Bill 4693 and Senate Bill 346 are tie-barred to each other and would take effect on October 1, 1995.

House Bill 4694 would amend the Department of Corrections (DOC) act (MCL 791.206 and 791.265d) to prohibit the director of the department and the Corrections Commission from promulgating a rule or adopting a guideline that would allow a prisoner to change his or her name. The bill also would require the DOC to make an entry into the Law Enforcement Information Network (LEIN) when a prisoner legally changed his or her name upon escape, parole, or transfer from a secure facility to community residential placement.

Senate Bill 318 would amend the Crime Victim's Rights Act (MCL 780.769 et al.) to require, upon the written request of a victim, that the sheriff or the DOC mail a notice to the victim when a prisoner or a juvenile offender legally changed his or her name. This requirement would apply to juveniles who were either under the jurisdiction of the probate court or within two years of discharge from the court's jurisdiction; and to county inmates

either while in a county jail or within two years of release from the county jail.

FISCAL IMPLICATIONS:

A representative of the Department of Corrections testified that abolishing "administrative" name changes would result in administrative savings for the department. (5-10-95)

The House Fiscal Agency has not yet completed its analysis of the bills. (5-11-95)

ARGUMENTS:

For:

The simplicity of changing one's name in Michigan undermines legal efforts to protect victims of crime, by allowing prisoners and others with criminal records to circumvent the laws intended to protect victims. Although the Department of Corrections or a county sheriff, whichever has jurisdiction over the incarcerated person, must notify victims of certain developments related to the prisoner's confinement, the current law does not require that the victim be notified if the offender has his or her name changed. This contradicts the rationale of the Crime Victims' Rights Act: that the victim should be kept apprised of the offender's status within the criminal justice system. (However, after a highly publicized case of a convicted rapist who changed his name last year, the department has administratively implemented a system to notify victims of prisoner name changes.) In addition, although information about a prisoner's escape, transfer, or parole is required to be entered into the LEIN, a name change is not required to be entered. By requiring LEIN entries and victim notification when a prisoner changes his or her name, the bills would address these problems with the current law.

Further, under current law a convicted felon can change his or her name through probate procedure, thereby possibly leaving behind his or her criminal record. In order to prevent convicted felons from avoiding their criminal records through abuse of this process, the bills would bar a convicted felon from receiving a probate name change during his or her incarceration and would require that the criminal history of anyone seeking a name change be checked before allowing the name change to proceed. If a person seeking a name change was found to have a criminal record, he or she would have the burden of proving that the name change

was not for a fraudulent purpose.

Finally, the Department of Corrections receives and grants requests for common law name changes from approximately 1,000 prisoners per year, and has responded to these requests with an administrative procedure. These requests are a burden on the DOC, which must keep track administratively of these changes. The bills would eliminate these "administrative name changes", thereby easing the department's administrative burden while at the same time placing an obstacle in the path of those seeking to escape their criminal records by changing their names.

Response:

While the bill would prevent the department from allowing prisoner name changes by rule, it would not actually prevent prisoners from changing their names. The Michigan Court of Appeals has ruled that people have a common law right to adopt any name they wish, without going to court. Besides, the bills may be subject to constitutional challenge, as many prisoner name changes are allegedly for religious reasons.

Rebuttal:

While the common law right to a name change would still exist, the bills, taken together, would go a long way toward preventing convicted criminals from escaping their pasts by simply changing their names. Without a court-ordered name change, a person can't get a new driver's license or Social Security number.

Against:

Is it right to place a person who was convicted of a crime and has completed his or her debt to society in the position of being presumed to have a fraudulent intent when seeking a name change? If an individual has completed his or her sentence shouldn't he or she be given the same presumption as any other person seeking to undergo a legal change of his or her name? It is already up to the probate judge's discretion to approve a name change petition; there is no need to infringe on the judge's ability to make an appropriate decision as to whether or not a such a petition should be granted.

Against:

Under House Bill 4694, the department would be required to make a LEIN entry if "upon escape or parole or transfer from a secure facility to community residential placement a prisoner has his or her name legally changed". One interpretation of this language is that it would require the

department to make a LEIN entry if a prisoner had his or her name changed legally after escaping from prison, which seems unlikely. Perhaps the intent of the provision is to require a LEIN entry to be made upon the escape of a prisoner who had previously obtained a legal name change. At any rate, the language should be clarified.

POSITIONS:

The Department of Corrections supports the legislation because it will eliminate the need for the department to recognize approximately 1,000 prisoner name changes per year. (5-16-95)

The ACLU of Michigan has no position on the bills. (5-11-95)