

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 908

INTRODUCER: Criminal Justice Committee and Senator Wise

SUBJECT: Change of Name

DATE: February 9, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thompson</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Current law requires a person seeking a name change, other than a person restoring a former name, to attach a set of fingerprints to the petition. If the petition is granted, the fingerprints are then submitted to Florida Department of Law Enforcement (FDLE).<sup>1</sup>

This bill provides that a person seeking a name change, other than a person restoring a former name, must attach two sets of fingerprints to the petition together with a fingerprint processing fee. The clerk of the court must send one set of the petitioner's fingerprints to FDLE for a state and national criminal history records check, which must be provided to the court prior to hearing the name change request. This requirement will increase the cost for filing a petition for name change by \$47.00.

This bill substantially amends section 68.07, Florida Statutes.

## II. Present Situation:

Any person or family that wants to change their name must follow the procedural requirements established by s. 68.07, F.S. The person seeking a name change is called the petitioner, and the petitioner files his or her petition for a change of name in the county in which he or she resides.

Section 68.07(2), F.S., provides that the petition must include a copy of the petitioner's fingerprints taken by a law enforcement agency, except where a former name is being restored. Section 68.07(2), F.S., also provides that the petition must be verified and show:

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<sup>1</sup> Section 68.07(5), F.S.

- That the petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.
- If known, the date and place of birth of the petitioner, the petitioner's residences since birth, and petitioner's father's name and mother's maiden name.
- If the petitioner is married, the name of petitioner's spouse. If the petitioner has children, the names and ages of each child and where they reside.
- If the petitioner's name has previously been changed and when and where and by what court.
- The petitioner's occupation and where the petitioner is currently employed and has been employed for five years preceding filing of the petition. If the petitioner owns and operates a business, the name and place of the business, and petitioner's connection and length of identification with the business must be included. If the petitioner is in a profession, the profession shall be stated, and where the petitioner has practiced the profession. If the petitioner is a graduate of a school or schools, the petitioner must include the name of school or schools, degrees received, and time of graduation.
- Whether the petitioner has been generally known or called by any other names and if so, by what names and where.
- Whether the petitioner has ever been adjudicated bankrupt and if so, where and when.
- Whether the petitioner has ever been arrested for or charged with, pled guilty or nolo contendere to, or been found to have committed a criminal offense, regardless of adjudication, and if so, when and where.
- Whether any money judgment has ever been entered against the petitioner and if so, the name of the judgment creditor, the amount and date thereof, the court by which entered, and whether the judgment has been satisfied.
- That the petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.
- That the petitioner's civil rights have never been suspended, or if the petitioner's civil rights have been suspended, that full restoration of civil rights has occurred.<sup>2</sup>

The judge is given the name change petition by the clerk of court. Upon entry of the final judgment, the clerk must send a report of the judgment to the Florida Department of Law Enforcement (FDLE or the department). The department must send a copy of the report to the Department of Highway Safety and Motor Vehicles. Any information retained by these departments is to be revised to reflect the changes made by the name change. If a person has been convicted of a felony in another state or of a federal offense, FDLE must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation (FBI). The department may also forward the report to any other law enforcement agency it believes may retain information related to the petitioner.<sup>3</sup>

Section 68.07(3), F.S., provides that a hearing on a change of name petition may be held immediately after the petition is filed.

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<sup>2</sup> Section 68.07(2), F.S.

<sup>3</sup> Section 68.07(5), F.S.

### III. Effect of Proposed Changes:

This bill amends s. 68.07(2), F.S., to require that a petition for name change, other than a petition seeking to restore a former name, must include two sets of the petitioner's fingerprints instead of one, and must include a fingerprint-processing fee. The bill requires a fee in the amount set by s. 943.053, F.S., for the state criminal history records check plus the amount established by the Federal Bureau of Investigation (FBI) for the national criminal history records check.<sup>4</sup> This bill requires the clerk of the court to forward one of the sets of fingerprints to the Florida Department of Law Enforcement (FDLE or the department) for a state and national criminal history records check. The results of the criminal history check are then to be returned to the clerk to be used by the court in determining whether to grant the petition for name change. If the judgment is granted, the clerk must send the second set of fingerprints to FDLE as required by s. 68.07(5), F.S.

The bill states that the criminal history check results are to be used by the court "in determining whether to grant the petition." The bill does not specify how the court is to use the information from the criminal history check, and the degree to which the information will be used to evaluate the petition. Currently, case law states that a facially sufficient petition should be granted in the absence of evidence of a wrongful or fraudulent purpose.<sup>5</sup> According to current case law, other than for a facially insufficient petition, the court cannot summarily dismiss a petition without first giving the petitioner a chance to be heard.<sup>6</sup>

Judge Mel Grossman in the 17th Judicial Circuit has suggested amending s. 68.07, F.S., and provided the following reasons for the amendment:

As of now, in this state, when a hearing is held regarding a name change petition (and there are judges in the state who handle these matters on the filing alone and without a hearing) it is less than an uncontested proceeding. It is an essentially self-executing process in which the entry of the final judgment is the equivalent of a ministerial function. The judge does not know if the petitioner is a convicted sex offender or predator or in this country legally. (We have had people seeking to be fingerprinted whose immigration documents are expired or were about to expire.) It is conceivable that someone could hopscotch through the twenty circuits of the state and significantly increase the likelihood he or she would not be found until after causing injury to innocent victims.

In light of the intent of the Legislature in enacting chapter 2005-78, Laws of Florida [Jessica Lunsford Act], which just became effective on September 12, 2005 and in keeping with ... [the] U.S. House of Representatives vote in favor of the Federal Children's Safety Act it would seem appropriate for the Legislature to amend s. 68.07, Fla. Stat., and require that a criminal and immigration background check be completed and made available to the court prior to the entry of the final judgment, much as

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<sup>4</sup> According to the FDLE website, the fee for processing both the Florida and national criminal history records check, as required by this bill, is \$47. <http://www.fdle.state.fl.us/criminalhistory> (accessed January 19, 2006).

<sup>5</sup> *In re Name Change Petition of Mullin*, 892 So. 2d 1214 (Fla. 2nd DCA 2005).

<sup>6</sup> *In re Petition for Name Change from Darrell Lee Keppro to Darrell Lee McQuaid*, 573 So. 2d 140, 142 (Fla. 1st DCA 1991).

s. 744.313, Fla. Stat., provides for such an investigation before someone can be appointed a guardian.

While it is possible that this matter might be resolved on a circuit by circuit basis by an administrative order establishing appropriate procedures and, indeed, this is being examined by the 17th circuit at the request of Chief Judge Dale Ross, it clearly would be an improvement to the operation of the judicial system and to law enforcement's ability to protect the public if the Legislature simply amended s. 68.07 to provide for the same opportunity to obtain information by the court as is provided in s. 744.313 Fla. Stat., before granting a name change.<sup>7</sup>

Presumably, in light of the case law, which indicates that a facially sufficient petition may be denied based on evidence of a wrongful or fraudulent purpose, the amendment to s. 68.07, F.S., suggested by Judge Grossman and the reasons he provided for the amendment, and the provisions of the bill that effect that amendment, the courts will use the results of the criminal history records check on an applicant to determine if the applicant's petition is being filed for a wrongful or fraudulent purpose.

The bill provides that a hearing on a petition for restoring a former name may be immediately after the name change petition is filed. Where a criminal history check is required on an applicant for a name change, the hearing on the name change petition may be immediately after the results of the criminal history check are returned to the clerk.

The bill does not provide exceptions to the criminal history records check requirement, except for a name change in proceedings for dissolution of marriage or for adoption. Thus the determination of whether to grant or deny the petition would not occur until after the results of the criminal history records check are received, which, according to FDLE, could take two weeks to two months. If the fingerprints are submitted electronically, the turnover time is two to three days. If the clerk of court mails the paper form to FDLE, the department in turn has to mail the fingerprints to the FBI. Currently, the clerks of courts are submitting all fingerprints in the paper form.<sup>8</sup> While it is possible that someone might seek to quickly change her or his name for the purpose of concealing her or his whereabouts from a violent ex-spouse or other violent person, it is unknown if the current process for a name change is any quicker than the new process proposed by the bill and if such person can even seek expedited consideration of a name change petition under current law. This situation is likely to be more effectively addressed by seeking a restraining order than changing a name because of Florida's broad public records law and the increasing availability of court records over the Internet.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>7</sup> E-mail from Judge Mel Grossman to Senate President Tom Lee, dated September 16, 2005.

<sup>8</sup> Information provided by staff of FDLE, January 20, 2006.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Under current law, the petitioner is required to pay a \$255 fee when filing a petition for a name change,<sup>9</sup> and also any costs associated with obtaining one set of fingerprints to include with the petition. This bill increases the cost of a name change, except in the case of restoring a former name, by requiring the petitioner to pay a \$47 fingerprint-processing fee for the state and national criminal history records check, as well as any costs associated with obtaining an additional set of fingerprints.

**C. Government Sector Impact:**

Under this bill, a portion of the \$47 criminal history check fee will go to the Florida Department of Law Enforcement (FDLE or the department). The department estimates that it will receive approximately 3,420 criminal history checks for name change petitions annually. These checks would provide \$23 per check for the fingerprint-processing fee, leading to \$78,660 per year to be deposited into the FDLE Operating Trust Fund.<sup>10</sup> The department does not believe that this bill will necessitate additional full-time equivalent (FTE) positions.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>9</sup> Florida Association of Court Clerks, Inc., *Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines* (Revised July 7, 2005), available at [http://www.flcourts.org/gen\\_public/funding/bin/manual\\_feesfines.pdf](http://www.flcourts.org/gen_public/funding/bin/manual_feesfines.pdf) (accessed January 23, 2006).

<sup>10</sup> Fiscal Analysis prepared by FDLE, December 1, 2005.



## **VIII. Summary of Amendments:**

None.

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