



Under s. 68.07(2), F.S., with some exceptions, a person who seeks to change his or her name must file a petition under oath and a set of fingerprints with a court. The petition must show:

(a) That petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.

(b) If known, the date and place of birth of petitioner, petitioner's father's name, mother's maiden name, and where petitioner has resided since birth.

(c) If petitioner is married, the name of petitioner's spouse and if petitioner has children, the names and ages of each and where they reside.

(d) If petitioner's name has previously been changed and when and where and by what court.

(e) Petitioner's occupation and where petitioner is employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, the profession shall be stated, where the petitioner has practiced the profession and if a graduate of a school or schools, the name or names thereof, time of graduation, and degrees received.

(f) Whether the petitioner has been generally known or called by any other names and if so, by what names and where.

(g) Whether petitioner has ever been adjudicated a bankrupt and if so, where and when.

(h) Whether 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.

(i) Whether any money judgment has ever been entered against 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.

(j) 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.

(k) 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>4</sup>

Section 943.053(5), F.S., authorizes Florida judges to have online access to the Florida Crime Information Center (FCIC) for the purpose of assisting in case-related decisionmaking responsibilities. The FCIC is maintained by the Florida Department of Law Enforcement (FDLE). Judges do not have access to the National Crime Information Center (NCIC) that is maintained by the Federal Bureau of Investigation (FBI).

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<sup>4</sup> This final element appears to be a dispositive factor under case law. See *In re Harris*, 976 So. 2d 668, 668 (Fla. 2d DCA 2008) ("The trial court determined that Harris lacked standing to seek a name change ... because his civil rights were suspended when he was incarcerated."). See also *Finfrack v. State*, 932 So. 2d 437, 439 (Fla. 4th DCA 2006) ("[I]t is unclear from this record whether subsection (k) applies and would preclude grant of appellant's petition for name change.").

After a court rules on the name change petition, the clerk of court must send a report of the judgment, including the fingerprints, to FDLE. A copy of the report must be sent to the Department of Highway Safety and Motor Vehicles (DHSMV). The report enables FDLE and DHSMV to revise their records to reflect the name change. With respect to a person convicted of a felony in another state or of a federal offense, FDLE must send the report to that state's office of law enforcement records or to the FBI. FDLE is also permitted to send the report to any other law enforcement agency that it has reason to believe may retain information related to the petitioner.<sup>5</sup>

Nothing in s. 68.07, F.S., provides for name change proceedings to be adversarial proceedings. Therefore, a court cannot always rely on another party to challenge the accuracy of the facts stated in a name change petition, including the petitioner's statements regarding his or her criminal history.<sup>6</sup> In interpreting the name change statute, courts have said that if a petition "is facially sufficient, it should be granted so long as there is no evidence of a wrongful or fraudulent purpose."<sup>7</sup>

Section 68.07, F.S., expressly does not apply to name changes in connection with proceedings for adoptions or dissolutions of marriage.<sup>8</sup> Section 68.07, F.S., also does not appear to apply to name changes resulting from marriages.<sup>9</sup> Moreover, individuals seeking a name change to restore a former name are not required to submit fingerprints as part of the petition.<sup>10</sup>

### III. Effect of Proposed Changes:

This bill requires a fingerprint-based state and national criminal history records check of a petitioner prior to the court hearing on a petition for change of name under s. 68.07, F.S. Existing law exempts persons seeking to restore a former name from the requirement to submit fingerprints, and the bill also makes them exempt from the criminal history check. Because changes of name in proceedings for dissolution of marriage or adoption of children are not

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

<sup>6</sup> Although the existing name change statute requires a person to include a set of fingerprints with the petition, the statute does not explicitly prescribe a pre-hearing criminal history records check. The FDLE noted that, as a result of legislative amendments in 2006 to another statute, state judges do have online access to Florida criminal justice information through the Florida Crime Information Center for their various "case-related decisionmaking responsibilities." See s. 943.053(5), F.S. The extent to which judges are currently using this resource in name change proceedings is not known by professional staff of the committee.

<sup>7</sup> *Finrock*, 932 So. 2d at 438 (Fla. 4th DCA 2006); see also *Isom*, 437 So. 2d at 733 (interpreting an earlier version of the statute and holding that a petition "should generally be granted unless sought for a wrongful or fraudulent purpose").

<sup>8</sup> Section 68.07(8), F.S.

<sup>9</sup> No Florida statute has been located that expressly authorizes or creates a process for name changes upon marriage. Several statutes, however, recognize that such name changes occur. See, e.g., s. 97.1031(2), F.S. (requiring voters to change their registrations to reflect name changes upon marriage); s. 775.21(6)(g), F.S. (requiring sexual predators to register name changes upon marriage at a driver's license office). See also 14 C.F.R. s. 61.25 (permitting name changes on certain certificates issued to pilots and others by the Federal Aviation Administration); Florida Department of Highway Safety and Motor Vehicles, Name Changes, available at <http://www.flhsmv.gov/ddl/namechange.html> (last visited January 31, 2009) (stating that "[a] name change may be handled at any driver license office by presenting an original or certified marriage certificate or court order, the incorrect license and paying the \$10 fee").

<sup>10</sup> Section 68.07(2), F.S.

processed pursuant to s. 68.07, F.S., the new criminal history check requirement does not apply to such cases.<sup>11</sup>

Existing law provides that, before the court hearing on a name change, the petitioner must file a petition with the clerk for a name change. Currently, a judge considering a name-change petition can perform an online name-based check of the petitioner's Florida criminal history record through the FCIC. The bill requires a fingerprint-based check of both Florida criminal history in the FCIC and national criminal history in the NCIC. It will take more time to receive the results of this expanded check, but the judge will have more accurate and complete information about the petitioner's criminal history.

Under the bill, when the petition is filed, the clerk will instruct the petitioner on the fingerprint process and provide a list of entities authorized to take fingerprints. The authorized entity will submit the fingerprints electronically to FDLE to perform a state criminal history records check. In turn, FDLE will forward the prints to the FBI for a national criminal history records check. FDLE will then send the results of the state and national criminal history check to the clerk of court, and the court will use the results to review the information filed by petitioner and to evaluate whether to grant the petition.

The petitioner, or the parent or guardian of a minor for whom a name change is being sought, will bear the cost of processing fingerprints and conducting this criminal history records check.

As a result of the bill, the hearing on a petition for a name change may only be held after the clerk receives the results of the criminal history check. However, as under existing law, a hearing on a petition for restoring a former name may be held immediately after the petition is filed.<sup>12</sup>

Following the name change hearing, the clerk will send a final report of the judgment to FDLE along with the results of the criminal history check.

The bill takes effect on July 1, 2009.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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<sup>11</sup> As noted in the "Present Situation" section of this bill analysis, s. 68.07, F.S., does not appear to apply to name changes resulting from marriages. Therefore, the bill's requirement for a criminal history check would not apply to such a change. See note 9.

<sup>12</sup> Section 68.07(2) and (3), F.S. (2008). (The bill renumbers s. 68.07(3), F.S., as subsection (4).)

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

See discussion in the “Private Sector Impact” section below.

B. Private Sector Impact:

Persons who seek to legally change their name will incur the cost of the criminal background check unless they are restoring a former name or changing names in connection with adoption or dissolution of marriage. According to FDLE, each criminal history records request costs \$43.25, of which \$24 goes into the FDLE Operating Trust Fund and \$19.25 is forwarded to the FBI to cover the cost of the criminal history records check. Law enforcement agencies and approved service providers are authorized to submit fingerprints to FDLE electronically, and service providers may assess a fee in addition to the records check fee.

C. Government Sector Impact:

According to FDLE, the bill is expected to generate approximately 1,000 additional background checks per year. This would result in additional revenue of \$24,000 to the FDLE Operating Trust Fund.

In keeping with the existing statute, uniform family law forms and instructions approved by the Florida Supreme Court currently require a name change petitioner to attach a set of fingerprints to the petition.<sup>13</sup> However, the bill envisions that fingerprints will be submitted electronically to FDLE and that FDLE will submit the results of the criminal history records check to the clerk of court. Thus, the petitioner will no longer be required to attach a set of fingerprints to the petition under the statute as revised by the bill. Consequently, the Supreme Court may incur some costs in revising the forms and instructions consistent with the proposed statutory changes. To the extent clerks have produced their own forms or instructions, they may also incur costs to revise them. These costs are not expected to be significant.

**VI. Technical Deficiencies:**

None

**VII. Related Issues:**

None.

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<sup>13</sup> See Fla. Fam. L. Form 12.982(a)-(g).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on February 4, 2009:**

- Makes a distinction between hearings on petitions that require a criminal history records check versus petitions for restoring a former name, which do not require the check.
- Directs the clerk of court to provide the petitioner with instructions on the electronic fingerprint process and information on entities that are authorized to conduct and submit prints to FDLE.
- Clarifies that an authorized entity, rather than the petitioner, will electronically submit the fingerprints to FDLE for state processing and that FDLE will then forward them to the FBI for a national criminal history records check.
- Specifies that FDLE will submit the results of the criminal history check to the court clerk.
- Explains that the court will use the results of the criminal history check to review the petition and decide whether to grant the name change.
- Amends the content of the final judgment report, so that the records check information will be attached to the petition, rather than the fingerprints.

- B. **Amendments:**

None.