House
Legislative
Analysis
Section

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NAME CHANGES: LIMIT PUBLICATION

House Bill 5044 as passed by the House
Second Analysis (4-11-00)

Sponsor: Rep. Terry Geiger
Committee: Family and Civil Law

THE APPARENT PROBLEM:

It is relatively easy in Michigan for a person to change his or her name. Under current law, anyone who wants to legally change his or her name may petition the family division of the circuit court for a name change. Legal name changes are generally granted provided that the person seeking the change meets certain criteria: he or she has resided in the county for at least one year, shows sufficient reason to want the change, and doesn't seek the change for a fraudulent purpose. In addition, anyone 22 years or older who petitions the court for a name change must also undergo a criminal record check. If a petitioner has a criminal record, he or she is presumed to be seeking a name change with a fraudulent intent, and the burden of proof is on the petitioner to rebut that presumption. The name of a minor normally may not be changed without the consent of both parents; however, in cases where a non-custodial parent has failed to provide support for two years or more or has been convicted of criminal sexual conduct or child abuse, the court may allow a name change without the consent or notification of that parent.

As part of the process, the court is required to schedule and hold a hearing and order publication of the name change. For any number of reasons, both legitimate or otherwise, a person who is seeking to change his or her name may not want the name change published. However, the law does not allow a court to decide not to publish a name change. The law requires the court to publish the name change, even if the person has very good reasons to want to keep it confidential. It has been suggested that a court should be allowed to keep certain name changes confidential where the circumstances warrant; for example, where the person seeking the name change could be placed at risk of physical harm by publication of the name change.

THE CONTENT OF THE BILL:

Currently, under the probate code, if a person seeks to legally change his or her name, the court is required to order publication of the name change in accordance with supreme court rules. The bill would allow a court, under certain circumstances, to refrain from ordering publication of the name change. More specifically, if the court determined that good cause for keeping the name change confidential existed, the court would not have to publish the name change and could keep the records of the change confidential. Good cause would include, but not be limited to, evidence that publication or availability of the record of the proceeding could place the petitioner or another person in physical danger. Such evidence of physical danger would have to include a sworn statement indicating the reason for the fear (for example, evidence that the petitioner or other person was a victim of stalking as defined under the Penal Code, or other assaultive crime). However, if evidence of stalking or assaultive crime were offered, the court could not require proof of an arrest or prosecution for such a crime in order to make a finding of good cause. If a court decided to keep a person's name change confidential, the records of the hearing would be exempt from disclosure under the Freedom of Information Act.

The bill specifies that if a court officer, employee, or agent divulged, used, or published information regarding a confidential name change beyond the scope of his or her duties, he or she would be guilty of a misdemeanor, unless the disclosure was made in accordance with a court order.

MCL 711.1

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact. (4-11-00)

ARGUMENTS:

For:

The bill will fix a flaw in the current law, by giving a judge the discretion to assess an individual's situation and determine whether publication of the name change should be required. There are many situations where a person might have good reason to want to change his or her name, but may not want to have the change made public. For example, a person who is the victim of a stalker or an assaultive former spouse may wish to change his or her name in order to avoid further contact with that person. Another situation could involve a person who has given state's evidence and wants to avoid contact with the people against whom he or she testified. In either of these situations, if the court is required to publish the individual's name change it would defeat the purpose of making the change.

POSITIONS:

There are no positions on the bill.

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.