

Committee on Children and the Law - Revised Memo
In support of Name Change Jurisdiction (for November 2022 EC)

The mission of the Committee on Children and the Law includes the responsibility of rendering information and guidance to the Executive Committee, the legal community and the public on the effect of existing laws and pending legislation impacting children, and the administration of juvenile justice and child welfare. In furthering its mission, the Committee is charged with examining, studying, and providing comment and reports on legal issues related to the rights and interests of children, in particular those involved in court proceedings; and drafting and promoting original legislation which is necessary or useful to the rights and interests of children. This proposal falls squarely within the stated mission of the Committee.

Presently, jurisdiction for a name change rests solely with supreme and county court pursuant to Civil Rights Law §60. Judiciary Law §35(7) provides that supreme court [or surrogate's court] can appoint an Attorney for the Child (AFC) in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court. Since family court does not have jurisdiction over a name change proceeding, children who are the subject of a name change petition do not have the benefit of legal representation by an AFC because supreme court has no authority to appoint.

A child who is the subject of a family court proceeding, and as such has been appointed an attorney, may want a name change. That attorney for the child could bring the proceeding in supreme court, as a collateral proceeding. However, a child who is not the subject of a family court proceeding, has no attorney, and would have no legal representation appointed in supreme court for a name change, whether initiated by the child, parent, or other person. It is that situation which this statutory change would remedy.

This proposal would vest jurisdiction in both family and supreme court so as to allow litigants the option that would be most convenient and least expensive for them. It would be counterproductive to send a family, already litigants in family court, and with a judge familiar with them, to supreme court and a new judge, at an expense they may not be able to afford.

The fiscal impact would be relatively small for those cases already assigned an attorney for the child in family court; and possibly, could be deferred to parental pay in the First, Second and Fourth Judicial Departments.

Accordingly, it is recommended that the Civil Rights Law be changed to vest in family court the same jurisdiction that supreme court has over name change proceedings. Additionally, the Family Court Act §115(e) should be amended to give family court concurrent jurisdiction with supreme court over proceedings to change the name of a child. With these changes, a child who is the subject of a name change proceeding will have access to representation by an AFC, whether the action is commenced in supreme or family court. Further, petitioners who seek the name change of a child will have the option of initiating the proceeding in family court, where there are no filing fees and perhaps prohibitive expense, as well as the tribune with the greatest expertise in adjudicating children's interests.

Family Court Act § 115

§ 115. Jurisdiction of family court

(a) The family court has exclusive original jurisdiction over

(i) abuse and neglect proceedings, as set forth in article ten;

(ii) support proceedings, as set forth in article four;

(iii) proceedings to determine paternity and for the support of children born out-of-wedlock, as set forth in article five;

(iv) proceedings to permanently terminate parental rights to guardianship and custody of a child: (A) by reason of permanent neglect, as set forth in part one of article six of this act and paragraph (d) of subdivision four of section three hundred eighty-four-b of the social services law, (B) by reason of mental illness, intellectual disability and severe or repeated child abuse, as set forth in paragraphs (c) and (e) of subdivision four of section three hundred eighty-four-b of the social services law, and (C) by reason of the death of one or both parents, where no guardian of the person of the child has been lawfully appointed, or by reason of abandonment of the child for a period of six months immediately prior to the filing of the petition, where a child is under the jurisdiction of the family court as a result of a placement in foster care by the family court pursuant to article ten or ten-A of this act or section three hundred fifty-eight-a of the social services law, unless the court declines jurisdiction pursuant to section three hundred eighty-four-b of the social services law;

(v) proceedings concerning whether a person is in need of supervision, as set forth in article seven; and

(vi) proceedings concerning juvenile delinquency as set forth in article three.

(b) The family court has such other jurisdiction as is set forth in this act, including jurisdiction over habeas corpus proceedings and over applications for support, maintenance, a distribution of marital property and custody in matrimonial actions when referred to the family court by the supreme court, conciliation proceedings, ***petitions for the change of the name of a child in accordance with Article 6 of the Civil Rights Law*** and proceedings concerning physically handicapped and mentally defective or retarded children.

(c) The family court has such other jurisdiction as is provided by law, including but not limited to: proceedings concerning adoption and custody of children, as set forth in parts two and three of article six of this act; proceedings concerning the uniform interstate family support act, as set forth in article five-B of this act; proceedings concerning children in foster care and care and custody of children, as set forth in sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and article ten-A of this act; proceedings concerning former foster children as set forth in article ten-B of this act; proceedings concerning destitute children, as set forth in article ten-C of this act; proceedings concerning guardianship and custody of children by reason of the death of, or abandonment or surrender by, the parent or parents, as set forth in sections three hundred eighty-three-c, three hundred eighty-four and paragraphs (a) and (b) of subdivision four of section three hundred eighty-four-b of the social services law; proceedings concerning standby guardianship and guardianship of the person as set forth in part four of article six of this act and article seventeen of the surrogate's court procedure act;

and proceedings concerning the interstate compact on juveniles as set forth in chapter one hundred fifty-five of the laws of nineteen hundred fifty-five, as amended, the interstate compact on the placement of children, as set forth in section three hundred seventy-four-a of the social services law, and the uniform child custody jurisdiction and enforcement act, as set forth in article five-A of the domestic relations law.

(d) Notwithstanding subdivisions (a) through (c) of this section, jurisdiction of the family court and tribal courts of Indian tribes designated by the Secretary of the Interior over those child custody proceedings provided for in articles three, seven, ten and ten-A of this act and sections three hundred fifty-eight-a and three hundred eighty-four-b of the social services law involving Indian children as defined in subdivision thirty-six of section two of the social services law shall be subject to the terms and conditions set forth in applicable sections of title twenty-five of the United States code; provided that tribal courts of Indian tribes designated as such by the state of New York shall have jurisdiction over such child custody proceedings involving Indian children to the same extent as federally designated Indian tribes upon the approval of the state office of children and family services pursuant to section thirty-nine of the social services law.

(e) The family court has concurrent jurisdiction with the criminal court over all family offenses as defined in article eight of this act.

(f) The family court has jurisdiction to direct the commencement of proceedings to suspend the driving privileges, recreational licenses and permits, and license, permit, registration or authority to practice of persons who are delinquent in their child or combined child and spousal support obligations or persons who have failed, after receiving appropriate notice, to comply with summonses, subpoenas or warrants relating to paternity and child support proceedings as set forth in sections four hundred fifty-eight-a, four hundred fifty-eight-b, four hundred fifty-eight-c, five hundred forty-eight-a, five hundred forty-eight-b, and five forty-eight-c of this act. Such jurisdiction shall include jurisdiction over all boards, departments, authorities or offices of the state for the purposes of implementing such section.

Civil Rights Law § 60

§ 60. Petition for change of name

A petition for leave to assume another name may be made by a resident of the state to the county court of the county, ~~or~~ the supreme court in the county in which he resides, or, if he resides in the city of New York, either to the supreme court or to any branch of the civil court of the city of New York, in any county of the city of New York ***or when the name change pertains to an infant under the age of 18 years, the family court of the county where the child resides***. The petition to change the name of an infant may be made by the infant through his next friend, or by either of his parents, or by his general guardian, or by the guardian of his person ***or by the infant's attorney. Upon the filing of a petition for the change of an infant's name, the Court may appoint an attorney to represent that child and require that notice of the petition be served upon such attorney.***

Civil Rights Law § 61

§ 61. Contents

1. The petition shall be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and shall specify the grounds of the application, the name, date of birth, place of birth, age and residence of the individual whose name is proposed to be changed and the name which he or she proposes to assume. The petition shall also specify (a) whether or not the petitioner has been convicted of a crime or adjudicated a bankrupt; (b) whether or not there are any judgments or liens of record against the petitioner or actions or proceedings pending to which the petitioner is a party, and, if so, the petitioner shall give descriptive details in connection therewith sufficient to readily identify the matter referred to; (c) whether or not the petitioner is responsible for child support obligations; (d) whether or not the petitioner's child support obligations have been satisfied and are up to date; (e) the amount of a child support arrearage that currently is outstanding along with the identity of the court which issued the support order and the county child support collections unit; (f) whether or not the petitioner is responsible for spousal support obligations; (g) whether or not the petitioner's spousal support obligations have been satisfied and are up to date; and (h) the amount of spousal support arrearage that currently is outstanding along with the identity of the court which issued the support order.

2. If the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or 230.32, and is currently confined as an inmate in any correctional facility or currently under the supervision of the department of corrections and community supervision or a county probation department as a result of such conviction, the petition shall for each such conviction specify such felony conviction, the date of such conviction or convictions, and the court in which such conviction or convictions were entered.

3. Upon all applications for change of name by persons born in the state of New York, there shall be annexed to such petition either a birth certificate or a certified transcript thereof or a certificate of the commissioner or local board of health that none is available.

Civil Rights Law § 62

§ 62. Notice

1. If the petition be to change the name of an infant, notice of the time and place when and where the petition will be presented must be served, in like manner as a notice of a motion upon an attorney in an action, upon (a) both parents of the infant, if they be living, unless the petition be made by one of the parents, in which case notice must be served upon the other, if he or she be living, and (b) the general guardian or guardian of the person, if there be one. But if any of the persons, required to be given notice by this section, reside without the state, then the notice required by this section must be sent by registered mail to the last known address of the person to be served. If it appears to the satisfaction of the court that a person required to be given notice by this section cannot be located with due diligence within the state, and that such person has no known address without the state, then the court may dispense with notice or require notice to be given to such persons and in such manner as the court

thinks proper.

2. If the petition be to change the name of a person currently confined as an inmate in any correctional facility or currently under the supervision of the department of corrections and community supervision or a county probation department as a result of a conviction for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or 230.32, notice of the time and place when and where the petition will be presented shall be served, in like manner as a notice of a motion upon an attorney in an action, upon the district attorney of every county in which such person has been convicted of such felony and upon the court or courts in which the sentence for such felony was entered. Unless a shorter period of time is ordered by the court, said notice shall be served upon each such district attorney and court or courts not less than sixty days prior to the date on which such petition is noticed to be heard.

Civil Rights Law § 63

§ 63. Order

If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, the court shall make an order authorizing the petitioner to assume the name proposed. The order shall further recite the date and place of birth of the applicant and, if the applicant was born in the state of New York, such order shall set forth the number of his birth certificate or that no birth certificate is available. ***The order shall be directed to be entered and the papers on which it was granted to be filed prior to the publication hereinafter directed in the clerk's office of the county in which the petitioner resides if he be an individual, or in the office of the clerk of the civil court of the city of New York if the order be made by that court.*** Such order shall also direct the publication, at least once, within sixty days after the making of the order, in a designated newspaper in the county in which the order is directed to be entered and if the petition is made by a person subject to the provisions of subdivision two of section sixty-two of this article, in a designated newspaper in any county wherein such person was convicted if different from the county in which the order is otherwise directed to be entered, of a notice in substantially the following form: Notice is hereby given that an order entered by the court, county, on the day of....., bearing Index Number....., a copy of which may be examined at the office of the clerk, located at, in room number....., grants me the right to assume the name of The city and state of my present address are; the month and year of my birth are; the place of my birth is; my present name is

QUESTION - Do we want to amend the bolded and italicized language above to provide for the order to be filed in family court?

Civil Rights Law § 64

§ 64. Effect

If the order shall be fully complied with, and within ninety days after the making of the order, an affidavit of the publication thereof shall be filed in the office in which the order is entered, the petitioner shall be known by the name which is thereby authorized to be assumed. If the surname of a parent be changed as provided in this article, any minor child of such parent at the time of such change may thereafter assume such changed surname.

Upon compliance with the order and the filing of the affidavit of the publication, as provided in this section, the clerk of the court in which the order has been entered shall certify that the order has been complied with; and, if the petition states that the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or 230.32, such clerk (1) shall deliver, by first class mail, a copy of such certified order to the division of criminal justice services at its office in the county of Albany and (2) upon the clerk of the court reviewing the petitioner's application for name change and subsequent in-court inquiry, may, in the clerk's discretion, deliver, by first class mail, the petitioner's new name with such certified order to the court of competent jurisdiction which imposed the orders of support. Such certification shall appear on the original order and on any certified copy thereof and shall be entered in the clerk's minutes of the proceeding.

Civil Rights Law § 64-a

§ 64-a. Exemption from publication requirements

1. If the court shall find that the publication of an applicant's change of name would jeopardize such applicant's personal safety, based on totality of the circumstances the provisions of sections sixty-three and sixty-four of this article requiring publication shall be waived and shall be inapplicable. Provided, however, the court shall not deny such waiver solely on the basis that the applicant lacks specific instances of or a personal history of threat to personal safety. The court shall order the records of such change of name proceeding to be sealed, to be opened only by order of the court for good cause shown or at the request of the applicant.

2. Notwithstanding any other provision of law, pending such a finding in subdivision one of this section where an applicant seeks relief under this section, the court shall immediately order the applicant's current name, proposed new name, residential and business addresses, telephone numbers, and any other information contained in any pleadings or papers submitted to the court to be safeguarded and sealed in order to prevent their inadvertent or unauthorized use or disclosure while the matter is pending.

Civil Rights Law § 65

§ 65. Optional change of name upon marriage, divorce or annulment

1. Any person may, upon marriage, elect to assume a new name according to the provisions of paragraph (b) of subdivision one of section fifteen of the domestic relations law.
2. Any person may, upon divorce or annulment, elect to resume the use of a former surname according to the provisions of section two hundred forty-a of the domestic relations law.
3. The effect of the name changes accomplished in the manner prescribed in subdivisions one and two of this section shall be as set forth in section sixty-four of this chapter.
4. Nothing in this article shall be construed to abrogate or alter the common law right of every person, whether married or single, to retain his or her name or to assume a new one so long as the new name is used consistently and without intent to defraud.
5. Notwithstanding any inconsistent provision of law, the state shall not impose any fee, charge, surcharge or assessment solely to change the surname contained on a license, permit, registration or other identifying document for a person who, because of a change in marital status, has assumed a new name or reassumes use of a former surname as provided for in this section.