



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 317 (as reported without amendment)
 Senate Bill 318 (Substitute S-2 as reported)
 Senate Bill 346 (Substitute S-7 as reported)
 Sponsor: Senator William Van Regenmorter (Senate Bills 317 and 318)
 Senator Glenn D. Steil (Senate Bill 346)
 Committee: Judiciary

Date Completed: 3-27-95

RATIONALE

Apparently, 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 his or her common law right to do so. Changing names can allow an individual to secure a new birth certificate, which, in turn, can enable that 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, a person who petitioned for a legal name change should have to be screened for past criminal actions, and, if a name change were granted to a person with a criminal record, the order granting the change should be sent to the State Police. In addition, they contend, if a current or recent prisoner were granted a name change, the Department of Corrections (DOC) or county sheriff, as well as the person's victims, should be notified and information regarding the change of name should be entered into the Law Enforcement Information Network (LEIN).

CONTENT

Senate Bills 317, 318 (S-2), and 346 (S-7) would amend various acts to require the entry of information into the Law Enforcement Information Network and notice to crime victims when a prisoner legally changed his or her name, and to require that a person who petitioned the probate court to have his or her name changed undergo a criminal history check.

Senate Bill 317

The DOC law requires that the Department of Corrections make an entry into the LEIN when a prisoner escapes from a State correctional facility or a parole violation warrant is issued. The bill would amend the law to specify that the DOC also would have to make a LEIN entry when a prisoner had his or her name legally changed.

In addition, the DOC law requires that the Department make available on line to the LEIN, by way of the Corrections Management Information Network, information pertaining to a prisoner's transfer into a community residential program, a prisoner's transfer into a minimum custody correctional facility, and changes in a person's parole status. The bill would require that the provided information include a prisoner's former name, if applicable.

Senate Bill 318 (S-2)

The bill would amend the Crime Victim's Rights Act to require notice to crime victims when a prisoner or juvenile offender legally changed his or her name. The Act requires that, upon the written request of a victim of a crime, a county sheriff or the DOC mail to the victim certain information about a prisoner who was sentenced for commission of that crime, and that the probate court or the Department of Social Services (DSS) make a good faith effort to notify the victim of a juvenile offender before certain events occur.

The bill would add to the list of information that must be provided to a victim of a felony, notification that a prisoner had his or her name legally changed or had his or her name changed in accordance with DOC procedures. A victim of a serious misdemeanor would have to be notified that a prisoner had his or her name legally changed. The court or DSS would have to make a good faith effort to notify a victim of a juvenile offender before that juvenile had his or her name legally changed.

Senate Bill 346 (S-7)

The bill would amend Chapter XI of Public Act 288 of 1939, which governs the probate court, to require that a person who petitioned the court to have his or her name changed undergo a criminal history check. The bill also specifies that a false statement that was intentionally included within a petition for a name change would constitute perjury under the Michigan Penal Code.

A person who petitioned the probate court to have his or her name changed would have to forward two complete sets of his or her fingerprints to the local law enforcement agency, which would have to forward the fingerprints to the Department of State Police. The Department would have to compare those fingerprints with its records and forward one set to the FBI for a comparison with the FBI's records. The Department would have to report to the court the information contained in the Department's records with respect to any pending charges against the applicant or any record of conviction and similar information obtained from the FBI. The court could not act on the name change petition until the Department made its report.

If the court entered an order to change the name of a person who had a criminal record, it would have to forward the order to the central records division of the Michigan State Police and to one or more of the following:

- The Department of Corrections, if the person named in the order were in prison or on parole or had been imprisoned or released from parole in the immediately preceding two years.
- The sheriff of the county in which the person named in the order was last convicted, if the person had been incarcerated in a county jail or released from a county jail within the immediately preceding two years.

- The probate court that had jurisdiction over the person named in the order, if he or she were under the jurisdiction of the probate court or had been discharged from the probate court's jurisdiction within the immediately preceding two years.

MCL 791.265d (S.B. 317)
780.769 et al. (S.B. 318)
711.1 (S.B. 346)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The simple procedure for changing one's name in Michigan can undermine legal efforts to protect victims of crime, because prisoners and others with a criminal record can, in effect, circumvent laws that are designed to protect victims from offenders and track criminals' records. Although the Department of Corrections or a county sheriff, whichever has jurisdiction over an incarcerated person, must notify the prisoner's victim of certain developments related to the prisoner's confinement, the law does not require that a victim be notified of an offender's name change. This skirts the rationale for the Crime Victim's Rights Act: that victims should be kept informed about offenders' status within the criminal justice system. In addition, while information about a prisoner's escape, transfer, or parole is required to be entered into the LEIN, there is no requirement that a prisoner's name change be entered. Since name changes are not entered, a person can avoid responsibility for prior acts. For instance, a prisoner released from custody under a different name than the one he or she had when incarcerated could distance himself or herself from past actions. By requiring LEIN entries and victim notification when a prisoner changed his or her name, the bills would address these shortcomings in the law.

Supporting Argument

Senate Bill 346 (S-7) would ensure that, whenever a person petitioned the court for a name change, a thorough review of his or her criminal past would be conducted. The court, then, could take the person's record into consideration when determining whether to grant or deny the petition. That bill also would ensure that, if the petition were granted for a person who had a criminal record,

law enforcement agencies would be kept abreast of the person's change of name so that criminal history records would be up-to-date.

Response: The bills are only a first step in the direction of solving this problem. According to a 1976 Michigan Court of Appeals case, "Under the common law a person may adopt any name he or she wishes, without resort to any court and without any legal proceedings...There is no requirement that any person go through the courts to establish a legal change of name" (*Piotrowski v Piotrowski*, 71 Mich App 213). According to the DOC, it is fairly common for prisoners to change their name not by filing a petition in court, but simply filing an affidavit with the Department notifying the DOC that the prisoner has changed his or her name. (The Department apparently recognizes these requests, though it does not separate prisoner records into different files.) Since changing one's name does not require court proceedings or approval, Senate Bill 346 (S-7) would not affect prisoners or those with criminal records who changed their name under the common law. Prisoners should simply be prohibited from changing their names while incarcerated. At the very least, the bills should require that any prisoner wishing to change his or her name do so through probate court proceedings, so that an adequate criminal history review could be conducted pursuant to Senate Bill 346 (S-7) and court approval of the change would have to be granted.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 317 and 318 (S-2) would have no fiscal impact on State or local government. The DOC already is required to enter information regarding escapes and parole violations into the LEIN system. Adding legal name changes should not result in increased costs to the Department.

Senate Bill 346 (S-7) would have no fiscal impact on State or local government should fees for fingerprints/searches be imposed as provided by law and as required under the bill's provisions. Current costs for fingerprint searches of criminal justice records include \$24 for an FBI search and \$15 for a State Police search.

The bill would have no fiscal impact on the courts.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.