

2001 DRAFTING REQUEST

Bill

Received: 09/22/2000

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Steven Foti (608) 266-2401

By/Representing: Michael Heifitz

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Children - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Name change of a minor

Instructions:

Redraft 1999 AB 62 with SA 2 and SA3.

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>
/?	malaigm 09/22/2000	jdyer 10/17/2000		_____			
/1			rschluet 10/19/2000	_____	lrb_docadmin 10/19/2000		
/2	malaigm 02/14/2001	jdyer 02/14/2001	rschluet 02/15/2001	_____	lrb_docadmin 02/15/2001	lrb_docadmin 03/15/2001	

FE Sent For:

<END>

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/1		1/2 7/14 jld	rschluet 10/19/2000		lrb_docadmin 10/19/2000		
FE Sent For:			2-15-)	Q PL 2-15-)			

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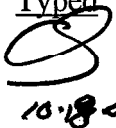

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Name change of a minor

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/?	malaigm	11/17 jld	 10-18-00	 10-18-00			

FE Sent For:

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE

D. Note

-0514 / 1
LRB-T029/T
GMM: M:ijs
ild

2001
~~1999~~ BILL

1 AN ACT *to renumber and amend* 786.36 and 786.37; and *to create* 786.36 (2)
2 (b), 786.36 (2) (c) and 786.37 (2) of the statutes; **relating to:** changing the name
3 of a minor.

Regenerate

Analysis by the Legislative Reference Bureau

that

Under current law, a resident of this state, in order to change his or her name, must petition the circuit court for an order changing ~~his or her~~ name. Currently, if the person whose name is to be changed is a minor under 14 years of age, both parents of the minor, if living, must file the petition. Currently, before applying to the court for a name change, the petitioner must publish a legal notice of the application once each week for three consecutive weeks in a newspaper that is likely to give notice to persons affected by the name change.

This bill permits one parent to petition for the name change of a minor under 14 years of age who has two living parents if the petitioning parent, in addition to filing proof of publication of the notice as required under current law, also files proof that the petitioning parent served a copy of the notice and petition on the nonpetitioning parent, or, if with reasonable diligence the nonpetitioning parent cannot be served, mailed a copy of the notice and petition to the last-known address of the nonpetitioning parent, if that address can be obtained with reasonable diligence, ~~and~~ files an affidavit showing that the petitioning parent has made a reasonable attempt to provide notice to the nonpetitioning parent, but with reasonable diligence the nonpetitioning parent cannot be found or provided with notice. The court may order the name change if the nonpetitioning parent does not

;

;

and if the nonpetitioning parent cannot be found or provided with notice,

BILL

✓
Insert A

appear at the hearing or otherwise answer the petition. If the nonpetitioning parent does appear at the hearing or answer the petition and shows that he or she has not abandoned the minor or failed to assume parental responsibility for the minor, the court may order the name change only ~~on the consent of the nonpetitioning parent.~~

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

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~~SECTION 1. 786.36 of the statutes is renumbered 786.36 (1) and amended to read:~~

~~786.36 (1) Any resident of this state, whether a minor or adult, may upon petition to the circuit court of the county where he or she resides and upon filing a copy of the notice, with proof of publication, as required by s. 786.37 (1), if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court. If~~

~~(2) (a) Subject to par. (b), if the person whose name is to be changed is a minor under the age of 14 years, the petition may be made by: both parents, if living, or the survivor of them; the guardian or person having legal custody of the minor, if both parents are dead or if the parental rights of both parents have been terminated by judicial proceedings; or the mother, if the minor is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, except that, if the paternity of the minor has been established, the father must also make the petition unless his parental rights have been legally terminated.~~

~~(3) The order shall be entered at length upon the records of the court and a certified copy of the record shall be recorded in the office of the register of deeds of the county, who shall make an entry in a book to be kept by the register. The fee for recording a certified copy is the fee specified under s. 59.43 (2) (ag). If the person whose name is changed or established was born or married in this state, the clerk~~

BILL

1 of the court shall send to the state registrar of vital statistics, on a form designed by
 2 the state registrar of vital statistics, an abstract of the record, duly certified,
 3 accompanied by the fee prescribed in s. 69.22, which fee the clerk of court shall charge
 4 to and collect from the petitioner. The state registrar of vital statistics shall then
 5 correct the birth record, marriage record or both, and direct the register of deeds and
 6 local registrar to make similar corrections on their records.

7 (4) No person engaged in the practice of any profession for which a license is
 8 required by the state may change his or her given name or his or her surname to any
 9 other given name or any other surname than that under which the person was
 10 originally licensed in the profession in this or any other state, in any instance in
 11 which the state board or commission for the particular profession, after a hearing,
 12 finds that practicing under the changed name operates to unfairly compete with
 13 another practitioner or misleads the public as to identity or otherwise results in
 14 detriment to the profession or the public. This prohibition against a change of name
 15 by a person engaged in the practice of any profession does not apply to any person
 16 legally qualified to teach in the public schools in this state, nor to a change of name
 17 resulting from marriage or divorce, nor to members of any profession for which there
 18 exists no state board or commission authorized to issue licenses or pass upon the
 19 qualifications of applicants or hear complaints respecting the conduct of members of
 20 the profession.

21 (5) Any change of name other than as authorized by law is void.

22 Section 2. 786.36 ~~(1m)~~ of the statutes is created to read:
 23 (1m) (a) Sub. (1) (a) and (c)
 24 786.36 ~~(1m)~~ Notwithstanding par. (a), the name of a minor under 14 years of
 25 age who has 2 living parents may be changed on the petition of one parent if, in
 addition to filing a copy of the notice, with proof of publication, as required by s.

Insert
3-21

(1m)

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BILL

if the nonpetitioning parent cannot be found or provided with notice, files

1 786.37 (1), the petitioning parent files proof of personal service, substituted service
2 or mailing, as required by s. 786.37 (2), and an affidavit showing that the petitioning
3 parent has made a reasonable attempt to provide notice to the nonpetitioning parent,
4 but with reasonable diligence the nonpetitioning parent cannot be found or provided
5 with notice, and ^{set} ~~if~~ the nonpetitioning parent does not appear at the hearing on the
6 petition or otherwise answer the petition.

~~SECTION 3. 786.36 (2) (c) of the statutes is created to read:~~

7 ~~786.36 (2) (c)~~ ^(b) If the nonpetitioning parent appears at the hearing on the
8 petition or otherwise answers the petition and shows that he or she has not
9 abandoned the minor, as described in s. 48.415 (1) (a) 3., (b) and (c) or failed to assume
10 parental responsibility for the minor, as described in s. 48.415 (6), the court shall
11 require the consent of the nonpetitioning parent before changing the name of the
12 minor.

13 **SECTION 4.** 786.37 ^X of the statutes is renumbered 786.37 (1) and amended to
14 read:

15 786.37 (1) Before applying to petitioning the court for changing or establishing
16 to change or establish a name, the applicant petitioner shall publish a class 3 notice
17 under ch. 985 stating the nature of the application petition and when and where the
18 application petition will be made heard.

19 **(3)** This section does not apply to the name change of a minor if the parental
20 rights to the minor of both parents have been terminated and, guardianship and
21 legal custody of the minor have been transferred under subch. VIII of ch. 48, and the
22 minor has been placed in a permanent foster home or a permanent treatment foster
23 home, ^{Plain} where and the guardian and legal custodian of the minor have petitioned to
24

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PCWF

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change the minor's name to the name or names of the minor's foster parents or treatment foster parents.

SECTION 5. 786.37 (2) of the statutes is created to read:

786.37 (2) If the petition is for the change of name of a minor under 14 years of age who has 2 living parents and if the petition is being made by one parent of the minor, the petitioner shall, in addition to publishing the notice under sub. (1), serve a copy of the notice and petition on the nonpetitioning parent in the same manner as a summons is served under s. 801.11 (1) (a) or (b) or, if with reasonable diligence the nonpetitioning parent cannot be served in that manner, mail a copy of the notice and petition to the last-known address of the nonpetitioning parent at or immediately prior to the time of the first publication under sub. (1), if that address can be ascertained with reasonable diligence.

SECTION 6. Initial applicability.

(1) This act first applies to petitions for name changes that are filed on the effective date of this subsection.

(END)

Debate

In reviewing s. 786.36 (1m)(a), as created by this draft, please note one small change from 1999 AB-62. Specifically, this draft clarifies that the petitioning parent must file the affidavit stating that with reasonable diligence the nonpetitioning parent cannot be found only if, indeed, that parent cannot be found. Obviously, if the parent can be found, that affidavit is not necessary.

GMM

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB01-0514/lins
GMM.....

(INSERT 3-21)

SECTION 1. 786.36 (1) (intro.)^X of the statutes is amended to read:

786.36 (1) (intro.) Any resident of this state, whether a minor or adult, may upon petition to the circuit court of the county where he or she resides and upon filing a copy of the notice, with proof of publication, as required by s. 786.37 (1)[✓], if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court. ^{Plain} ~~Of~~ Subject to sub. (1m)[✓], if the person whose name is to be changed is a minor under the age of 14 years, the petition may be made by whichever of the following is applicable:

History: 1973 c. 263; 1977 c. 449; 1979 c. 32 ss. 63, 92 (14); 1979 c. 221; Stats. 1979 s. 786.36; 1981 c. 245; 1983 a. 447; 1985 a. 315 s. 22; 1993 a. 301; 1995 a. 201; 1999 a. 83.

SECTION 2. 786.36 (1) (b)[✓] of the statutes is amended to read:

786.36 (1) (b) The guardian or person having legal custody of the minor if both parents are dead or if the parental rights of both parents[✓] have been terminated by judicial proceedings.

History: 1973 c. 263; 1977 c. 449; 1979 c. 32 ss. 63, 92 (14); 1979 c. 221; Stats. 1979 s. 786.36; 1981 c. 245; 1983 a. 447; 1985 a. 315 s. 22; 1993 a. 301; 1995 a. 201; 1999 a. 83.


SECTION 3. 786.36 (1) (c)[✓] of the statutes is amended to read:

786.36 (1) (c) The minor's mother, if the minor is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, except that, if the paternity of the minor has been established[✓], the father must also make the petition unless his rights have been legally terminated.

History: 1973 c. 263; 1977 c. 449; 1979 c. 32 ss. 63, 92 (14); 1979 c. 221; Stats. 1979 s. 786.36; 1981 c. 245; 1983 a. 447; 1985 a. 315 s. 22; 1993 a. 301; 1995 a. 201; 1999 a. 83.

(END OF INSERT)

(INSERT A)

 consents. The bill specifies that the fact that a nonpetitioning parent has been incarcerated does not, in itself, show that the nonpetitioning parent has abandoned the minor or failed to assume parental responsibility for the minor. Finally, the bill requires the court, before changing the name of a minor who is 12 years of age or over,

to address the minor to determine the wishes of the minor with respect to the proposed name change and to consider those wishes in determining whether to order the name change.

(END OF INSERT)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0284/1
GMM:jlgrjf

Insert 4-13

~~SENATE AMENDMENT 2,
TO 1999 ASSEMBLY BILL 62~~

~~March 14, 2000 - Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.~~

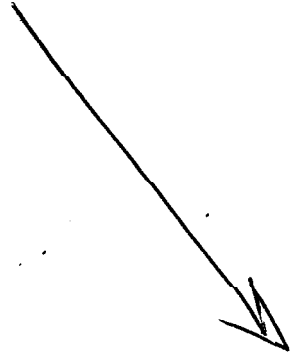
NO #

1 At the locations indicated, amend the bill as follows:

2 ~~1. Page 4, line 13: after "minor," insert "The fact that a nonpetitioning parent~~
3 has been incarcerated does not, in itself, show that the nonpetitioning parent has
4 abandoned the minor, as described in s. 48.415 (1) (a) 3., (b) and (c), or failed to
5 assume parental responsibility for the minor, as described in s. 48.415 (6).

6

(END)





State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1483/1
GMM:cmh:jf

Insert 4-13

~~SENATE AMENDMENT 3,
TO 1999 ASSEMBLY BILL 62~~

SEC. CR; 786.36 (1r)

786.36 (1r)

~~March 14, 2000 - Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.~~

(c)

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~~At the locations indicated, amend the bill as follows:~~
~~1. Page 3, line 23: after "(b)" insert "1."~~
~~2. Page 4, line 7: delete that line.~~
~~3. Page 4, line 8: delete "786.36 (2) (c)" and substitute "2."~~
~~4. Page 4, line 13: after that line insert:~~

5. Before changing the name of a minor who is 12 years of age or over, the court shall address the minor to determine the wishes of the minor with respect to the proposed name change and shall consider those wishes in determining whether to order the name change.

(END)

(end of insert)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0514/1dn
GMM:jld:rs

October 19, 2000

In reviewing s. 786.36 (1m) (a), as created by this draft, please note one small change from 1999 AB-62. Specifically, this draft clarifies that the petitioning parent must file the affidavit stating that with reasonable diligence the nonpetitioning parent cannot be found only if, indeed, that parent cannot be found. Obviously, if the parent can be found, that affidavit is not necessary.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

2/14/07

① Michael

507

Take out SA 2 + SA 3



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0514/1

GMM:jld:rs

2
RMR

2001 BILL

1 AN ACT to renumber and amend 786.37; to amend 786.36 (1) (intro.), 786.36
2 (1) (b) and 786.36 (1) (c); and to create 786.36 (1m), 786.36 (1r) and 786.37 (2)
3 of the statutes, relating to: changing the name of a minor.

Repealed

Analysis by the Legislative Reference Bureau

Under current law, a resident of this state, in order to change his or her name, must petition the circuit court for an order changing that name. Currently, if the person whose name is to be changed is a minor under 14 years of age, both parents of the minor, if living, must file the petition. Currently, before applying to the court for a name change, the petitioner must publish a legal notice of the application once each week for three consecutive weeks in a newspaper that is likely to give notice to persons affected by the name change.

This bill permits one parent to petition for the name change of a minor under 14 years of age who has two living parents if the petitioning parent, in addition to filing proof of publication of the notice as required under current law, also files proof that the petitioning parent served a copy of the notice and petition on the nonpetitioning parent; or, if with reasonable diligence the nonpetitioning parent cannot be served, mailed a copy of the notice and petition to the last-known address of the nonpetitioning parent, if that address can be obtained with reasonable diligence; and, if the nonpetitioning parent cannot be found or provided with notice, files an affidavit showing that the petitioning parent has made a reasonable attempt to provide notice to the nonpetitioning parent, but with reasonable diligence the nonpetitioning parent cannot be found or provided with notice. The court may order

BILL

the name change if the nonpetitioning parent does not appear at the hearing or otherwise answer the petition. If the nonpetitioning parent does appear at the hearing or answer the petition and shows that he or she has not abandoned the minor or failed to assume parental responsibility for the minor, the court may order the name change only if the nonpetitioning parent consents. ~~The bill specifies that the fact that a nonpetitioning parent has been incarcerated does not, in itself, show that the nonpetitioning parent has abandoned the minor or failed to assume parental responsibility for the minor. Finally, the bill requires the court, before changing the name of a minor who is 12 years of age or over, to address the minor to determine the wishes of the minor with respect to the proposed name change and to consider those wishes in determining whether to order the name change.~~

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

1 **SECTION 1.** 786.36 (1) (intro.)[✓] of the statutes is amended to read:

2 786.36 (1) (intro.) Any resident of this state, whether a minor or adult, may
3 upon petition to the circuit court of the county where he or she resides and upon filing
4 a copy of the notice, with proof of publication, as required by s. 786.37 (1), if no
5 sufficient cause is shown to the contrary, have his or her name changed or established
6 by order of the court. If Subject to sub. (1m), if the person whose name is to be
7 changed is a minor under the age of 14 years, the petition may be made by whichever
8 of the following is applicable:

9 **SECTION 2.** 786.36 (1) (b)[✓] of the statutes is amended to read:

10 786.36 (1) (b) The guardian or person having legal custody of the minor if both
11 parents are dead or if the parental rights of both parents have been terminated by
12 judicial proceedings.

13 **SECTION 3.** 786.36 (1) (c)[✓] of the statutes is amended to read:

14 786.36 (1) (c) The minor's mother, if the minor is a nonmarital child who is not
15 adopted or whose parents do not subsequently intermarry under s. 767.60, except

BILL

1 that, if the paternity of the minor has been established, the father must also make
2 the petition unless his rights have been legally terminated.

3 **SECTION 4.** 786.36 (1m) ✓ of the statutes is created to read:

4 786.36 (1m) (a) Notwithstanding sub. (1) (a) and (c), the name of a minor under
5 14 years of age who has 2 living parents may be changed on the petition of one parent
6 if, in addition to filing a copy of the notice, with proof of publication, as required by
7 s. 786.37 (1), the petitioning parent files proof of personal service, substituted service
8 or mailing, as required by s. 786.37 (2), and, if the nonpetitioning parent cannot be
9 found or provided with notice, files an affidavit showing that the petitioning parent
10 has made a reasonable attempt to provide notice to the nonpetitioning parent, but
11 with reasonable diligence the nonpetitioning parent cannot be found or provided
12 with notice, and if the nonpetitioning parent does not appear at the hearing on the
13 petition or otherwise answer the petition.

14 (b) If the nonpetitioning parent appears at the hearing on the petition or
15 otherwise answers the petition and shows that he or she has not abandoned the
16 minor, as described in s. 48.415 (1) (a) 3., (b) and (c), or failed to assume parental
17 responsibility for the minor, as described in s. 48.415 (6), the court shall require the
18 consent of the nonpetitioning parent before changing the name of the minor. ~~The fact~~
19 ~~that a nonpetitioning parent has been incarcerated does not, in itself, show that the~~
20 ~~nonpetitioning parent has abandoned the minor, as described in s. 48.415 (1) (a) 3.,~~
21 ~~(b) and (c), or failed to assume parental responsibility for the minor, as described in~~
22 ~~s. 48.415 (6)~~

23 **SECTION 5.** 786.36 (1r) of the statutes is created to read:

24 786.36 (1r) Before changing the name of a minor who is 12 years of age or over,
25 the court shall address the minor to determine the wishes of the minor with respect

BILL

1 ~~to the proposed name change and shall consider these wishes in determining~~
2 ~~whether to order the name change.~~

3 SECTION 6. 786.37 of the statutes is renumbered 786.37 (1) and amended to
4 read:

5 786.37 (1) Before applying to petitioning the court for changing or establishing
6 to change or establish a name, the applicant petitioner shall publish a class 3 notice
7 under ch. 985 stating the nature of the application petition and when and where the
8 application petition will be made heard.

9 (3) This section does not apply to the name change of a minor if the parental
10 rights to the minor of both parents have been terminated and, guardianship and
11 legal custody of the minor have been transferred under subch. VIII of ch. 48, and the
12 minor has been placed in a permanent foster home or a permanent treatment foster
13 home, where and the guardian and legal custodian of the minor have petitioned to
14 change the minor's name to the name or names of the minor's foster parents or
15 treatment foster parents.

16 SECTION 7. 786.37 (2) of the statutes is created to read:

17 786.37 (2) If the petition is for the change of name of a minor under 14 years
18 of age who has 2 living parents and if the petition is being made by one parent of the
19 minor, the petitioner shall, in addition to publishing the notice under sub. (1), serve
20 a copy of the notice and petition on the nonpetitioning parent in the same manner
21 as a summons is served under s. 801.11 (1) (a) or (b) or, if with reasonable diligence
22 the nonpetitioning parent cannot be served in that manner, mail a copy of the notice
23 and petition to the last-known address of the nonpetitioning parent at or
24 immediately prior to the time of the first publication under sub. (1), if that address
25 can be ascertained with reasonable diligence.



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 15, 2001

MEMORANDUM

To: Representative Foti

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-0514 Name change of a minor

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.