

Legislative Analysis



LEGAL NAME CHANGES AND SEX DESIGNATIONS ON CERTAIN IDENTIFICATION DOCUMENTS

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<http://www.house.mi.gov/hfa>

House Bill 5300 as introduced
Sponsor: Rep. Laurie Pohutsky

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5301 as introduced
Sponsor: Rep. Emily Dievendorf

House Bill 5302 as introduced
Sponsor: Rep. Felicia Brabec

House Bill 5303 as introduced
Sponsor: Rep. Helena Scott

Committee: Judiciary
Revised 2-13-24

SUMMARY:

House Bills 5300 to 5303 would do all of the following:

- Eliminate a presumption in law that a person who is seeking to change their legal name must be doing so for a fraudulent reason if they have a criminal record.
- Eliminate a requirement that a person 22 or older who is seeking a name change must submit fingerprints for state and federal criminal background checks.
- Expand reasons for which a court can waive publication requirements regarding a name change, notably to include affirmation of the person's gender identity.
- Eliminate a requirement for a doctor's affidavit of surgery before a new birth certificate that shows a sex designation other than the one assigned at birth can be issued.
- Allow a person to indicate a sex designation of "M," "F," or "X" for a driver's license, state personal ID card, or new birth certificate, with no additional documentation or certification required.
- Allow driver's licenses and state personal ID cards to be reissued without charge to update a sex designation.

House Bill 5300 would amend the Probate Code to change provisions related to legal name changes. Under the code, the Family Division of Circuit Court can enter an order to change the name of a person who has been a resident of the county for at least one year and who petitions¹ the court in writing to do so, as long as the person shows sufficient reason for the proposed change and that it is not being done to commit fraud. The court must hold a hearing on the question and order publication of a notice of the proceeding that describes the current and proposed names and the time and place of the hearing.² However, if good cause is shown that no notice should be published and that the proceeding should be confidential, the court can

¹ See <https://www.courts.michigan.gov/49f990/siteassets/forms/scao-approved/pc51.pdf>

² The relevant court rule is 3.613: https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/michigan-court-rules/court-rules-book-ch-3-responsive-html5.zip/index.html#t=Court_Rules_Book_Ch_3%2FCourt_Rules_Chapter_3%2FCourt_Rules_Chapter_3.htm%231007897bc-68

waive that publication. Good cause includes evidence of stalking or of an assaultive crime or another reason a person fears physical danger if the proceeding or record is made public.

Currently, if the person petitioning for a name change has a criminal record, the law provides a presumption that they are changing their name with a fraudulent intent. The burden is on them to prove otherwise. The bill would eliminate this presumption of fraud. However, under the bill, a person submitting a petition who has a criminal record, including a pending charge, would have to include that record in the petition. Similarly, a person without a criminal record would have to state so in the petition. (False statements in a petition are perjury.)

In addition, when someone who is 22 years old or older petitions to have their name changed, they now must submit two sets of fingerprints to be forwarded to the Department of State Police (MSP) and the Federal Bureau of Information (FBI) so those agencies can run background checks for pending charges or records of conviction. The bill would eliminate this provision.

The bill would newly allow the court, at the court's discretion, to enter a name change order without a hearing.

The bill also would amend the provisions that allow, for good cause shown, a proceeding to be confidential. Under the bill, if the court receives a petition that shows **good cause**, the court *would have to* (currently it *may*) order that no publication be made of the proceeding and that records of it be confidential. A petition that shows good cause would have to state the reasons that the person submitting the petition, or anyone else (referred to in the bill as an *endangered individual*), fears the publication or availability of the record. The court would have to presume that good cause is shown if the statement includes any of the following reasons:

- The person submitting the petition or the endangered individual is a victim of an assaultive crime, **domestic violence**, harassment, human trafficking,³ or stalking.⁴
- The person submitting the petition or the endangered individual seeks to affirm their **gender identity**.

Good cause would include evidence that the publication or availability of the record of a name-change proceeding could place the person submitting the petition or another individual in physical danger, at an increased likelihood of physical danger, or at risk of unlawful discrimination or retaliation.

Domestic violence would mean any of the following acts that is not self-defense:

- Causing or attempting to cause physical or mental harm to a **family or household member**.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

³ A violation of Chapter LXVIIA of the Michigan Penal Code: <http://legislature.mi.gov/doc.aspx?mcl-328-1931-LXVIIA>

⁴ As defined in sections 411h and 411i of the Michigan Penal Code: <http://legislature.mi.gov/doc.aspx?mcl-750-411h> and <http://legislature.mi.gov/doc.aspx?mcl-750-411i>

Family or household member would include any of the following:

- An individual who is the person’s spouse or former spouse.
- An individual the person resides with or has resided with.
- An individual the person has, or has had, a ***dating relationship*** with.
- An individual the person is, or has, engaged in a sexual relationship with.
- An individual the person is related to, or was formerly related to, by marriage.
- An individual the person has a child in common with.
- The minor child of an individual described above.

Dating relationship would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. It would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Gender identity would mean an individual’s gender-related self-identity, regardless of whether the self-identity is associated with their assigned sex at birth.

Finally, the bill would no longer require a child who is 14 or older to sign written consent to a name change *in the presence of the court*. (Their signature would still be required.)

MCL 711.1 and 711.3

House Bill 5301 would amend the Michigan Vehicle Code to provide that, for purposes of choosing a sex designation on an application for a driver’s license, an applicant may indicate a designation of “M,” “F,” or “X,” with no additional documentation or certification required.

The bill also would add “to update a sex designation” to the list of reasons a person can receive an updated license without a renewal charge. For purposes of updating a sex designation on a license, a person could submit a signed form indicating a designation of “M,” “F,” or “X,” with no additional documentation or certification required.

MCL 257.302 and 257.812

House Bill 5302 would amend 1972 PA 222, the state personal identification card act, to make the same changes regarding state ID cards as HB 5301 would make regarding driver’s licenses.

MCL 28.291 and 28.292

House Bill 5303 would amend the Public Health Code. Currently, a request for a new birth certificate to show a sex designation other than the one assigned at birth must be accompanied by an affidavit from a doctor that certifies that sex-reassignment surgery (more commonly called gender affirmation surgery or gender confirmation surgery) has been performed. The bill would eliminate this requirement. Instead, the request would have to be accompanied by a signed form indicating a sex designation of male, female, or X. If the form is accompanied by a court order changing the person’s name, the new certificate would also have to reflect the new legal name. The state registrar could not require any additional document or certification.

In addition, when the state registrar now receives a certified copy of a court order changing the name of someone born in Michigan and the request of that person or their parents, guardian, or legal representative, the state registrar must affix an addendum to the individual's certificate of live birth that states the individual's new name and identifies the court order. The state registrar creates a new live birth certificate and seals the original certificate *only if* the court order changing the individual's name specifically directs the state registrar to do so *or if* the request relates to a minor whose name is changed under section 1 of Chapter XI of the Probate Code (which HB 5300 would amend).

The bill would provide that the above requirement that a court order changing the person's name must include a specific direction to the state registrar for the state registrar to create a new live birth certificate and seal the original certificate does not apply to a new certificate of birth established to show a sex designation other than the one assigned at birth. (That is, the bill would, in those cases, allow the state registrar to create a new certificate and seal the original regardless of whether the court order specifically directed them to do so.)

MCL 333.2831 and 333.2872

FISCAL IMPACT:

House Bill 5300 would have a neutral net fiscal impact on the Department of State Police. By eliminating the fingerprinting and background check requirement, the bill would eliminate restricted revenue that MSP would otherwise receive from associated fees; however, the department would also have reduced fingerprinting and background check volumes, so the net impact would be neutral. MSP processed a total of 2,495 name change background checks in 2023, with \$79,840 in restricted revenue received for this activity.

House Bills 5301 and 5302 would have no fiscal impact on the state or on local units of government.

House Bill 5303 would not have a significant fiscal impact on state expenditures to the Department of Health and Human Services (DHHS) or local units of government. The fiscal impact of the bill would be dependent on an increase in the number of applications received to amend birth certificates.

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