

2003 DRAFTING REQUEST

Bill

Received: **10/22/2002**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Joel**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Correctional System - misc
Criminal Law - sex offenses**

Extra Copies: **rlr
rpn**

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit name changes by sex offenders

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>
/?	mdsida 10/28/2002	chanaman 11/20/2002					S&L Crime
/1			rschluet 11/20/2002		lemery 11/20/2002		S&L Crime
/2	mdsida	jdyer	rschluet		sbasford	mbarman	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/04/2002	12/06/2002	12/09/2002	_____	12/09/2002	01/27/2003	

FE Sent For:

Att intro.

<END>

2003 DRAFTING REQUEST

Bill

Received: 10/22/2002

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Joel**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Correctional System - misc
Criminal Law - sex offenses**

Extra Copies: **rlr
rpn**

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit name changes by sex offenders

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>
/?	mdsida 10/28/2002	chanaman 11/20/2002		_____			S&L Crime
/1			rschluet 11/20/2002	_____	lemery 11/20/2002		S&L Crime
/2	mdsida	jdyer	rschluet	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/04/2002	12/06/2002	12/09/2002	_____	12/09/2002		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 10/22/2002

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: Joel

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Correctional System - misc
Criminal Law - sex offenses

Extra Copies: rlr
rpn

Submit via email: YES

Requester's email: Rep.Gundrum@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit name changes by sex offenders

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>
/?	mdsida 10/28/2002	chanaman 11/20/2002					S&L Crime
/1		12/16 jld	rschluet 11/20/2002		lemery 11/20/2002		

[Handwritten signature]
12-16-02

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 10/22/2002

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: Joel

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Correctional System - misc
Criminal Law - sex offenses

Extra Copies: rlr

Submit via email: YES

Requester's email: Rep.Gundrum@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit name changes by sex offenders

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

FE Sent For:

cmh
1
11/20

[Handwritten signatures]
11-20 SEND

P/c to Joel

Apply to marriage name changes

Not to adoption

~~Felony~~

- Prohibit usage of ^{another} name ~~other~~

- Penalty = Class A misd.

→ Include in DHFS notice

Women's Names in Wisconsin: In Re Petition of Kruzal

By Attorney Priscilla Ruth MacDougall
Madison

*"What's in a name? That which we call a rose
By any other name would smell as sweet."*^{*}

*"[H]e that filches from me my good name
Robs me of that which not enriches him,
and makes me poor indeed."*^{**}

In *In re Petition of Kruzal*,¹ the Wisconsin Supreme Court ruled that under the common law a woman does not have to change her name at marriage, that if she does elect to do so she new name becomes a "lawful" name where she "habitually" or "customarily" uses the same.

Kathleen Rose Harney, a school teacher in the Milwaukee Public School system, never used her husband's surname for any social or legal purpose, i.e. her United States passport, her Wisconsin driver's license and all other identification were the name Harney.² She was told that in order to continue using her birth-given surname of Harney for group insurance and teaching purposes, she would have to procure an official court ordered name "change" pursuant to Sec. 296.36, Wis. Stats. Using the name Kruzal for the purpose of the proceeding on advice of counsel, Ms. Harney petitioned for a court order accordingly. The Honorable Ralph Podell denied the petition stating that couples bearing different names could adversely affect any

children of the marriage and that if couples cannot at the time of marriage agree on a common surname, "it would be better for them, any children they may have, and society in general that they do not enter into the marriage relationship."³

The supreme court, 4-3, reversed stating that the court had no discretion to deny the petition which should have been granted by mandate of the court.

Viewed nationally,⁴ *Kruzal* is an important victory for women's rights advocates and sound judicial precedent at a time when the judicial, administrative and legislative branches of government are faced with the issue of a woman's right to her own name irrespective of marital status.⁵ As the first Wisconsin case to discuss, in holding and dicta, name law in any

^{*} Shakespeare, *Romeo and Juliet*, II, Opinion of Trial Court, p. 1.

^{**} Shakespeare, *Othello*, III, brief ACLU-NOW LDEF *amicus curiae*, p. 2.

depth, it should resolve issues concerning personal and professional names in Wisconsin generally, particularly as they apply to women.

Personal Names

The general rule of English common law, adopted by Wisconsin in its Constitution, is that a person, irrespective of marital status can adopt whatever name he/she pleases and change the same at will if for a non-fraudulent purpose.⁶ The best example of such a change is that of a woman changing her name without court proceedings by assuming her husband's name. By repute it could become a "legal" or "lawful" name.⁷ Coverture never required a woman to merge her name with that of her husband.⁸ Nothing in Wisconsin statutes has abrogated the common law right to choose one's name as to women; while many statutes reflect the custom of women changing their names at marriage or divorce, nothing in the same compels them to do so.

By adopting the view that a change of name at marriage is a voluntary change of name by common law usage, the Wisconsin Supreme Court has made clear that Wisconsin is a common law state against which all statutes must be strictly construed.⁹

"Legal" Name

The concept of a person's "legal" name is an evolving one in the law at this writing.¹⁰ Strictly speaking, whether a name be called "fictitious," "assumed" or "professional," a name which is not used for fraudulent purposes is a "legal" or "lawful" name as opposed to an "illegal" one. Under the common law a person could have several surnames, but only one Christian, or first name.¹¹ Where called

upon by the state to use one's "true" name for the purposes of publishing one's marriage banns, it would be a question of fact as to which name by which a person was best known.

Kruzal does not enunciate a clear standard for differentiating from a "legal" or "lawful" name, and an "assumed" or "fictitious" name. By employing a "habitual" or "customary" use test for establishing a name by usage, however, the court makes clear, unlike in other recent leading name retention cases, that a woman need not use one name exclusively and consistently to establish it as her "legal" name.¹² The most common example of a person using more than one name is that of the professional woman who elects to use her birth-given or another surname for professional purposes, and her name acquired by repute from marriage as another name. From Pulitzer-prize winning Zona Gale (a/k/a Breese) of Portage, to Lynn Fontaine and Dr. Patricia Staff (a/k/a Grover) of Bonquiel, and Kathleen Harney's own mother, Wisconsin women have used two surnames interchangeably with no difficulty. While the dissent in *Kruzal* makes much ado about its fear of the "habitual" use test precluding the use of two names by married women, the court by not enunciating a standard of exclusive use only strengthens the right of Wisconsinites to use the surnames of their choice by not specifying that a married woman must use a name exclusively and consistently to either retain or change it. Faced with the necessity of choosing between one of two surnames used by a married woman, a court would have to determine if mere usage of the husband's surname made her better known by such name than the other. The case

should best be viewed as Wisconsin's adoption of pure common law where persons can have more than one "lawful" surname, whatever the names be called.¹³

Professional Licensing

Kathleen Rose Harney is a licensed schoolteacher, the only category of licensed professionals to be excluded from the prohibition against changing their names from those under which they were originally licensed via the common law usage excepting by marriage or divorce in any instance in which the state board of commissioners, after a hearing, finds that practicing under such changed name operates to unfairly compete with another practitioner, misleads the public as to identity or otherwise results in detriment to the profession or public. Also excepted from the prohibition on changing one's professional name are any changes of name due to "marriage or divorce" and changes made by members of professions for which there exists no state board or commission "authorized to issue licenses or pass upon the qualifications of applicants or hear complaints respecting conduct of members of such profession."¹⁴ While an early Attorney General opinion indicated that professional name changes should be pursuant to court order, *Kruzel* specifically recognizes the right of licensed professionals to change their names. The Attorney General's Office, in advising the Division of Nurses, Board of Nursing, has advised that a professional name change will be accepted on a simple form asking for the old and new names, and a recitation that the name will be used for all professional acts and duties and is not adopted for fraudulent or misrepresentation pur-

poses. The matter is handled routinely with no investigation unless pursuant to a complaint by a person alleging to have had his/her rights infringed upon.¹⁵

Divorced Women

Wisconsin divorce courts have extremely limited jurisdiction to change names pursuant to a divorce decree. If either husband or wife is receiving alimony, or if the wife has not relinquished custody of any children of the marriage, the court is powerless to act on a petition for a name change. The lower court in *Kruzel* construed this statute as meaning that a married woman had to adopt her husband's name. The Wisconsin Supreme Court dealt with this statute as it did with others referring to name changes—as simply applicable to those women who have in fact adopted their husbands' surnames. "The statute merely recognizes that by marriage a wife may have, through usage, effected a common law change in her name. It does not indicate that she was compelled to do so."¹⁶

A woman who has customarily or habitually used her husband's surname would presumably sue or be sued for divorce in Wisconsin in such name.¹⁷

No statute in Wisconsin requires a divorced woman with children to use the surname of her last husband for any purpose, or the same surname as her children parental rights to whom she has not relinquished.¹⁸ Divorced women with children usually utilize the common law method of name change out of court to avoid problems with lower court judges who view Sec. 247.20, Wis. Stats. as eliminating their jurisdiction to change divorced women's surnames pursuant

296.36, Wis. Stats. In so defining the limit of judicial discretion the court lined up with numerous other courts which have recently reviewed statutory name changes of married or divorced women, making it clear that Wisconsin has adopted the common law standard with respect to name change.²²

Conclusion

Kruzel, while dealing with the narrow issue of whether the law requires a woman to adopt her husband's surname, covers the waterfront of name law in an exemplary and scholarly opinion which should serve as guidance to attorneys handling name matters, and courts reviewing name law.

Priscilla Ruth MacDougall, a Madison attorney, is a director and legal consultant to the Center For A Woman's Own Name, Barrington, Illinois, and is currently Chairperson of the Wisconsin State Bar Section of Individual Rights and Responsibilities.

to Sec. 296.36, Wis. Stats. This very issue was resolved by South Dakota's Supreme Court in *Ogle v. Circuit Court*,¹⁹ shortly after *Kruzel* came down. The court there held that the divorce statute did not preclude divorced women from utilizing the general name change statute as any other person, the court refusing to "enlarge a statute beyond its face where the statutory terms are clear and unambiguous in meaning and do not lead to an absurd or unreasonable conclusion."²⁰

The court pointed out that the South Dakota statute by its terms exempts the class of women only from the operation of the divorce statute, and not from recourse to the general name change statute. Sec. 296.36, Wis. Stats. specifically refers to "persons" over fourteen.²¹

Judicial Discretion

Of considerable importance to Wisconsin lawyers is the pronouncement in dicta of the supreme court, that only a showing of fraud is justified in permitting a court to deny a name petition brought pursuant to Sec.

Footnotes

¹ 67 Wis. 2d 138, 226 N.W. 2d 458 (1975). Appellant was represented by Joan F. Kessler, Esq., Milwaukee. Four groups entered as amici: The American Civil Liberties Union, National Organization For Women Legal Defense and Education Fund, the Women Law Students' Association and the Olympia Brown League (named for the Reverend Olympia Brown of Racine, Wisconsin, second known American woman to retain the use of her birth-given surname for all purposes). The appellants and the joint ACLU-NOW I.D.E.F. amicus *curiae* briefs are available through the Center For A Woman's Own Name at cost.

² *In Re Petition of Kruzel*, 67 Wis. 2d 138, 140, 226 N.W. 2d 458, 459 (1975). Brief for Appellant, p. 3.

³ *Ibid.* at 142, 226 N.W. 2d at 463.

⁴ MacDougall, "Kruzel: A Landmark Names Case," 1 WLR 1207 (May 1, 1975). Only one case of a court of higher jurisdiction, faced squarely with the issue of whether or not under the common law marriage requires a change of name by operation of law, has ruled that it does. *State ex rel Rego v. Lipsky*, 327 Ill. App. 63, 63 N.E. 2d 642 (1945). The case has been repudiated by the attorney general of the state in which it was rendered, and is not followed by state agencies. Illinois OAG Feb. 13, 1974. See also Dunn v. Palermo, ... Tenn. ... 522 S.W. 2d 979 (1975). In *Whitlow v. Hodges*, Civ.

No. 74-7, U.S.D.C.E.D. Ky., *Rago* is cited for the authority that the common law required a name change. In *Forbush v. Wallace*, 341 F. Supp. 217 (N.D. Ala. 1971), aff'd mem., 405 U.S. 970 (1972) a case subject to various interpretations by the courts, a three judge panel upheld the constitutionality of a regulation and a so-called common law rule based on a conceded view of the common law that a married woman's "legal" name becomes that of her husband by operation of law, based on the fact that Alabama provided a simple and inexpensive means by which any person could change his or her name pursuant to statute. *Forbush* was not even cited in *Kruzel*. For an analysis of the cases on which *Rago* relies see Lamber, "A Married Woman's Surname: Is Custom Law?" 1973 *Wish. U. L. Quarterly* 779 (1973), MacDougall, "Married Women's Common Law Right To Their Own Surnames," 1972/1973 *Women's Rights Law Reporter* 2.

¹⁵ See MacDougall, "The Right of Women To Determine Their Own Names Irrespective of Marital Status," 1 FLR 4005 (Bureau of National Affairs, December 10, 1974), Daum, "The Right of Married Women To Assert Their Own Names," 8 U. of Mich. J. of L. Reform 63 (1974) and Gordon, "Statutory Development: Pre-Marriage Name Change, Resumption and Registration Statutes," 74 Col. L. Rev. 1503 (1974) for discussions of all aspects of women's names, in addition to the articles cited by the Wisconsin Supreme Court in *Kruzel*.

¹⁶ Since 1972 numerous attorney general opinions affirming the common law right of married women and persons generally to use the names of their choice, have been rendered. Space precludes printing a full list. Legislatures are addressing themselves to the issue in various ways and cases affirming a woman's right to her chosen name were decided in the spring of 1975. For a general guide to all aspects of the names issue see booklet "For Women Who Wish To Determine Their Own Names After Marriage," published by the Center For A Woman's Own Name.

¹⁷ Most of the law of names as discussed by writers on the issue derives from *In Re Spook*, 2 Hilt. Rep. 566 (N.Y. 1859); *Smith v. United States Casualty Co.*, 197 N.Y. 420, 90 N.E. 947 (1910); *DuBoulay v. DuBoulay*, L.R. 2, E.C. 430 (1869).

¹⁸ *Kruzel*, supra, note 2, at 145, 226 N.W. 2d at 461.

¹⁹ *Ibid.* at 148-150, 226 N.W. 2d at 463-464.

²⁰ Wisconsin statutes are riddled with reference to names, and name changes such as those occurring due to "marriage," "divorce," or the all-inclusive term "otherwise," 256.30 (4), Wis. Stats.; 447.05 (7), Wis. Stats.; 443.01 (8), Wis. Stats.; 447.08 (7), Wis. Stats.; 446.02 (6), Wis. Stats.; 448.02 (4), Wis. Stats.; 247.20, Wis. Stats.; 343.22, Wis. Stats.; 6.40 (1) (c), Wis. Stats.; 7.08 (2) (a), Wis. Stats. The licensing statutes require motor vehicle operators and voters to register a change of name when one occurs for record keeping purposes.

²¹ The *Forbush* case made the distinction between a woman's "legal" name, one she could use vis-a-vis the state, and another name. In *Kotecki v. Auguziny*, 487 P. 2d 925 (1971) where a woman had obtained credit under her "maiden" name and her estate was probated and noticed in her husband's surname by which she was otherwise known, the court viewed the professional name as an "assumed" name. Cf. *Dunn v. Palermo*, supra, note 4. For a statement as to the correct "signature" to be used on negotiable instruments, see 403.203, Wis. Stats.; Sec. 403.401, Wis. Stats.; and Sec. 990.01 (38), Wis. Stats.

²² *Coxe*, *Litt.* 3 (a).

²³ *Stuart v. Board of Supervisors of Elections For Howard County*, 266 Md. 440, 295 A. 2d 223 (1972); *Guster v. Bonadies*, 30 Conn. Supp. 387, 318 A. 2d 639 (1974). *Dunn v. Palermo*, supra, note 4.

²⁴ Attorneys advising women clients should continue to counsel that they use but one surname exclusively and consistently if they wish to use a name which differs from that of their spouses to avoid any presumption that there is in fact, that a married woman is better known by the same surname as her spouse and should be known by the same on official records where she uses two names. However, *Kruzel* does not overrule *Lane v. Duchac*, 73 Wis. 646, 41 N.W. 962 (1889) which upheld the right of a married woman known by her husband's surname to execute legal documents in her "maiden" name. The validity of a mortgage so executed by a married woman was upheld in *Duchac*.

¹⁴ 296.36, Wis. Stats. A name changed for fraudulent purposes would be unauthorized by law and void. The change of name due to marriage would apply equally to women and men. See *Dunn v. Palermo*, supra, note 4.

¹⁵ Conversation with Carl L. Riccardi, Assistant Attorney General.

¹⁶ *Kruzel*, supra, note 2, at 151, 226 N.W. 2d at 464.

¹⁷ Before *Kruzel* women who did not use their husbands' surnames divorced in their own names in different counties of the state with no difficulty except in Milwaukee County.

¹⁸ A discussion of children's names beyond the scope of this article on the *Kruzel* case although the issue is raised without accompanying authority by the dissent. No law mandates that a child born in wedlock has the same surname as his natural father, or dictates to parents what first, middle or last names parents should name their children or their birth certificates or thereafter. Parents have a mutual right in naming their children and as married women assert their rights to their own identities, so do they begin to participate in naming their children by naming them for themselves. Only with hypenate names according to old English custom. A lengthy discussion of children's names is contained in 74 OAG 118. Similar opinions have recently been issued in other states.

¹⁹ *Ogle v. Circuit Court*, ... S.D. ... 227 N.W. 2d 621, 623 (1975).

²⁰ *Ibid.*

²¹ In *Nissen v. Nissen*, 38 Wis. 2d 599, 157 N.W. 2d 860 (1968), the late Justice Harold Hallow stated that persons over fourteen years of age were old enough to determine their own surnames and rejected a natural father's contention that he need not provide child support where his teenage boys had changed their surnames statutorily without his consent or knowledge.

²² In *Re Hauptley*, ... Ind. ... 312 N.E. 2d 357 (1974) (showing of fraudulent intent). *Marshall v. State*, ... Fla. App. ... 301 So. 2d 477 (1974) (ulterior or illegal purposes or invade property rights of others); *In re Marriage of Banks*, 42 Cal. App. 3d 63 (1974) (substantial reason or peculiar circumstances); *Egner v. Egne Walls v. Walls*, *Coon v. Coon*, ... N.J. App. ... 337 A. 2d 46 (1975) (fraudulent criminal intent or name obscene or offensive); *Application of Lawrence*, ... N.J. App. ... 337 A. 2d 49 (1975) (resumption of ante-nuptial name with husband's consent warranted as abuse of judicial discretion); *Application of Halligan*, 361 N.Y.S. 2d (1974) (fraud, misrepresentation or interference with rights of others); *Ogle v. Circuit Court*, supra, note 19 (substantial reason); *In The Matter of Change of Name of Mohan, Cisar, Lysaght and Smith*, Case No. 7510#C137, N.C. Ct. App. (June 18, 1975) (substantial reason).



HAMMERSMITH-BREITHAUP PRINTING CO.

for Fast, Accurate, On-Time

BRIEF PRINTING

WISCONSIN SAFE PLACE LAW \$2500 PER COPY PLUS \$1.00 TAX
Postage Paid If Check With Order

by Howard H. Boyle, Jr.

3889 N. 1st STREET (414) 964-5450 MILWAUKEE, WIS. 53211



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0533/2
MGD&PJK:.....
cmh

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

sen cat

1 AN ACT ...; relating to: name changes and names used by sex offenders and
2 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may change his or her name by consistently and continuously using another name, by petitioning a court to have his or her name changed, or, after being granted a divorce, by asking the court to permit him or her to use a former surname. This bill prohibits a person required to register as a sex offender from changing his or her name or using a name other than one by which the person is identified with the Department of Corrections. This prohibition also applies to a person who has been found to have committed a sex offense for which registration will be, but is not yet, required. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

SECTION 1

1 **SECTION 1.** 69.11 (4) (b) of the statutes is amended to read:

2 69.11 (4) (b) The state registrar may amend an item on a birth certificate that
3 affects information about the name, sex, date of birth, place of birth, parent's name,
4 or marital status of the mother if 365 days have elapsed since the occurrence of the
5 event that is the subject of the birth certificate, if the amendment is at the request
6 of a person with a direct and tangible interest in the record and is on a request form
7 supplied by the state registrar, and if the amendment is accompanied by 2 items of
8 documentary evidence from early childhood that are sufficient to prove that the item
9 to be changed is in error and by the affidavit of the person requesting the
10 amendment. A change in the marital status on the birth certificate may be made
11 under this paragraph only if the marital status is inconsistent with information
12 concerning the father or husband that appears on the birth certificate. This
13 paragraph may not be used to add to or delete from a birth certificate the name of a
14 parent ~~or~~ to change the identity of a parent named on the birth certificate, or to effect
15 a name change prohibited under s. 301.45 (4u).

History: 1985 a. 315; 2001 a. 16.

16 **SECTION 2.** 69.12 (1) of the statutes is amended to read:

17 69.12 (1) If the state registrar cannot make an amendment to a vital record
18 under s. 69.11 and a person with a direct and tangible interest in the vital record
19 alleges that information on the vital record does not represent the actual facts in
20 effect at the time the record was filed, the person may petition the circuit court of the
21 county in which the event which is the subject of the vital record is alleged to have
22 occurred. The petition shall be accompanied by a certified copy of the original vital
23 record. If the court finds that the petitioner has established the actual facts of the
24 event in effect when the record was filed, the clerk of court shall report the court's

1 determination to the state registrar on a form prescribed by the state registrar, along
2 with the fee required under s. 69.22 (5) (a) 2. Upon receipt of the report, the state
3 registrar shall, if information as to the cause of death on the original certificate of
4 death is changed, act under sub. (4), or shall change the record under s. 69.11 (5) and
5 send a notice of the change to the local registrar who shall make the change in the
6 record filed in his or her office. This subsection does not apply to a name change
7 prohibited under s. 301.45 (4u).

8 History: 1985 a. 315; 1993 a. 346; 1995 a. 225; 2001 a. 16.

9 **SECTION 3.** 69.15 (4) (b) of the statutes is amended to read:

10 69.15 (4) (b) Any person with a direct and tangible interest in a birth certificate
11 registered in this state may petition a court to change the name and sex of the
12 registrant on the certificate due to a surgical sex-change procedure. If the state
13 registrar receives an order which provides for such a change the state registrar shall
14 change the name and sex on the original certificate, except that if the court orders
15 the state registrar to prepare a new certificate the state registrar shall prepare a new
16 certificate under sub. (6). This subsection does not apply to a name change prohibited
under s. 301.45 (4u).

17 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.

18 **SECTION 4.** 301.45 (4u) of the statutes is created to read:

19 301.45 (4u) NAME CHANGES PROHIBITED. (a) In this subsection, "sex offender"
20 means a person who is subject to sub. (1g) but does not include a person who, as a
21 result of a proceeding under sub. (1m), is not required to comply with the reporting
22 requirements of this section.

23 (b) A sex offender may not do any of the following before he or she is released,
24 under sub. (5) or (5m), from the reporting requirements of this section:

1. Change his or her name.

1 2. Identify himself or herself by a name unless the name is one by which the
2 person is identified with the department.

3 **SECTION 5.** 301.45 (6) (ag) of the statutes is amended to read:

4 301.45 (6) (ag) Whoever intentionally violates sub. (4r) or (4u) may be fined not
5 more than \$10,000 or imprisoned for not more than 9 months or both.

6 History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109.

6 **SECTION 6.** 765.13 of the statutes is amended to read:

7 **765.13 Form of marriage document.** The marriage document shall consist
8 of the marriage license and the marriage license worksheet. The marriage license
9 shall contain a notification of the time limits of the authorization to marry, a notation
10 that the issue of the marriage license shall not be deemed to remove or dispense with
11 any legal disability, impediment or prohibition rendering marriage between the
12 parties illegal, a notation that a sex offender, as defined in s. 301.45 (4u) (a), may not
13 change his or her name by marriage, and the signature of the county clerk, who shall
14 acquire the information for the marriage document and enter it in its proper place
15 when the marriage license is issued. The marriage license worksheet shall contain
16 the social security number of each party, as well as any other information items that
17 the department of health and family services determines are necessary and shall
18 agree in the main with the standard form recommended by the federal agency
19 responsible for national vital statistics. The county clerk shall transmit the
20 marriage license worksheet to the state registrar within 5 days after the date of
21 issuance of the marriage license.

22 History: 1977 c. 418; 1979 c. 32 s. 48; Stats. 1979 c. 765.13; 1981 c. 20; 1995 a. 27 c. 9126 (19); 1997 a. 191; 2001 a. 16.

22 **SECTION 7.** 767.20 of the statutes is amended to read:

1 **767.20 Name of spouse.** ~~The~~ Except as provided in s. 301.45 (4u), the court,
2 upon granting a divorce, shall allow either spouse, upon request, to resume a former
3 legal surname, if any.

4 History: 1975 c. 94; 1979 c. 32 s. 30; Stats. 1979 s. 767.20.

4 **SECTION 8. 786.36 (1) (intro.)** of the statutes is amended to read:

5 **786.36 (1) (intro.)** Any Except as provided in sub. (3) or s. 301.45 (4u), any
6 resident of this state, whether a minor or adult, may upon petition to the circuit court
7 of the county where he or she resides and upon filing a copy of the notice, with proof
8 of publication, as required by s. 786.37, if no sufficient cause is shown to the contrary,
9 have his or her name changed or established by order of the court. If the person
10 whose name is to be changed is a minor under the age of 14 years, the petition may
11 be made by whichever of the following is applicable:

12 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)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0533/D
MGD&PJK:cmh:rs

2
tjld

2003 BILL

Regen

1 AN ACT to amend 69.11 (4) (b), 69.12 (1), 69.15 (4) (b), 301.45 (6) (ag), 765.13,
2 767.20 and 786.36 (1) (intro.); and to create 301.45 (4u) of the statutes;
3 relating to: name changes and names used by sex offenders and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may change his or her name by consistently and continuously using another name, by petitioning a court to have his or her name changed, or, after being granted a divorce, by asking the court to permit him or her to use a former surname. This bill prohibits a person required to register as a sex offender from changing his or her name or using a name other than one by which the person is identified with the Department of Corrections. This prohibition also applies to a person who has been found to have committed a sex offense for which registration will be, but is not yet, required. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

BILL

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.** 69.11 (4) (b) of the statutes is amended to read:

2 69.11 (4) (b) The state registrar may amend an item on a birth certificate that
3 affects information about the name, sex, date of birth, place of birth, parent's name,
4 or marital status of the mother if 365 days have elapsed since the occurrence of the
5 event that is the subject of the birth certificate, if the amendment is at the request
6 of a person with a direct and tangible interest in the record and is on a request form
7 supplied by the state registrar, and if the amendment is accompanied by 2 items of
8 documentary evidence from early childhood that are sufficient to prove that the item
9 to be changed is in error and by the affidavit of the person requesting the
10 amendment. A change in the marital status on the birth certificate may be made
11 under this paragraph only if the marital status is inconsistent with information
12 concerning the father or husband that appears on the birth certificate. This
13 paragraph may not be used to add to or delete from a birth certificate the name of a
14 parent ~~or~~, to change the identity of a parent named on the birth certificate, or to effect
15 a name change prohibited under s. 301.45 (4u).

16 **SECTION 2.** 69.12 (1) of the statutes is amended to read:

17 69.12 (1) If the state registrar cannot make an amendment to a vital record
18 under s. 69.11 and a person with a direct and tangible interest in the vital record
19 alleges that information on the vital record does not represent the actual facts in
20 effect at the time the record was filed, the person may petition the circuit court of the
21 county in which the event which is the subject of the vital record is alleged to have

BILL

1 occurred. The petition shall be accompanied by a certified copy of the original vital
2 record. If the court finds that the petitioner has established the actual facts of the
3 event in effect when the record was filed, the clerk of court shall report the court's
4 determination to the state registrar on a form prescribed by the state registrar, along
5 with the fee required under s. 69.22 (5) (a) 2. Upon receipt of the report, the state
6 registrar shall, if information as to the cause of death on the original certificate of
7 death is changed, act under sub. (4), or shall change the record under s. 69.11 (5) and
8 send a notice of the change to the local registrar who shall make the change in the
9 record filed in his or her office. This subsection does not apply to a name change
10 prohibited under s. 301.45 (4u).

11 **SECTION 3.** 69.15 (4) (b) of the statutes is amended to read:

12 69.15 (4) (b) Any person with a direct and tangible interest in a birth certificate
13 registered in this state may petition a court to change the name and sex of the
14 registrant on the certificate due to a surgical sex-change procedure. If the state
15 registrar receives an order which provides for such a change the state registrar shall
16 change the name and sex on the original certificate, except that if the court orders
17 the state registrar to prepare a new certificate the state registrar shall prepare a new
18 certificate under sub. (6). This subsection does not apply to a name change prohibited
19 under s. 301.45 (4u).

20 **SECTION 4.** 301.45 (4u) of the statutes is created to read:

21 301.45 (4u) NAME CHANGES PROHIBITED. (a) In this subsection, "sex offender"
22 means a person who is subject to sub. (1g) but does not include a person who, as a
23 result of a proceeding under sub. (1m), is not required to comply with the reporting
24 requirements of this section.

BILL**SECTION 4**

1 (b) A sex offender may not do any of the following before he or she is released,
2 under sub. (5) or (5m), from the reporting requirements of this section:

- 3 1. Change his or her name.
- 4 2. Identify himself or herself by a name unless the name is one by which the
5 person is identified with the department.

6 **SECTION 5.** 301.45 (6) (ag) of the statutes is amended to read:

7 301.45 (6) (ag) Whoever intentionally violates sub. (4r) or (4u) may be fined not
8 more than \$10,000 or imprisoned for not more than 9 months or both.

9 **SECTION 6.** 765.13 of the statutes is amended to read:

10 **765.13 Form of marriage document.** The marriage document shall consist
11 of the marriage license and the marriage license worksheet. The marriage license
12 shall contain a notification of the time limits of the authorization to marry, a notation
13 that the issue of the marriage license shall not be deemed to remove or dispense with
14 any legal disability, impediment or prohibition rendering marriage between the
15 parties illegal, a notation that a sex offender, as defined in s. 301.45 (4u) (a), may not
16 change his or her name by marriage, and the signature of the county clerk, who shall
17 acquire the information for the marriage document and enter it in its proper place
18 when the marriage license is issued. The marriage license worksheet shall contain
19 the social security number of each party, as well as any other information items that
20 the department of health and family services determines are necessary and shall
21 agree in the main with the standard form recommended by the federal agency
22 responsible for national vital statistics. The county clerk shall transmit the
23 marriage license worksheet to the state registrar within 5 days after the date of
24 issuance of the marriage license.

25 **SECTION 7.** 767.20 of the statutes is amended to read:

Barman, Mike

From: Churchill, Jolene
Sent: Monday, January 27, 2003 1:57 PM
To: Barman, Mike
Subject: Please Jacket these bills for Rep. Gundrum

LRB 533/2 and LRB 535/1

Basford, Sarah

From: Basford, Sarah
Sent: Tuesday, January 28, 2003 7:48 AM
To: Churchill, Jolene
Subject: LRB -0533/2 (attached)



03-0533/2

Sarah Basford

Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us