Proposal for a Model Name Act

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PROPOSAL FOR A MODEL NAME ACT

A model name act would provide solutions for many problems involving personal names, such as questions of identity, by building on the framework of the common law. An act would provide a basis for future legal developments in the law of names to promote the individual’s interest in freedom of self-expression and the state’s interest in consistent application and record keeping. Legislation creates certainty avoiding burdensome and expensive litigation by providing judges with a clear and stable reference and reducing the number of situations requiring judicial decisions.

This note will discuss the common law of names relating to such issues as identity, contract, civil procedure, and criminal procedure, as well as discussing common law and statutory change of name methods. The failure of some courts to apply the existing law of names in a manner consistent with the state interest in record keeping and the personal interest in freedom of expression will be reviewed. Finally, a model act will be proposed attempting to reconcile and promote these interests.

I. THE EXISTING LAW OF NAMES

A. The Common Law

A name is “a word or phrase by which a person, . . . is known, called, or spoken to or of; . . . a word or words expressing some quality considered to be characteristic or descriptive of a person . . . fame, reputation, or character. . . .” Since at least the early nineteenth century, a person’s name has generally been held to consist of at least two distinct names, a given name and a surname. A person may acquire a name at birth, through statutory

1This note is concerned only with the law respecting the names of natural persons.
2WEBSTER’S NEW TWENTIETH CENTURY DICTIONARY 1193 (unabridged 2d. ed. 1975).

The plaintiffs sue by the names of Stothard and Starky, and whether both or either of them have any other name, is not a matter of law, but a matter of fact, for we know of no law, which requires a person to have two names, and if he has but one he may certainly sue by that.

European countries under the civil law have paralleled many aspects of the common law, including the requirement that a person have at least two names. W. Schätz, Le nom des personnes, 95 RECUEIL DES COURS III 183, 201 (1958).

4See, e.g., ALA. CODE tit. 22, § 34 (1958).
proceedings,\textsuperscript{8} or by repute, that is, through the use of a name.\textsuperscript{6}

There have been two general approaches to the legal function of a personal name. Courts in some jurisdictions have regarded names as the equivalent of the person named.

[I]t is well settled that identity of name imports, prima facie, identity of person . . . . It would seem to follow that a difference of name imports, prima facie, a difference in identity. To some extent, a change of name always conceals the nominee’s identity.\textsuperscript{7}


See Statutory Development, Pre-Marriage Name Change, Resumption and Registration Statutes, 74 Colum. L. Rev. 1508 (1974).

\textsuperscript{6}In In re Natale, 527 S.W.2d 402, 404 (Mo. App. 1975), the court stated, "[T]he courts have indicated that a person’s name is the designation given to the individual by himself or herself and others . . . ."; see Wilson v. State, 69 Ga. 224, 235 (1882); Commonwealth v. Trainor, 123 Mass. 414, 415 (1877); Mississippi State Bd. of Dental Examiners v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945); State ex rel. Kansas City Pub. Serv. Comm’r v. Cowan, 356 Mo. 674, 203 S.W.2d 407 (1947).

\textsuperscript{7}Esco v. State, 278 Ala. 641, 643, 179 So.2d 766, 768 (1965); Accord, Kirk v. Bonner, 186 Ark. 1063, 57 S.W.2d 802 (1933); Johnston v. Riley, 13 Ga. 97 (1853); Mitchell v. State, 134
Courts which follow this approach hold that names must be exact to have legal weight. Neither description nor abbreviation can be the equivalent of a name.8

Other courts have held that the purpose of a name is to denominate the particular individual. As long as the person's identity is adequately certain, a variation in name is unimportant. "Jurisdiction attaches to persons, to things, to facts, not to mere words, and an error in name is nothing where there is certainty as to the thing . . . ."9 Although these two approaches to names need not be mutually exclusive, the latter view, which was more prevalent in the early nineteenth century, is generally being replaced by the former.

Names have social as well as legal significance as identifiers. It is certainly not accidental that the word "name" is a synonym for reputation.10 Loss of the use of a name by which one is commonly known can mean a virtual loss of a person's position in a community. In several cases involving elections, a candidate's opponent has charged that the name under which the candidate was to appear on the ballot was not the person's real name.11 In these cases, the courts have recognized that to force the candidate to appear under an unfamiliar name would assure a defeat. With the purpose of a name being to denominate a particular individual, the courts con-

8Putnam v. Bessom, 291 Mass. 217, 197 N.E. 147 (1935); cf., Nelson, The Reform of Common Law Pleading in Massachusetts 1760-1830: Adjudication as a Prelude to Legislation, 122 U. PA. L. REV. 97, 106-07 (1973). Nelson found that in the late eighteenth century courts required that a person's exact name be given or a pleading would be held inadequate. Later courts allowed inaccuracy as long as the person was adequately identified. In the latter part of the nineteenth century, there was a return to the more exacting requirements. See notes 7 & 9 and accompanying text.

9Milbra v. Sloss-Sheffield Steel & Iron Co., 182 Ala. 622, 630, 62 So. 176, 179 (1913); accord, National Life & Accident Ins. Co. v. Saffold, 225 Ala. 664, 144 So. 816 (1932); Washington v. State, 68 Ala. 85 (1880); Terry v. Klein, 133 Ark. 366, 201 S.W. 801 (1918); Bogart v. Woodruff, 96 Cal. 609, 31 P. 618 (1892); In re Westerman, 401 111. 489, 82 N.E.2d 474 (1948); Feld v. Loftis, 240 Ill. 105, 88 N.E. 281 (1909); Parmelee v. Raymond, 43 Ill. App. 609 (1892); cf. Nelson, supra note 8 at 113-14 (discussing the use of names as identity referents in pleadings in the early nineteenth century).

10Arnold, Personal Names, 15 YALE L.J. 227, 232 (1906), states, "[T]here can be no more valuable patrimony than a good name; it is, though outside the pale of commerce, one of the most prized attributes of man."

cluded that an unfamiliar name could not perform this function as well as the name by which the candidate was generally known, even though the name sought to be used on the ballot was not the candidate's given name or the one which courts would generally recognize as the person's legal name.\textsuperscript{12} Names also indicate a person's position in society by connecting him with a particular family\textsuperscript{13} or with an ethnic group.\textsuperscript{14} Moreover, many individuals, especially new parents, view names as a means of self-expression.\textsuperscript{15}

Because the common law has defined a name as an identifier of a person,\textsuperscript{16} a name can be acquired through sufficient use and repute to adequately denote a particular individual.\textsuperscript{17} The doctrine of \textit{idem sonans} is a natural outgrowth of this attitude. Under this doctrine, courts have held that a difference in spelling is unimportant if the two names sound the same or naturally suggest each other.\textsuperscript{18}

\begin{itemize}
\item \textsuperscript{13}See, e.g., \textit{In re Kayaloff}, 9 F. Supp. 176 (S.D.N.Y. 1934); Ansley v. Green, 82 Ga. 181, 7 S.E. 921 (1888); Dunn v. Palermo, ___ Tenn. ___, 522 S.W.2d 679, 681 (1975).
\item \textsuperscript{15}This desire, however, is not limited merely to new parents. See, e.g., Stuart v. Board of Elections, 266 Md. 440, 442, 295 A.2d 223, 224 (1972) (discussed at notes 51-52 and accompanying text infra); \textit{In re John's}, 29 Misc. 2d 31, 212 N.Y.S.2d 146 (Queens County Ct. 1961); U. STANNARD, \textit{MARRIED WOMEN V. HUSBANDS' NAMES: THE CASE FOR WIVES WHO KEEP THEIR OWN NAME} 1-2 (1973).
\item However, the state has often limited this freedom, for example, in cases where the judge regards the change as ridiculous. Recently, Ellen Donna Cooperman petitioned to change her name to Cooperperson in order to express her sense of human equality. The judge ridiculed Ms. Cooperman by reciting a number of possible name changes which he regarded as silly: Jackson to Jackchild, Manning to Peopleing, Carmen to Carperson. N. Y. Times, Oct. 19, 1976, at 37, col. 4 (city ed.).
\item The Civil Law countries tend to be even more restrictive in regard to permissible names. [In Argentina by] Executive Decree no. 11,609 of October 13, 1943, confirmed by Law 13,030 of October 7, 1947, registrants of civil status were prohibited from inscribing births of persons with first names not expressed in Spanish or not appearing in the calendar or among the names of the fathers of the Independence; consequently only names would be admitted to registry that were either Spanish or had become hispanicized by usage or native Indian names that had been incorporated in the national idiom (art. 1, 2). Names signifying ideological or political tendencies, ridiculous or extravagant names or those contrary to good morals were to be refused registry (art. 4), as well as those not corresponding to the sex of the person (art. 7). The use of surnames as first names was likewise prohibited (art. 5). Comment, \textit{The Right to Choose a Name}, 8 AM. J. COMP. L. 502 (1959); See also Schätz, \textit{supra} note 3 at 191-92.
\item See, e.g., Comer v. Jackson, 50 Ala. 384, 387 (1874); State \textit{ex rel.} Lane v. Corneli, 347 Mo. 932, 940-41, 149 S.W.2d 815, 821 (1941); State \textit{ex rel.} Krupa v. Green, 114 Ohio App. 497, 501-02, 177 N.E.2d 616, 619 (1961); Presley v. Wilson, 125 S.W.2d 654, 656 (Tex. Civ. App. 1939).
\item See, e.g., Ingram v. Watson, 211 Ala. 410, 413, 100 So. 557, 559 (1924). This is consistent with and an outgrowth of the concept of names as denominators. It has remained part of the common law even though the older concept is slowly passing out of usage; however, there have been steady inroads on this means of effecting a change of name as well.
\item See, e.g., Grannis v. Ordean, 234 U.S. 385 (1914); Schoonhoven v. Gott, 20 Ill. 46 (1858); Loser v. Plainfield Sav. Bank, 149 Iowa 672, 128 N.W. 1101 (1910); Brown v. Chaddick, 197 Okla. 515, 172 P.2d 996 (1946).
\end{itemize}
Well-accepted abbreviations such as Wm. for William, or Thos. for Thomas have also been found to adequately fulfill their function of identification.\footnote{Owens v. State, 72 Ga. App. 11, 32 S.E.2d 848 (1945); Clinton v. Miller, 124 Mont. 463, 226 P.2d 487 (1951).}

B. Legal Applications of Identity

Three areas of the common law in which courts have frequently considered the issue of identity are contracts, civil procedure, and criminal procedure. Clearly, where a name does not make a person’s identification certain, it is difficult to protect his legal rights.\footnote{Reliance on names as the means of identifying people is so basic that it is difficult to imagine any society functioning without them. Legal rights do not exist in the abstract, but have meaning only as they attach to the individual, whether singly, as one of a specific group, or as one of the public. No individual has any right until he is identified. The rights to participate in government, such as the right to vote or to hold office, have meaning only as they relate to identifiable human beings. Rider, Legal Protection of Manifestations of Individual Personality—The Identity-Indicia, 33 S. Cal. L. Rev. 31, 31-32 (1959).}

The individual who needs protection may be either the person relying on the name to single out a particular person or the person who has been misidentified.

1. Contracts—Courts have enforced contracts executed by the use of a name other than that given at birth if the person was adequately identified by the name employed. Judges have found identification to be adequate for varying reasons. Some courts have held that use makes the identity certain, while maintaining that the birth name remains the legal name.\footnote{National Life & Accident Ins. Co. v. Saffold, 225 Ala. 664, 144 So. 816 (1932); Comer v. Jackson, 50 Ala. 384, 387 (1874); Vanek v. Foster, 74 Idaho 532, 263 P.2d 997 (1953); Sims v. Missouri State Life Ins. Co., 223 Mo. App. 1150, 23 S.W.2d 1075 (1930); Miller v. Thomason Supply Co., 107 S.W.2d 752 (Tex. Civ. App. 1937).} Other courts have stated that use effects a common law name change, so that the new name does become the legal name\footnote{See notes 42-59 and accompanying text infra.} and is thus the appropriate name to use when contracting.\footnote{See, e.g., State v. Carroll, 21 Ariz. App. 99, 515 P.2d 1197 (1973); Graham v. Eisznr, 28 Ill. App. 269, 273 (1888); Schofield v. Jennings, 68 Ind. 232, 235 (1879).} Still other courts have enforced these contracts on the basis of an estoppel theory.\footnote{See, e.g., Tuggle v. Bank of Cave Spring, 8 Ga. App. 291, 68 S.E. 1070 (1910); State ex rel. Schoenbacher v. Kelly, 408 S.W.2d 383 (Mo. App. 1966); Tom v. First Nat'l Bank, 104 S.W.2d 130, 135 (Tex. Civ. App. 1937). The approach which a court adopts influences the utility of the doctrine of mistake. If the contract was made with the physical person and the name merely singles out that person, then there is no mistake. However, if the name is an important element of the contract, then the court must assess the materiality of the name to the performance of the contract and determine whether the innocent party suffered any loss. See generally, A. Corbin, Contracts §§ 601-603 (1960).} Here, the courts inquire first into the adequacy of the identification. Where identification is adequate, the inquiry is limited to whether the
signature was obtained by fraud or whether the signatory used the name with a fraudulent purpose.25

2. Civil Procedure—In general, when issues of identity are raised with reference to procedural matters, the basic question again is whether the person has been sufficiently identified. Due process requires that a party receive notice of a pending suit.26 Minimal due process requirements are probably met even where the notice received does not employ the party’s birth name.27 For example, if a person is generally known by a name other than the birth name, notice is properly given in the name by which he is known,28 whether the name is acquired by use29 or whether there is an element of estoppel.30 When service is by publication, courts adhere more strictly to the requirement that there be certainty in the identification of any individual served in this manner.31 Due process requirements are satisfied where there is no question as to proper identity, “no enlargement of an existing suit and no introduction of any new suit . . . beyond the statutory period . . . ,”32 the other party is not misled, and no further suit can be brought for the same claim.33

3. Criminal Law—Issues of identity in the field of criminal law differ in important respects from those encountered in contracts or civil procedure. Certain crimes such as impersonation,34 fraud,35

25 In re Adoption of Long, 56 So. 2d 450 (Fla. 1952); North Am. Accident Ins. Co. v. Canady, 196 Okla. 105, 163 P.2d 221 (1945).
26 See, e.g., Wuchter v. Pizzutti, 276 U.S. 13 (1928); McDonald v. Mabee, 243 U.S. 90 (1917).
27 See, e.g., Schmidt v. Thomas, 33 Ill. App. 109, 111-12 (1889). The Court stated that such service would usually be good; however, no default judgment could be entered where the defendant did not appear even though there had been personal service.
28 See, e.g., State v. Dresser, 54 Me. 569, 571 (1866); Frye v. Hinkley, 18 Me. 320 (1841); Commonwealth v. Trainor, 123 Mass. 414, 415 (1877).
30 Jones v. Kohler, 137 Ind. 528, 37 N.E. 399 (1893); Clark v. Clark, 19 Kan. 522, 524-25 (1878). In Emery v. Kipp, 154 Cal. Rptr. 83, 86, 97 P. 17, 19 (1908) the court stated: [A] judgment is valid when obtained against a married woman sued as a femme sole and in her maiden name, particularly upon any contract which she has executed in such name, . . . [as] a rule of general acceptance . . . . This is in consonance with the principle of common law that a man may change his name at will and sue or be sued in any name in which he is known and recognized.
31 See, e.g., Pooher v. Hyne, 213 F. 154 (7th Cir. 1914), cert. denied, 238 U.S. 620 (1915); Doyle v. Hays Land & Inv. Co., 80 Kan. 209, 102 P. 496 (1909) (notice by publication adequate); cf. Morris v. Tracy, 38 Kan. 137, 48 P. 571 (1897) (service voidable if not absolutely void because the defendant has not used the name under which service by publication was attempted); Kidd v. Rasmus, 285 S.W.2d 415 (Tex. Civ. App. 1955) (defendant not a party to a tax suit because notice given in her maiden name no longer sufficiently identified her).
33 Baumeister v. Markham, 101 Ky. 122, 128-29, 39 S.W. 844, 845 (1879).
34 See, e.g., United States v. Lepowitch, 318 U.S. 702, 704 (1943); State v. Kosky, 191 Mo. 1, 90 S.W. 454 (1905).
or forgery\textsuperscript{36} may involve the use of a name to deceive. Any use of a name other than the one given at birth creates the possibility of deception. Courts have recognized this fact and regularly inquire into the intent of those seeking a change of name to discover whether there is a fraudulent purpose.\textsuperscript{37}

In addition, criminal law must be concerned with the identification of those who have committed crimes. Obviously, identification is an important prerequisite to the imposition of criminal sanctions on any person. Positive identification is necessary whether the court is trying to identify an individual as a prior offender or as the person charged with the crime before the court. For example, additional sanctions are often imposed on persons with prior convictions.\textsuperscript{38} In this regard, identity of names is prima facie evidence of the identity of persons.\textsuperscript{39} Customarily, indictments must be in the person's birth name or at least his usual name,\textsuperscript{40} and if no name is known, that fact must be alleged.\textsuperscript{41}

\textbf{C. Methods for Change of Name}

\textit{1. Common Law Procedures}—In general, common law name change is straightforward and simple. "The name by which a person is generally known, although not his original name, but used by him in all of his business affairs becomes his legal name and is not a fictitious name."\textsuperscript{42} It is through this method of use and repute that a woman acquires her husband's surname upon marriage.\textsuperscript{43}

\begin{thebibliography}{99}

\bibitem{footnote2} See note 46 and accompanying text infra.
\bibitem{footnote3} See, e.g., 18 U.S.C. \textsection{} 924(c) (1970); State v. Cook, 463 S.W.2d 863, 868 (Mo. 1971).
\bibitem{footnote4} See, e.g., State v. Cook, 463 S.W.2d 863, 868 (Mo. 1971); State v. Shumate, 516 S.W.2d 297, 300 (Mo. App. 1974).
\bibitem{footnote5} Washington v. State, 68 Ala. 85, 87-88 (1880); People v. Reilly, 175 Ill. App. 45, 47 (1912); see also Nelson, \textit{supra} note 8, at 106.
\bibitem{footnote6} State v. Kutter, 59 Ind. 572 (1877).
\bibitem{footnote7} Mississippi State Bd. of Dental Examiners v. Mandell, 198 Miss. 49, 67, 21 So. 2d 405, 410 (1945); \textit{accord}, Alabama Clay Products Co. v. Mathews, 220 Ala. 549, 126 So. 869 (1930); Ray v. American Photo Player Co., 46 Cal. App. 311, 189 P. 130 (1920); Reinken v. Reinken, 351 Ill. 409, 184 N.E. 639 (1933).
\bibitem{footnote8} In Kruzel v. Podell, 67 Wis. 2d 138, 140, 226 N.W.2d 458, 459 (1975), the court stated "[A] woman upon her marriage adopts the surname of her husband by thereafter customarily using that name, but no law requires that she do so. If she continues to use her antenuptial surname, her name is unchanged by the fact that marriage has occurred." \textit{Accord}, Walker v. Jackson, 391 F. Supp. 1395, 1402 (E.D. Ark. 1975); Custer v. Bonadies, 30 Conn. Supp. 385, 318 A.2d 639 (1974); \textit{cf. In re Kneipp}, 172 La. 411, 134 So. 377 (1931) (A woman's name always remains her maiden name because she bears her husband's name only by custom.); Wilty v. Jefferson Parish Democratic Executive Comm., 245 La. 145, 171, 157 So. 2d 718, 727 (1963) (Sanders, J., concurring) (He urged the court to base its decision on \textit{In re Kneipp}.). \textit{Contra}, Whitlow v. Hodges, 539 F.2d 582 (6th Cir. 1976), \textit{cert. denied}, 45 U.S.L.W. 3432 (Dec. 12, 1976); Forbush v. Wallace, 341 F. Supp. 217, 221-22 (M.D. Ala. 1971), \textit{aff'd without opinion}, 405 U.S. 970 (1972); \textit{In re Kayaloff}, 9 F. Supp. 176 (S.D.N.Y. 1934) (The court misstated the common law in this instance, as have other courts, holding that the common law requires a woman to change her surname to her husband's surname upon marriage.); People \textit{ex rel. Rago v. Lipsky}, 327 Ill. App. 63, 63 N.E.2d 642 (1945).
\end{thebibliography}
The common law merely requires sufficient use of a new name to indicate that the community in general, and creditors in particular, have acquiesced in the use of the new name and have come to identify the person by that new name. The common law also requires that the change not be made for a fraudulent purpose. Nevertheless, some courts have suggested that even where a person meets these requirements, the birth name remains the person’s real name, and the new name is in the nature of an alias.

Despite this basic simplicity, confusion has complicated the common law of name changes. This confusion is a result of the conflict of several different characteristics of names: names as a means of self-expression, names as a type of property, and names as a means by which society, in general, and the state, in particular, can keep track of its individual members. Some courts have restricted the freedom of certain individuals to determine their own names. Minors, for example, have often been denied a change of name. In some jurisdictions, the courts have ruled that a married woman must adopt the surname of her husband. However, for the most part, the common law affords a simple, inexpensive means for a change of name.

This permissive approach to changing names is a recognition of the fact that there is an element of self-expression in a person’s name. In *Stuart v. Board of Elections*, a statutory name change case, Mary Emily Stuart stated that she wished to retain her given name. See, e.g., *Forbush v. Wallace*, 341 F. Supp. 217 (M.D Ala. 1971), aff’d without opinion, 405 U.S. 970 (1972); *In re Kayaloff*, 9 F. Supp. 176 (S.D.N.Y. 1934); *People ex rel. Rago v. Lipsky*, 327 Ill. App. 63, 63 N.E.2d 642 (1945). In addition, three states have statutes which allow a court to forbid a woman to use her husband’s surname or his given name following a divorce. See, e.g., *ALA. Code tit. 34, § 39(1) (Cum. Supp. 1973); N.J. STAT. ANN. § 2A:34-21 (1952); WASH. REV. CODE ANN. § 26.09.150 (Supp. 1976).
name because "her marriage . . . was 'based on the idea that we're both individuals and our names symbolize that.'" One court in a petition for a name change using the statutory procedure recognized the element of self-expression when it stated, "[t]here is no statutory requirement . . . that the petitioner establish any particular reason other than his personal desire for a change of name." It is not unusual for converts to a new religion to display their new convictions by a change of name. Courts have held that a name is "the designation given to the individual by himself or herself . . . " A person generally chooses a name which is personally pleasing or expressive of some desirable trait, avoiding names considered ugly, obscene, or silly. Names undergo changes in popularity as people search for ways to express themselves. Social expectations can even persuade people to alter their names to express change in status, as, for example, in the United States where many women customarily change their names upon marriage.

Although names are a well-recognized means of self-expression, a person has no property right in his name. In other words, it is not possible to prevent another from using one's name, absent a showing of fraudulent purpose or an intent to invade the rights of another. However, courts have seemed willing to recognize something resembling a property right in a father who wishes to have his children bear his name. This question usually arises after a divorce, when the mother with custody of the children remarries and thereafter petitions to have her children's names changed to that of the stepfather. Courts have held that fathers have a right or a protectable interest in having their children bear their name, and therefore, generally deny petitions for a change of name.

52 Id. at 442, 295 A.2d at 224.
53 In re Hauptly, ___ Ind. ___ , 312 N.E.2d 857, 859 (1974).
54 See, e.g., In re Green, 54 Misc. 2d 606, 283 N.Y.S.2d 242 (Civ. Ct. 1967).
55 See In re Natale, 527 S.W.2d 402, 404 (Mo. App. 1975). In order to implement the freedom which the common law gives the individual in determining his name, courts should exercise minimal discretion, only inquiring into the question of fraud.
56 See, e.g., Fulghum v. Paul, 229 Ga. 463, 192 S.E.2d 376, 377 (1972); Bentham, note 50 supra. But see P.R. LAWS ANN. tit. 31, § 466 (1968) (A legitimate child has the right to bear the surname of both father and mother.).
58 See, e.g., Worms v. Worms, 252 Cal. App. 2d 130, 60 Cal. Rptr. 88 (1967); In re Yessner, 61 Misc. 2d 174, 175, 304 N.Y.S.2d 901, 901 (Civ. Ct. 1969); In re Keach, 51 Misc. 2d 1097, 274 N.Y.S.2d 938 (Onondaga County Ct. 1966).
2. **Statutory Name Change Procedures**—All states now have a statute setting forth methods for the change of name.\(^{60}\) The purpose of these statutory procedures is to promote the state’s interest in record keeping.\(^{61}\) Courts in most jurisdictions have recognized that these statutes do not abrogate the common law rule which allows a person to change his name without resort to legal procedure or repeal it by implication or otherwise. They merely affirm and are in aid of the common law rule and provide an additional method of effecting a name change . . . .\(^{62}\)

Three states, however, have adopted or at one time followed a contrary position to the effect that the statute “provides the only method by which one can change his name with legal effect.”\(^{63}\)

A person who petitions for a statutory change of name has the burden of satisfying the court that the request should be granted. Courts differ as to the extent of the burden placed on the petitioner. Some courts have broad discretion in deciding the merits of a petition.

A person’s right to change his name by court order is not absolute . . . . [A]n application for a change of name may properly be denied where the change is sought for a fraudulent purpose, . . . or where the change of name will result in the invasion of the rights of others . . . . And even in the absence of a showing of fraud or the invasion of rights of another, the court may be justified in denying an application for a change of name.\(^{64}\)

\(^{60}\)See note 5 supra.


\(^{63}\)In *re Merolevitz*, 320 Mass. 448, 450, 70 N.E.2d 249, 250 (1946). The earliest Massachusetts case, *Lord v. Cummings*, 303 Mass. 457, 22 N.E.2d 26 (1939), held that the statute was the only way to effect a legal change of name. *In re Merolevitz*, supra, reaffirmed that position. The court in *Mark v. Kahn*, 333 Mass. 517, 131 N.E.2d 758 (1956), citing *Merolevitz*, adopted the majority position that the statute is merely in aid of the common law. Since the *Mark* decision, Massachusetts appears to take a position in conformity with the majority of states. In *re Rusconi*, 341 Mass. 167, 167 N.E.2d 847 (1960). See *In re Reben*, 342 A.2d 688, 694 (Me. 1975), which is in accord with the earlier Massachusetts rule. PA. ST AT. ANN. tit. 54, § 5 (Purdon 1964), provides that the use of other means besides the statutory procedure for the change of name is illegal. See, e.g., *In re Falucci*, 355 Pa. 588, 50 A.2d 200 (1947).

\(^{64}\)See *In re Evetts*, 392 S.W.2d 781, 784 (Tex. Civ. App. 1965).
Other courts have held that while generally some substantial reason must exist before the court is justified in refusing to grant the petition, it is also the general rule that the court is not subject to the whim or capricious desire of a petitioner to change his name. . . . [P]etitioner has the burden of establishing that it is just and reasonable that the petition be granted—not merely that petitioner desires it and that the request is without fraud.65

Finally, some courts have stated that because the purpose of the statute is to provide a record of the change of name and because the petitioner may otherwise resort to a common law change of name, a statutory change of name should be denied "only where there is a showing of 'substantial reason' . . . or 'peculiar circumstances' . . . . In effect the burden of proof rests on the person who would deny the change, not the person seeking the change."66

In many respects a name involves more than the individual's freedom of expression. In a highly organized society, names are to some extent "established as a police institution in the interest of society in general, not of the individual . . . ."67 Although the state could keep records more effectively by using numbers, names will undoubtedly play a vital role in the identification process for the foreseeable future. There can be no doubt that a change of name creates both the possibility of fraud,68 as well as a bureaucratic burden for the state.69 Thus, it is not surprising that judges, as officials of the state, often exercise their discretion to deny name changes requested for insubstantial reasons.

The state recognizes and provides for the desire for a change of name at certain times, such as naturalization,70 adoption,71 mar-

65In re Mohlman, 26 N.C. App. 220, ___ , 216 S.E.2d 147, 151 (1975).
67Comment, supra note 15, at 503.
68See, e.g., Forbush v. Wallace, 341 F. Supp. 217, 221-22 (M.D. Ala. 1971), aff'd without opinion, 405 U.S. 970 (1972), where the court stated:
As has been previously indicated, the state has a significant interest in maintaining close watch over its licensees. The confusion which would result if each driver were allowed to obtain licenses in any number of names is obvious. This would be true not only of the maintenance of driving records, but also of the identification purposes to which a license is put . . . .
69See, e.g., In re Klimpl, 11 Conn. Supp. 460 (1943).
71CONN. GEN. STAT. § 45-69 (1960); D.C. CODE § 16-312(c) (1973); FLA. STAT. ANN. § 63.131 (1969); HAW. REV. STAT. § 578-13 (Supp. 1975); IND. CODE ANN. § 31-3-1-8 (Burns Supp. 1976); LA. REV. STAT. ANN. § 9:435 (West 1965); MASS. ANN. LAWS ch. 210, § 6 (Michie/Law Co-op. 1969); MICH. COMP. LAWS ANN. § 710.59 (Supp. 1976); MINN. STAT. ANN. § 259.28 (West 1971); MISS. CODE ANN. § 93-17-3 (Supp. 1976); MO. REV. STAT. § 453.080 (1969); N. H. REV. STAT. ANN. § 170-B:21 (Supp. 1973); N.J. STAT. ANN. § 9:3-27, § 9-3-31 (West 1976).
riage,\textsuperscript{72} and divorce.\textsuperscript{73} However, in other situations, judges have been unwilling to allow statutory name changes. Ironically, while denying a person a statutory name change, which would fulfill the state interest in record keeping, many judges advise the petitioner of the availability of the common law method.\textsuperscript{74} In other cases, judges have frustrated both the state’s interest in stability of names and the personal right to determine one’s own name by requiring a change of name where the person did not want one.\textsuperscript{75} The most frequent example is the case of a woman who wants to retain her birth name after marriage.\textsuperscript{76}

\textsuperscript{72}CAL. CIV. PROC. CODE § 1279.5(b) (West Supp. 1976) (A married woman may continue to use her former name if she uses it consistently.); HAW. REV. STAT. §§ 574-1 to 2 (Supp. 1975) (Upon marriage each party declares the surname that party will use, either that person’s former name, the spouse’s surname, or a hyphenated combination of the two.); IOWA CODE § 674.12 (1975).

\textsuperscript{73}ALA. CODE tit. 34, § 39(1) (Cum. Supp. 1973) (A wife may be enjoined from using her husband’s given name or initials.); ALASKA STAT. § 09.55.210(7) (1962); ARIZ. REV. STAT. § 25-325(D) (1962); CAL. CIV. PROC. CODE § 4362 (West Supp. 1976) (A court will restore the former or birth name regardless of any child’s name.); COLO. REV. STAT. § 1-2-209 (Supp. 1975) (Although there is no explicit provision for a change of name upon divorce, this statute assumes its availability.); CONN. GEN. STAT. ANN. § 46-60 (Supp. 1976); DEL. CODE ANN. tit. 13, § 1514 (Supp. 1976) (Upon request a change may be made to any former name that a party has had.); D.C. CODE § 16-915 (1973); GA. CODE ANN. §§ 30-116, 121 (1969); HAW. REV. STAT. ch. 40, § 17 (1974); IND. CODE ANN. § 31-1-11.5-18 (Burns Supp. 1976); KAN. STAT. § 60-1610(e) (1964); KY. REV. STAT. § 403.230 (Supp. 1976); LA. CODE CIV. PROC. ANN. form no. 208(c) n.1 (West 1963) (No need exists for the court to restore a woman’s former name because a woman’s legal name never varies with changes in her marital status.); ME. REV. STAT. tit. 19, § 752 (1965); MD. ANN. CODE art. 16, § 32 (Supp. 1976); MASS. LAWS ANN. ch. 208, § 23 (Michie/Law Co-op. Supp. 1975); MICH. COMP. LAWS ANN. § 552.391 (Supp. 1976) (A divorced party may adopt any surname.); MINN. STAT. ANN. § 518.27 (West Supp. 1976); MONT. REV. CODES ANN. § 48-328(4) (Cum. Supp. 1976) (If there are no children a divorced party may use any former name.); NEB. REV. STAT. § 42-364 (Cum. Supp. 1976) (Name change is not specified among the orders a court may make.); see, NEB. REV. STAT. § 60-415(2) (1974) (The provision seems to be premised on the fact that it is possible to make a change at divorce.); NEV. REV. STAT. § 125.130(3) (1975) (A divorced party may return to the use of any former name for just and reasonable cause.); N.J. STAT. ANN. § 2A:34-21 (1952) (A court may order a wife not to use her husband’s surname.); N.Y. DOM. REL. LAW § 240-a (McKinney Supp. 1976); N.C. GEN. STAT. § 50.12 (1976); OHIO REV. CODE ANN. § 3105.34 (Page 1972); OKLA. STAT. ANN. tit. 12, § 1278 (West Supp. 1976); OR. REV. STAT. § 107.105(g) (1975) (It is mandatory for a court to restore the premarriage name if requested.); PA. STAT. ANN. tit. 23, § 98 (Purdon 1955); R.I. GEN. LAWS § 15-5-17 (1970); S.C. CODE § 20-117 (1962); S.D. COMPILED LAWS §§ 25-4-47 (1967) (A wife cannot return to the use of her maiden name under this provision if there is a child, but can get a name change under the regular name change statute. See Ogle v. Circuit Court, ---- S.D. ----, 227 N.W.2d 621 (1975)); VT. STAT. ANN. tit. 15, § 557 (1958); VA. CODE § 20-107 (1975); WASH. REV. CODE ANN. § 26.09.150 (Supp. 1976) (A court may order a wife not to use her husband’s name.); W. VA. CODE § 48-2-21 (1966) (A wife may take her former name if there is no child in the present marriage, or she can take the name of any former husband if she had children by him.); WIS. STAT. ANN. § 247.20 (West Supp. 1976) (A wife may resume use of her former name if no child is in her custody and she is not receiving alimony.).

\textsuperscript{74}See, e.g., In re Brast, 32 Conn. Supp. 1, 334 A.2d 483 (1974); In re Cohen, 4 Conn. Supp. 342 (1936); Solomon v. Solomon, 5 Ill. App. 2d 297, 125 N.E.2d 675 (1955); In re Green, 54 Misc. 2d 606, 283 N.Y.S. 2d 242 (Civ. Ct. 1967); In re Johns, 29 Misc. 2d 81, 212 N.Y.S.2d (Queens County Ct. 1961).


\textsuperscript{76}Recently, however, many courts have allowed a woman to retain her maiden name upon marriage. These courts have ruled consistently with the common law, see note 30 supra, and
In many cases in which a judge has denied a statutory name change, the decision seems to be based upon the judge’s personal biases or lack of sensitivity to the petitioner’s personal interests. For example, some judges have denied the request of a married woman to return to the use of her maiden name or the request of a divorced woman that her children’s names be changed to her name out of concern that the children would be branded as illegitimate. Other judges have feared that to allow a married woman to use her birth name would be but “another step toward the destruction of the family, the basic unit of our society.” Some denials have been based on the judge’s prejudices as to race and ethnicity. Still other name changes have been denied because the judge felt that the change was unwarranted. It is difficult to see what interest is served in these denials, since the judges have frustrated either state or personal interests or both while failing to promote any rational purpose.

with the state’s interest in consistency by allowing the woman to retain her birth name when she desires to do so.

In point of fact, permitting a married woman to retain her own name, [sic] would eliminate substantial administrative problems incident to change of name. With the rapid increase of divorces and remarriages in America today, with attendant name changes, we may reach the point of having to forbid a change of name by marriage in order to bring about stability, reduce confusion and preserve the identity of women who acquire a different name from each successive husband.


In re Hauplty, __ Ind. ____, 312 N.E.2d 857, 860 (1974), where the court reversed the trial judge’s denial of a change of name.


Marshall v. State, 301 So. 2d 477, 478 (Fla. App. 1974) (concurring opinion). In re Lawrence, 133 N.J. Super. 408, 337 A.2d 49 (1975); cf. Egner v. Egner, 133 N.J. Super. 403, 337 A.2d 46 (1975) (A divorced woman was denied the right to return to the use of her premarriage name.).

Examples of such bias appear in the following extracts. “Petitioner should realize that he bears an honored name and should not hide his original identity by the assumption of another name totally and strangely different from the one he has borne since birth.” In re Green, 54 Misc. 2d 606, 607, 283 N.Y.S.2d 242, 245 (Civ. Ct. 1967). “The name he presently bears is one that bespeaks his American forebears and heritage and this court will not aid him in his avowed intention to foreswear his original identity by assuming another and totally different name under the facts and circumstances set forth.” In re Johns, 29 Misc. 2d 31, 32, 212 N.Y.S.2d 146, 147-48 (Queens County Ct. 1961).

It is to be gathered from the testimony of the petitioner that it would be more advantageous for him to bear a name of apparent Irish origin than Jewish. . . . Each race has its virtues and faults and men consider these in their relations with one another. The applicant would be traveling under false color, so to speak, if his request were granted . . . .


Judges also impose their personal biases when they require that a married woman who applies for a statutory change of name in order to use her maiden name must show that her husband has assented.

The court's request for the husband's assent to the wife's name change has become a standard feature of such proceedings. It is submitted that no interest of the state can be identified in the procedural requirement that a husband assent to the wife's change of name. It is not a valid exercise of judicial discretion to require a woman to bear a name that she does not want, unless there is a demonstrable administrative reason therefor. At present, a woman's child may bear a surname different from his mother's after the mother has undergone a divorce and remarriage; and no detrimental administrative consequences appear to result if the parties to a marriage choose to have different surnames . . . . A woman ought to be free to use her maiden name as a matter of right, subject only to her satisfying whatever procedural requirements are deemed necessary for administrative reasons. Enabling legislation is needed and should be enacted to this end.\(^{82}\)

Since courts have held that there is no property interest in another's name and that a person has a right to determine his own name,\(^{83}\) no legal basis exists for requiring the husband's assent to a married woman's request for a change of name.

Following a divorce, a mother with custody frequently petitions the court for a change of her children's names, often to that of a new stepfather. The articulated standard for decision is "the best interests of the child."\(^{84}\) In applying this standard, judges typically consider factors such as the father's interest in having his children bear his name;\(^{85}\) the father's demonstrated continuing concern for his children's welfare evidenced by his making support payments, visits, and a prompt protest to any change of name; the possible effect of a change of name on the father's relationship with the children; the age of the children; and any misconduct by the father.\(^{86}\) Although courts equate these factors with the best interests of the child, the courts have also stated that "the advantage to

\(^{83}\)In *In re Hauptly*, Ind. __, __, 312 N.E.2d 857, 860 (1974), the state's brief asserted that the petitioner's desire to use her birth name was an insult to her husband.
\(^{84}\)See notes 56-57 and accompanying text supra.
\(^{86}\)See notes 58-59 and accompanying text supra.
the child in having the name changed must be so 'substantial' as to outweigh the natural right of the father that his children bear his name.' Courts rarely focus on the impact of a particular name of the child, as distinguished from the interests of other parties.

The basis used for granting a petition for a change of a name in these cases to another is arbitrary and inconsistent. A change of name has been allowed where the father was an adulterer, failed to support his children for two years, committed manslaughter, raped his child, or where the child's initials were the same as those of his half-brother, grandfather, and father. However, in Worms v. Worms, the petition was denied even though the father had never contributed regularly to his children's support, he had contributed nothing for eighteen months, and the children had become involved in fights in school as a result of their unusual name.

Inevitably, as the number of divorces rises, courts will be faced with the problem of name change more frequently. If courts intend to base their decisions on the child's best interests, more consistent standards should be articulated. Although the decisions are neither logical nor the result of a well-developed policy, by denying name changes except in the most egregious cases, the courts may have reached the best solution. In effect, judges have given children a stable identity referent. However, if this is the court's purpose in denying these petitions, it has been reached through a subterfuge of conflicting 'rights.'

Many people see their names as a means of expressing personal convictions and values. Muhammed Ali, Malcolm X, and Kareem Abdul-Jabbar, for example, assumed names to express religious and social identities. Many women have sought to use names which they see as a means of expressing their self-images as independent people. In the past, the common law afforded people the

88In Binford v. Reid, 83 Ga. App. 280, 63 S.E.2d 345 (1951), the court allowed a change of name holding that it was in the best interests of the child to have the same name as the rest of the family, especially because he had used that name from the time he was a year old. However, in West v. Wright, 263 Md. 297, 283 A.2d 401 (1971), the court said that it was not unusual to have more than one name in a family.
89In re Adoption of Wildrick, 25 Misc. 2d 1078, 212 N.Y.S.2d 350 (St. Laurence County Ct. 1960).
90In re Adoption of McCoy, 31 Ohio Misc. 195, 287 N.E.2d 833 (1972).
94252 Cal. App. 2d 130, 60 Cal. Rptr. 88 (1967).
95See note 14 and accompanying text supra; In re Lawrence, 133 N.J. Super. 408; 337
right to determine their own names. However, it is not clear that this same freedom will be extended to those seeking a statutory change of name for political, religious, or social reasons which a judge may not sympathize with or understand. In such a case, a judge may simply dismiss the petition as unwarranted.

II. CODIFICATIONS OF NAME LAW

Recently a number of states have revised their statutes dealing with names. In addition, one of the most ambitious recent attempts to revise the law of names was undertaken in Quebec, Canada, through the promulgation of a proposed act. This proposed act contains many positive, progressive provisions; however, it incorporates a great deal of the rigidity characteristic of the provisions in civil law countries as opposed to the flexibility of the common law treatment of the law of names. For example, the proposed act would provide that a legitimate or acknowledged illegitimate child must assume the father’s surname. It would also make it quite difficult to change a person’s name. Thus, the proposed act has the disadvantage of not incorporating the flexibility of the common law, though it does have the advantage of clarity and consistency for the individual and for the state.

Hawaii has revised its code in a way which limits the options previously available under the common law. Although the Hawaiian legislature may have intended to maximize a couple’s options, and though it has instituted an excellent system for the state to ascertain what name each of the spouses will use after marriage, it limits the number of choices a couple has to three. Since Hawaii has one of the less generous change of name statutes, this statutory scheme imposes a genuine limitation upon


We live in the age of the women's rights movement, when federal law prohibits discrimination in employment on account of sex, when the equal rights amendment has passed the Congress . . . when women march in the streets to demand equal status before the law, and when some women go to court for the right to vote in their "own" names.

See notes 4, 68-70 supra. A significant number of states have revised their statutes in the last two years. See also Hughes, And Then There Were Two, 23 HASTINGS L. REV. 233, 239-43 (1971), for a discussion of some other recent proposed statutes.

OFFICE DE REVISION DU CODE CIVIL, RAPPORT SUR LE NOM ET L'IDENTITE PHYSIQUE DE LA PERSONNE HUMAINE (1975) [hereinafter cited as QUEBEC ACT].

For example, the proposed act promotes equality of the sexes and stability of names by providing that both spouses retain their given names and surnames after marriage. QUEBEC ACT, supra note 97, art 10.

QUEBEC ACT, supra note 97, arts. 2-4.

QUEBEC ACT, supra note 97, arts. 11-15.

HAW. REV. STAT. §§ 574-1 to 2 (Supp. 1975).

the freedom of self-expression. In 1976, a bill was introduced in the Ohio legislature which is similar to the Hawaii statute with respect to the change of name on marriage. Unfortunately, Hawaii and Ohio have unnecessarily sacrificed the flexibility and freedom of the common law in an otherwise laudable effort at codification.

III. A PROPOSED MODEL NAME ACT

The law of names deals with such problems as what constitutes a name, how one may choose one's own or one's child's name, under what name or names a person may contract, what are mandatory or permissive name changes, and what the legal effect is where a name is in doubt. The law of names should accommodate the potential conflict between the personal interest in self-expression and the state's administrative needs. The need for a consistent codification of the law of names is apparent.

Until recently, the common law as a whole has developed appropriate solutions to legal problems involving names, despite problems in interpretation. However, a number of factors demand that the law evolve more quickly. Many people, for instance, use their names as a means of expressing themselves. Women are showing an increased interest in retaining their birth names after marriage. Parents may give their children unusual names or ones which do not follow the pattern of using the father's surname.

104 As one of the foremost commentators on name law has stated, "[I]n all areas of name change legislation is not preferable." Letter from Priscilla Ruth McDougal to author (Nov. 15, 1976). This seems, however, to be based on a view that state legislatures will inevitably be insensitive to the flexibility inherent in the common law. However, it is clearly not certain that the judiciary, even with the aid of briefs prepared by able counsel, will produce more favorable results. See, e.g., Whitlow v. Hodges, 539 F.2d 582 (6th Cir. 1976), cert. denied, 45 U.S.L.W. 3432 (Dec. 12, 1976).
105 Those aspects of the law of names which may best accommodate personal interests in self-expression may present the greatest conflict with state interests in stability. "I shudder to think of the governmental and business records that must be revised, and the confusion that will ultimately result merely to accommodate the appellant's most unorthodox caprice." In re Hauptly, __ Ind. __, __, 312 N.E.2d 857, 862 (1974) (Prentice, J., dissenting upon the allowance of a married woman's petition to retain her maiden name). See In re Klimpl, 11 Conn. Supp. 460 (1943).
106 See, e.g., CENTER FOR A WOMAN'S OWN NAME, BOOKLET FOR WOMEN WHO WISH TO DETERMINE THEIR OWN NAMES AFTER MARRIAGE (1974); U. STANNARD, supra note 14.
107 For example, name law must accommodate people who wish to change their names, without regard to their reasons. Bentham, supra note 50, at 616, states: "[I]t is perhaps characteristic of the sound sense and elasticity of our English law that . . . it should make no attempt in general to limit a man's right to change his name by the assumption of any name he pleases, either in substitution for, or in addition to his original name."
108 See, e.g., Abby and Anita Hoffman's child "America," Grace Slick's child "China" (née "God"), and Jane Fonda and Tom Hayden's child who bears the surname "Garrity."
Moreover, the rising number of divorces will likely lead to an increased number of name changes.

The growth in population coupled with an increase in record keeping has accentuated the state’s interest in consistency in all aspects of names. Courts and counsel have often failed to take the time to do adequate research or to realize fully the context of their decisions. Many judges have been influenced by personal bias or custom and, as a result, have failed to write opinions which promote personal and state interests.

A codification of name law offers a basis for future change in a conscious framework that accommodates the competing interests of consistency for record keeping purposes and self-expression. By articulating clear guidelines for a change of name, a model name act can avoid problems associated with prior laws and often avoid the need for expensive and burdensome litigation. A statutory name change procedure which supersedes the common law is preferable because it fulfills the state’s need for record keeping and provides a determination in advance as to the presence or absence of a purpose to deceive. In short, a model name act can preserve those features of the common law consistent with the articulated values providing a tested basis for the Act, while eliminating those aspects which are inconsistent. For these reasons the following act is proposed.

**MODEL NAME ACT**

Section I

This act shall be known as the Model Name Act.

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110 States have become increasingly insistent on adequate identification when registering for activities such as voting or driving in one’s “legal” name.

111 Many decisions have relied on no more than annotations in legal encyclopedias. See note 112 infra.

112 One of the clearest recent examples has been the judiciary’s failure to separate social customs from the law with regard to a married woman’s name. Three factors probably account for this failure. The first is the almost universal impact of the practice. Very few married women do use surnames other than their husband’s, and from this observable fact it could be inferred, albeit perhaps improperly, that the law requires women who marry to adopt their husband’s surnames. Second, one must consider the nature of most of the decisions which have found such a requirement. Few of them turned on the legal question of the proper surname for a married woman, and hence the courts may not have seen a need to do extensive research on the subject. The third factor is inertia. Once several decisions, containing dicta to the effect that a married woman’s surname is her husband’s, had been reported and gathered together in legal encyclopedias and annotations, courts may have considered the question settled.

Note, The Right of a Married Woman to Use Her Birth-Given Name for Voter Registration, 32 Md. L. Rev. 409, 421, 422 n.70 (1973).


114 In re Reben, 342 A.2d 688, 694 (Me. 1975). This does not imply an extension of the principles of collateral estoppel or res judicata to the determination of the existence of an intent to deceive to parties not involved in this procedure.
Section 2
(a) This act shall be liberally construed to promote its underlying purposes and policies.
(b) The purposes and policies of this act are:
   (1) to make consistent and uniform the law within the various jurisdictions;
   (2) to clarify and modernize the law governing names and name changes;
   (3) to codify the common law where appropriate and to replace the common law where it is inconsistent with the purposes and policies of this act; and
   (4) to provide for an accommodation of the state interest in record keeping and the personal interest in freedom of self-expression.
(c) Unless displaced by this act, the state statutory provisions and the principles of the common law and equity shall remain in force and supplement its provisions.

Section 3
This act shall apply only to personal names of natural persons.

Section 4
(a) A legal surname of a natural person shall consist of [one/two] given name[s]; only the [first/first two] shall constitute the legal name. An initial, whether a vowel or a consonant, may be a given name or a surname.
(b) A legal signature shall consist of a person's full surname plus [one/two] given name[s] represented either by the full name, the initial letter, or other commonly accepted abbreviation of the name.

At common law, only a given name and a surname were recognized. The middle name was regarded as surplusage. With the growth in population and general mobility, it seems consistent with the state record keeping needs to require at least two given names. However, to require two given names is a matter for a particular state legislature to decide. Although the common law at first accepted only vowels as names in the case of initials, gradually courts held that any initial, vowel, or consonant, could be used as a name. The act provides that initials may be used either as a legal name given at birth, or a person may choose to represent any given

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116 Schofield v. Jennings, 68 Ind. 232 (1879); Choen v. State, 52 Ind. 347 (1876); Riley v. Litchfield, 168 Iowa 187, 150 N.W. 81 (1914); Collins v. Board of Supervisors, 158 Iowa 322, 138 N.W. 1095 (1912); contra, Parker v. Parker, 146 Mass. 320, 15 N.E. 902 (1888).
117 People v. Reilly, 257 Ill. 538, 101 N.E. 54 (1913); Lucas v. Farrington, 21 Ill. 31 (1858); Porter v. Butterfield, 116 Iowa 725, 89 N.W. 199 (1902).
name by its initial letters. In any legal signature, however, a given name must be used either in full or by the initial letter. The act does not require that a surname be the last name for those people who traditionally place the surname first.

(c) Every person shall exercise all legal rights and obligations using the legal name registered at birth or registered under a statutory name change pursuant to section 7 or section 10 of this act. Rights and obligations entered into under a name other than the legal name shall be enforced where appropriate to prevent fraud or injustice.

The above section is a codification of the common law with a change in emphasis. Under the common law, a person could use any name by which others identified him so long as the purpose was not to defraud. In part, as a result of a large, mobile population, the law has recently come to emphasize the need for the consistent use of one legal name. This later development serves the state’s record keeping function and also tends to protect people who need to know the identity of those with whom they deal. It is important, however, that this rule not be followed too rigidly, or it will operate inequitably. The law can best protect people’s expectations by enforcing those legal obligations entered into by a name other than a person’s legal name so long as the signatory’s identity is certain. Courts should protect these interests using basic contract doctrines such as estoppel, rather than by using some concept of the law of names.

(d) Honorifics such as (but not limited to) Mr., Mrs., Dr., Miss, Ms., Prof., and Esq. are not part of a person’s legal name. Suffixes such as (but not limited to) Jr. or Sr. are also not part of a person’s legal name.

At common law, honorifics generally were not considered to be part of a name because they do not convey the sort of useful information that a name does. There does not seem to be any

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reason to change the common law, especially in light of the growing informality in such usage today. Suffixes, on the other hand, do perform a useful function by distinguishing between people bearing the same name. However, they are subject to change. Thus, they are not an appropriate part of a legal name. They may, of course, be used as part of a name other than as a suffix.

Section 5

(a) Parents may give their child any surname they agree on, either at birth or pursuant to an antenuptial agreement, whether or not it is borne by either parent, so long as the name does not defraud or operate to create injustice. If the parents are unable to agree upon a surname, a daughter takes the surname of her mother, and a son takes the surname of his father.

At common law, a person could bear any name so long as the purpose was not to defraud. Courts have held that the practice of a child’s taking his father’s surname is a matter of custom. Other courts have stated that parents do not have a property right in a minor’s name. With widespread support for equal rights for women, it is appropriate to give both parents the same rights in naming children. If most people continue to assume one family name at marriage by following the procedure provided in section 7 of this act, then a daughter would assume the surname common to both parents in a case where parents could not agree.

This section provides for greater freedom of choice yet still accommodates current custom. If each spouse prefers to retain his birth name, the statute provides an equitable way to choose a surname for the child in the event of a dispute. The act assumes


See note 43 and accompanying text supra.


Fulghum v. Paul, 229 Ga. 463, 463, 192 S.E.2d 376, 377 (1972); contra, L.A.M. v. State, 547 P.2d 827, 832 n.13 (Alaska 1976), where the court said that parents have the right to have the child bear the parent’s name; Dolgin v. Dolgin, 1 Ohio App. 2d 430, 205 N.E.2d 106 (1965).

See Laks v. Laks, 25 Ariz. App. 58, 540 P.2d 1277 (1975); De Renzes v. His Wife, 115 La. 675, 39 So. 805 (1905). Evidently in Turkey, it was formerly the custom for the father to choose the name of the first born and for the mother to select the name for the second child. Scätzel, supra note 3. at 190.
that this is an area in which the state generally does not have any interest in intervention. If parents prefer, they can decide in a written antenuptial agreement on a means for choosing names for their children.

(b) Parents may give a child any given names on which they agree as long as the names do not defraud or otherwise operate to create injustice. If the parents are unable to agree, then each parent will give the child one name.

This section provides for the choice of a child's given names. Section 4(a) sets forth the requirements for a legal name. The agency responsible for registering births may rely upon the information given by one parent as to the names to which the parents have agreed, but it must ascertain that the name chosen meets legal requirements. It is suggested that the state agency which registers births send a copy of the birth certificate to the parents within a certain period of time after the birth to provide for corrections. After a reasonable period, as defined by the state, the name would be recognized as the legal name.

(c) A minor may not apply for a change of name either in his own person or by a next friend until he has attained the age of fourteen years, except in unusual circumstances. Mere divorce or subsequent remarriage of one or both parents shall not be considered sufficient reason to change a child's name.

One of the most frequent causes for an application for a change of name is the divorce or remarriage of a parent who then desires a uniform household name. Courts have generally denied the change.\(^{127}\) Except in unusual circumstances, it seems best to deny the possibility of a change of name to eliminate a possible source of conflict. The standard to be applied is whether the change of name is in the child's best interest allowing the court to exercise great discretion. Factors such as parental neglect or misbehavior should not be weighed heavily. Of greater importance should be the child's sense of identity. For example, where the name desired has been used since infancy there would be a reasonable ground for granting a change of name. There should be a presumption against any change of name until the minor is fourteen years old and can apply under section 10 using the same procedure as an adult.\(^{128}\)

\(^{127}\)See notes 80-89 and accompanying text supra.

\(^{128}\)Courts have tended to use the age of fourteen as the point at which a minor can exercise his discretion. See, e.g., Laks v. Laks, 25 Ariz. App. 58, 540 P.2d 1277 (1975), in which the court stated that the opinion of children aged thirteen and fourteen should be ascertained;
For the purposes of this act, a parent is generally defined as one who begets a child. However, parent may include anyone who stands in a position equivalent to that of a parent.  

Section 6

(a) A change in surname does not result from a change of given names; nor does a change in given names result from a change in surnames.

(b) In cases of adoption, the surnames or given names or both surname and given names may be changed. There is no requirement or presumption of a change if no change pursuant to this act is made during the adoption proceedings. Adoption is a permissible ground for a change of a minor's name.

This section promotes the philosophy of the act in establishing a presumption against change of name, unless the petitioner or his representative takes affirmative action for a change.

Section 7

An individual retains his surname and given names throughout life, unless affirmative action is taken to register a new name at the time he applies for a marriage license or pursuant to the procedure established in section 10 of this act. Marriage by itself does not effect a change of name.

Some courts have recognized that it is not necessary for all members of a family to bear the same name. Recently, most courts addressing the question of whether a married couple must use the same name have decided that they need not do so. This

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In other contexts, the United States Supreme Court has considered the age at which minors may exercise various rights and responsibilities. In Tinker v. Des Moines Ind. Comm. School Dist., 393 U.S. 503 (1969), the Court held that minors thirteen to sixteen years old would be protected in the exercise of their first amendment rights. Justice Douglas, dissenting in part, in Wisconsin v. Yoder, 406 U.S. 205, 241-46 (1972), relied on Tinker in asserting that the opinions of the Amish children in their early teens should be ascertained before the Court ruled in Yoder.

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Miller v. United States, 123 F.2d 715, 717 (8th Cir. 1941).


section is consistent with the general thrust of the common law which allows a person to determine his own name. However, the act adds a registration requirement where a legal change of name is desired. It is suggested that the states inquire on the marriage license application as to what legal name each person will use after marriage if it is to be different from the person's current legal name. This procedure provides an alternative method for a change of name to that provided in section 10.

Section 7 maximizes freedom of expression for a married couple. Moreover, it is more consistent with the state interest in record keeping than the present system. The couple could decide to bear one surname — either that of the wife, the husband, or a surname reached in mutual agreement. The only qualification is that the name recorded not operate to defraud or create injustice. Each spouse could also retain his birth name as his legal name and use one surname socially. Social use would not operate as a common law name change, because the common law method of change of name is abolished under section 9 of the act. It would still be possible to enter into legal obligations under such a name as provided by section 4(a), by applying basic contract principles.

A third alternative for the couple would be for each spouse to retain his antenuptial name both legally and socially. In the absence of an affirmative change, a person's legal name is presumed to be the legal name used before marriage.

Section 8

A change of name is any modification of the legal name of a natural person.

Section 9

A change of name can only be made at marriage as provided by section 7 or through the change of name procedure in section 10. The common law procedure for a change of name is hereby abolished.

Most states allow common law name changes, even though they have enacted statutory procedures. The statutory method is

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133See notes 62, 66, 74 and accompanying text supra.
preferable considering the broad scope of the common law\textsuperscript{134} with its failure to create a record of the date and extent of the change. Most states currently give no effect to common law name changes other than those of a woman upon marriage, for purposes such as registering to vote, obtaining a driver’s license, or registering a motor vehicle. As a result, common law name changes are of limited utility. However, under section 4(a) a person remains legally obligated under a name other than his legal name through incorporation of basic contract and estoppel principles.

Section 10

(a) A change of name shall be granted for any sufficient reason as long as the purpose of the change is not to defraud.

(b) A change of name shall not be denied:
   (1) when the surname or given names of the petitioner are difficult to pronounce or spell;
   (2) when the surname or given names consistently used by the petitioner are not those registered at birth;
   (3) when the surname or the given names of the petitioner could subject him to ridicule or have become infamous; or
   (4) when there is a change of sexual identity following a surgical procedure.

(c) In determining whether to grant a change of name, these enumerated grounds shall be construed liberally.

It is in the state’s interest to make the name change procedure simple and easily accessible.\textsuperscript{135} The only major concern should be with the possibility of fraud.\textsuperscript{136} Although it is clear that a change of name should be granted in cases where the legal name is unsuitable as a result of its length or inconvenience\textsuperscript{137} or where it denominates the wrong sex,\textsuperscript{138} courts should also accommodate other grounds for change of name.

(d) A change of name shall be made by applying to [an agency created by the state for processing petitions for name

\textsuperscript{134}Under the common law, one could make a change of name as long as there was no intent to defraud. \textit{See note 46 and accompanying text supra.}

\textsuperscript{135}\textit{See Don v. Don, 142 Conn. 309, 114 A.2d 203 (1955); In re Hauptly, Ind. 312 N.E.2d 857 (1974); In re B., 81 Misc. 2d 284, 366 N.Y.S.2d 98 (Wayne County Ct. 1975); Ogle v. Circuit Court, S.D. 227 N.W.2d 621, 625 (S.D. 1975).}

\textsuperscript{136}\textit{See Weingand v. Lorre, 231 Cal. App. 2d 289, 41 Cal. Rptr. 778 (1964) (petitioner wanted to change his name to Peter Lorie, Jr.); In re Thompson, 82 Misc. 2d 460, 369 N.Y.S.2d 278 (Civ. Ct. 1975).}

\textsuperscript{137}\textit{See In re Knight, Colo. App. 537 P.2d 1085 (1975); In re M., 91 N.J. Super. 296, 219 A.2d 906 (1966).}

changes]. The petition shall set forth the applicant’s present name, address, place of birth, any previous name changes, period of residency in the state, any real property owned in the state, any licenses held by the applicant, reasons for desiring a change of name, marital status, and the names of any creditors, any dependents, and parent or guardian (if the applicant is under fourteen) within the state. The petition must be acknowledged. The agency shall send notice by registered mail of the change of name petition to all creditors and dependents who do not reside with the applicant. In addition, notice shall be published once a week for three consecutive weeks in a paper of general circulation in the community where the petitioner resides. The applicant shall pay a registration fee [to the processing agency] as well as all costs of notification at the time the petition is filed.

If no one objects to the petition within six weeks after the notices are mailed and the agency determines that the petition is in order, the change shall be approved, and all relevant state records shall be changed to reflect the new name. Notice shall be sent to the state of birth and to any other state where there has been a statutory change of name. If there is an objection, a hearing shall be held before [the court which formally decides petitions for change of name].

Section 10(d) assures that a change of name will also result in a change of the relevant legal records.

Section 11
(a) Any natural person who is a citizen of the United States and who has been a resident of this state for [a time period] immediately preceding the petition may apply for a change of name.
(b) A minor fourteen years or older may apply for a change of name in his own person, and the court shall consider the petition as it would that of an adult.

Section 12
A change of one person’s name does not alter any other person’s name, unless that other person joins in a request for a change of name. Subject to the restrictions in section 5(c) a parent may request a change of name for a minor younger than fourteen years of age. If the other parent objects to such a change, it shall not be granted. However, if the objecting parent has made the name notorious or the object of ridicule, or if for other similar reasons the court finds that a change would be in the best interest of the child, the petition may be granted.
Section 12 is consistent with the presumption of this act against a change of name unless the person takes affirmative action. It has generally been held that in the case of a minor both parents must join in a request for a change of name or at least that the non-petitioning parent has not objected. Courts, however, have been willing to allow a change of a child's name over the objections of a parent when that parent has caused the name to become an object of shame. This ground for a change of name is consistent with section 10(b)(3) of the act.

Section 13

No person may object to another's use of a name except on the grounds that it does not meet with the requirements set forth in section 10.

Section 13 is consistent with the common law principle that no one has a property right in a name so as to prevent another from using it, absent fraud or intent to deceive. Because under section 12 a change of name does not affect any other person's name, relatives would have no special grounds for objection.

IV. CONCLUSION

The promulgation and adoption of a model name act accomplishes a number of desirable goals. It satisfies both the personal interest in self-expression and the state interest in record keeping. It maximizes and preserves the flexibility available under the common law. In addition, the proposed act makes it easier to determine a person's legal name, thus eliminating some possibilities for fraud. States should adopt such an act to effectuate the goals developed in this note.

—Ellen Jean Dannin

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