

2009 DRAFTING REQUEST

Bill

Received: **01/14/2010**

Received By: **tdodge**

Wanted: **As time permits**

Identical to LRB:

For: **Nick Milroy (608) 266-0640**

By/Representing: **Marylou Keleher**

This file may be shown to any legislator: **NO**

Drafter: **tdodge**

May Contact:

Addl. Drafters:

Subject: **Health - vital statistics**

Extra Copies: **GMM**

Submit via email: **YES**

Requester's email: **Rep.Milroy@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reverting to an original birth certificate after adoption

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 02/17/2010	nmatzke 02/17/2010		_____			S&L
/1			jfrantze 02/17/2010	_____	sbasford 02/17/2010	cduerst 03/10/2010	

FE Sent For: **"1" @ intro. 3/15/10**

<END>

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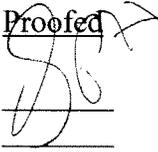
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1?	tdodge	1 nun 2/17	 2/17				S&L

FE Sent For:

<END>

Dodge, Tamara

From: Kuczenski, Tracy
Sent: Wednesday, January 13, 2010 2:11 PM
To: Ryan, Robin; Dodge, Tamara; Malaise, Gordon
Cc: Keleher, Marylou
Subject: FW: Draft request for Rep. Nick Milroy

Attachments: 0442/P1; 20091027153538859.pdf

Hi Marylou -

I will not be the drafter for this bill, but I am copying the appropriate drafters on this reply: Gordon Malaise, who works in Chapter 48, and Robin Ryan and Tamara Dodge, who work in Chapter 69. One or more of these individuals will contact you if they have any questions.

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Keleher, Marylou
Sent: Wednesday, January 13, 2010 2:03 PM
To: Kuczenski, Tracy
Subject: Draft request for Rep. Nick Milroy

Hi Tracy,

Laura Rose of Legislative Council drafted the attached bill for Rep. Nick Milroy regarding altering a birth certificate. I've included the e-mail Rep. Milroy received from his constituent to give you a better idea of the aim of the proposal. I'm not sure if you are the correct drafting attorney. If not, please let me know who I should forward this request to.

Thank you!!!!

Mary Lou Keleher
Aide to Rep. Nick Milroy



0442P1.pdf (11 KB)



2009102715353885
9.pdf (112 KB)...

LR:ty;

12/10/2009

1 **AN ACT** *to amend* 48.94; and *to create* 69.15 (2) (d) of the statutes; **relating to:**
2 allowing an adult adoptee to petition the court for restoration of the adoptee's
3 original birth certificate.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 48.94 of the statutes is amended to read:

5 **48.94 New birth certificate.** After entry of the order granting the adoption the clerk
6 of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish
7 any additional data needed for the new birth certificate. Whenever the parents by adoption,
8 or the adopting parent and a birth parent who is the spouse of the adopting parent, request, that
9 the birth certificate for the person adopted be not changed, then the court shall so order. In
10 such event no new birth certificate shall be filed by the state registrar of vital statistics,
11 notwithstanding the provisions of s. 69.15 (2) or any other law of this state. Whenever an adult
12 who was adopted as a minor petitions the court for restoration of the adoptee's original birth
13 certificate under s. 69.16 (2) (d) and the court grants the petition, the state registrar shall restore
14 the adoptee's original birth certificate.

15 **SECTION 2.** 69.15 (2) (d) of the statutes is created to read:

16 69.15 (2) (d) The subject of an adoption, for whom a new certificate was prepared under
17 par. (a), may petition the court for an order to restore the subject's original birth certificate,
18 if all of the following circumstances apply:

19 a. The subject is an adult.

October 20, 2009

Rep. Nick Milroy
2706 N. 17th Street
Superior, WI 54880

Dear Mr. Milroy:

After speaking with you recently, I thought it might be helpful if I put the facts of my issue in writing, as I'm not sure I was being clear.

About me: I was born on March 19, 1957, in New Richmond (St. Croix County), Wisconsin, as Mary Ann Jarchow. My father was Lloyd George Jarchow. My mother is Rita Higgins Jarchow LaVenture. She lives in Superior, WI. My father died on August 20, 1961. My mother married Joseph M. LaVenture on February 16, 1963. Mr. LaVenture adopted my sister, brother, and me in about 1965 or 1966 in St. Croix County, WI.

The divorce: Mr. LaVenture and my mother separated in 1968 and divorced in 1969. Mr. LaVenture's parental rights were not terminated, although he was not allowed any visitation with my siblings or me. We have never had a relationship with him and do not wish to have one. He is alive and well, age 74 or 75, and living in Inver Grove Heights, MN. He does maintain somewhat of a relationship with my three half-brothers, who were all fathered by him.

The adoption records: I am applying for a passport and need to explain why my birth certificate was filed more than one year following my birth. I called St. Croix County to request a copy of my adoption order and was told that a judge who retired many years ago "took all the adoption records with him" and they cannot be located. They referred me to the Wisconsin Department of Children's Services in Madison so that I could obtain a court order to get a copy of my adoption order. Not sure if this can be accomplished without documentation from St. Croix County, the Wisconsin Department of Children's Services provided me with a letter outlining all of these facts and I will attempt to get my passport using that letter.

What I would like to happen: My real issue is that I would like to have my original birth certificate restored to me...I would like to be Lloyd Jarchow's daughter again and not Mr. LaVenture's daughter. This may mean that the adoption would have to be "undone" and I have been told repeatedly that there is nothing in the law that allows for this to happen.

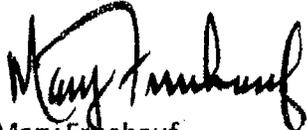
I have spoken with three different attorneys over the years about this issue. Each of them has told me that I cannot have Mr. LaVenture's name removed from my birth certificate unless I have someone else adopt me. There is no other "vehicle" within the current Wisconsin law to have his name removed. And even if I did find someone to adopt me, that person's name would go on my birth certificate...not Lloyd Jarchow's name. I am 52 years old. I do not want

anyone to adopt me and I do not believe anyone in their right mind would WANT to adopt me since an adoption establishes inheritance rights. I don't wish to inherit from anyone, including (and especially) Mr. LaVenture. I do not believe Mr. LaVenture would be opposed to having his name removed from my birth certificate. My guess is that he will not want me to inherit from him.

I spoke with Jacy Allen-Boldebeck at the Wisconsin Department of Children's Services (608-266-1003) and I told her that I had spoken with you. She tells me that the law governing identification documents is the Vital Records statute and that it has both state and federal components. The number for the Department of Vital Statistics is 608-266-1371. Ms. Allen-Boldebeck said she would also be happy to speak with you.

The typical American family nowadays is a lot different from the typical American family of the 50's and 60's. I bet there are more people out there that have the same or a similar situation. I know I may be asking for the impossible, but can you help me?

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Fruehauf". The signature is written in a cursive style with a large, looping initial "M".

Mary Fruehauf
715-394-3686 (evenings)
218-726-2034 (days)
1006 E. 2nd Street
Superior, WI 54880

cc: Jacy Allen-Boldebeck

Dodge, Tamara

From: Keleher, Marylou
Sent: Tuesday, February 09, 2010 10:35 AM
To: Dodge, Tamara
Subject: RE: Draft - restoring birth certificate after adoption

I like your idea of the additional language. Feel free to talk with DHS or DCF!

Thanks!

Mary Lou

From: Dodge, Tamara
Sent: Tuesday, February 09, 2010 10:33 AM
To: Keleher, Marylou
Subject: Draft - restoring birth certificate after adoption

Marylou,

I am working on the draft regarding restoring birth certificates after adoption. I had a concern. There are provisions in chapter 48 regarding the secrecy of adoption records. From the Department of Children and Families website, it appears that an adoptee can request to find out the identity of a birth parent from DCF if the birth parent signed a release previous to adoption to allow the adoptee to obtain that information or if the birth parent signs the release upon a request from DCF to allow the adoptee to obtain the information. Otherwise, the birth certificate is impounded. The way the requested language for this draft reads, an adoptee may wait until their adoptive parents die (or get their permission for removal of their names) and then find out who their birth parents are, without the birth parents' permission, by requesting that the original birth certificate be restored. Is this what you intend?

If not, I may be able to add language that if the person has a copy of their original birth certificate or knows the identity of both birth parents or if the birth parents give permission or are deceased (in addition to the other requirements) that the birth certificate may be restored. (It sounds like this would still solve the constituent's problem since she knows her birth parents' names and her father is deceased.)

Also, I am concerned about the word "restored" could I talk to DHS or DCF to find out if the original birth certificate is kept in such a state that it could just be restored or if a new certificate identical to the original would need to be created?

Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

-4128 2/10/10

DHS vital records 6-1373

Rhonda - The state registrar doesn't do anything to birth certificates when impounded.

Adoption record search

6-7163

The birth certificate is stamped that it cannot be used as a legal document b/c you can only have one birth certificate.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4128

TJD: f....

nwm

RmNR

In: 2/17/10 ^{Due} 2/18/10
if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

SA ✓
X-ref ✓

1 Gen.
AN ACT ...; **relating to:** the restoration of information from an original birth
2 certificate after adoption.

Analysis by the Legislative Reference Bureau

Under current law, at the time a person is adopted the state registrar must prepare a new birth certificate for the adoptee unless the adoptive parents or the person being adopted objects. The new birth certificate must contain, among other information, the names and personal information of the adoptive parents, unless the court's order of adoption indicates otherwise. When a new certificate is issued, the original certificate is impounded and may be accessed only by court order, with permission of the birth parents, or for processing purposes of the state registrar.

This bill allows an adult who has been adopted to petition the court to order the state registrar to prepare a new birth certificate based on information on the person's original birth certificate if the person did not have the opportunity, at the time of the adoption, to request that a new birth certificate not be prepared; any adoptive parent who is alive and who is named on the person's birth certificate does not object to the removal of his or her name from the birth certificate; and any birth parent who is alive and who is named on the person's original birth certificate does not object to the restoration of the information on the person's original birth certificate. Under the bill, if the court finds that all of those circumstances apply, the court must grant the petition. The state registrar must issue a new birth certificate that uses all of the information from the original birth certificate, if ordered by the court.

x A new birth certificate issued under the bill does not affect the legal relationship between the adoptive parents and the child and does not restore any legal rights or legal relationship that terminated at the time of adoption.

adoptee

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.94^X of the statutes is renumbered 48.94 (1).

2 History: 1981 c. 359 s. 16; 1985 a. 315 s. 22; 1991^X s. 316.

2 **SECTION 2.** 48.94 (2) of the statutes is created to read:

3 48.94 (2) If the court issues an order under s. 69.15 (2) (d) to restore the ✓
4 information from an adoptee's original birth certificate, the state registrar shall
5 issue a new birth certificate containing the information from the adoptee's original
6 birth certificate. ✓ The restoration of any birth parent's name on the adoptee's birth
7 certificate does not do any of the following:

8 (a) Affect the legal relationship of parent and child that was created by the ✓
9 order of adoption. ✓ *adoptivee*

10 (b) Restore any legal rights or any legal relationship that terminated upon the
11 order of adoption. ✓

12 **SECTION 3.** 69.15 (2) (a) (intro.) of the statutes is amended to read:

13 69.15 (2) (a) (intro.) Except as provided under par. (b), if the state registrar
14 receives an order under sub. (1) which provides for an adoption, the state registrar
15 shall prepare, under sub. (6), a new certificate for the subject of the adoption unless
16 the adoptive parents or the subject of the adoption requests, under s. 48.94 (1), ✓
17 no new certificate be prepared. If the order is from a court in this state, the order
18 shall include a certified copy of the original birth certificate registered for the subject
19 of the adoption. The new certificate shall show: ✓

20 History: 1985 a. 315; 1987 a. 413; 1989 a. 183; 1993 a. 481; 1995 a. 201, 404; 1997 a. 3, 27, 191; 2001 a. 16, 61; 2003 a. 52; 2005 a. 443 ss. 4, 5, 265; 2007 a. 20.

20 **SECTION 4.** 69.15 (2) (d) of the statutes is created to read:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4128⁵dn
TJD:.....

Dodge

Please review this draft to ensure it complies with your intent. You may also want to have the Department of Children and Families review this draft to make sure there are no unforeseen consequences to its provisions.

According to an employee of adoption record^s search in the Department of Children and Families, the original birth certificate is stamped with "not for legal use" because a person may not have more than one birth certificate. Therefore, this draft requires that a new birth certificate be created that contains the original information. This original information includes the name of the adoptee given at birth. I am unsure whether the adoptee will have access to all of the information necessary to connect their current name with the name on the birth certificate. You may want to discuss this with the Department of Children and Families or the Department of Health Services.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4128/1dn
TJD:nwn:jf

February 17, 2010

Please review this draft to ensure it complies with your intent. You may also want to have the Department of Children and Families review this draft to make sure there are no unforeseen consequences to its provisions.

According to an employee of adoption records search in the Department of Children and Families, the original birth certificate is stamped with "not for legal use" because a person may not have more than one birth certificate. Therefore, this draft requires that a new birth certificate be created that contains the original information. This original information includes the name of the adoptee given at birth. I am unsure whether the adoptee will have access to all of the information necessary to connect their current name with the name on the birth certificate. You may want to discuss this with the Department of Children and Families or the Department of Health Services.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Basford, Sarah

From: Keleher, Marylou
Sent: Wednesday, March 10, 2010 1:21 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4128/1 Topic: Reverting to an original birth certificate after adoption

Please Jacket LRB 09-4128/1 for the ASSEMBLY.