

Dismantling Collateral Consequences: The Case for Abolishing Illinois' Criminal Name-Change Restrictions

Lark Muligan

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Part of the [Law Commons](#)

Recommended Citation

Lark Muligan, *Dismantling Collateral Consequences: The Case for Abolishing Illinois' Criminal Name-Change Restrictions*, 66 DePaul L. Rev. (2017)

Available at: <https://via.library.depaul.edu/law-review/vol66/iss2/13>

This Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

DISMANTLING COLLATERAL CONSEQUENCES: THE CASE FOR ABOLISHING ILLINOIS' CRIMINAL NAME-CHANGE RESTRICTIONS

INTRODUCTION

Two women, Meagan and Tanya, walk into a Chicago office of the Department of Human Services (DHS) to apply for the Illinois Supplemental Nutrition Assistance Program (SNAP), formerly known as “food stamps.”¹ Meagan is a cisgender woman² and Tanya is a transgender woman.³ Each woman is assigned a caseworker who interviews them to determine their eligibility and asks them to produce

1. See *Supplemental Nutrition Assistance Program—Snap (Dec. 28, 2015)*, ILL. DEP’T HUM. SERVS., <https://www.dhs.state.il.us/page.aspx?item=30357> (last visited Mar. 4, 2017). This hypothetical is based on real-world situations that the author witnessed while working at the Transformative Justice Law Project of Illinois for the past six years. The author has worked closely with transgender people who are living in poverty and criminalized. The actual names of the individuals and the particular facts of each case have not been used to protect confidentiality.

2. The term cisgender (commonly shortened to “cis”) refers to a person who identifies with the gender they were assigned at birth. *LGBTQ+ Definitions*, TRANS STUDENT EDUC. RES., <http://www.transstudent.org/definitions> (last visited Jan. 17, 2017). For example, a cisgender woman is a person who was assigned female at birth and currently identifies as female. On a related note, this Comment uses the terminology “gender as assigned at birth” rather than, for example, the phrases “birth gender” or “a person who was born male” because it is more socially accepted and less offensive among transgender people. Many transgender people feel that they have actually been the gender with which they currently identify their entire lives, and were merely assigned the wrong gender at birth. *Id.* Further, this phraseology highlights the notion that gender is not an anatomical and immutable fact, but rather something that is socially constructed and non-consensually assigned to people based on their anatomy as perceived at birth. Nobody is “born male” or “born female”; people become gendered when the doctor says “it’s a boy!” or “it’s a girl!” *Id.* See generally JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (Linda J. Nicholson ed., 1990); ANNE FAUSTO-STERLING, *SEXING THE BODY: GENDER POLITICS AND THE CONSTRUCTION OF SEXUALITY* (2000); NOBODY PASSES: REJECTING THE RULES OF GENDER AND CONFORMITY (Mattilda a.k.a Matt Bernstein Sycamore ed., 2006); Christin Scarlett Milloy, *Don’t Let the Doctor Do This to Your Newborn*, SLATE: OUTWARD (June 26, 2014, 11:44 AM), http://www.slate.com/blogs/outward/2014/06/26/infant_gender_assignment_unnecessary_and_potentially_harmful.html.

3. The term transgender (commonly shortened to “trans”) refers to a person who identifies with a gender different from the gender they were assigned at birth, including people who identify as transsexual, gender non-conforming, cross-dressers, drag kings and queens, genderqueer, and more. *Transgender Terminology*, NAT’L CTR. FOR TRANSGENDER EQUAL. (Jan. 15, 2014), <http://www.transequality.org/issues/resources/transgender-terminology>. While the statute that is the subject of this Comment impacts all people seeking to change their legal names—including transgender women, transgender men, and cisgender people—the criminal restrictions contained in the statute disproportionately impact transgender women of color living in poverty. For this reason, this Comment will primarily focus on circumstances particular to the lives of transgender

their government-issued identification cards.⁴ Meagan hands her state ID to her caseworker. It reads “Meagan Wilson,” shows a photo of a woman with long hair and identifies her as “Female.” Her application is processed and she is eventually granted SNAP benefits.

Tanya then hands her state ID to her caseworker. It identifies her as “Female” and displays a picture of the longhaired woman sitting in front of the caseworker, but the name reads “Thomas Williams.” The caseworker accuses the woman of using someone else’s ID and attempting to defraud the government.⁵ When Tanya explains that she is transgender, the caseworker proceeds to ask invasive questions about her genitalia, her identity, and her reasons for seeking SNAP benefits. The caseworker refuses to process the application until Tanya brings in her “real ID.” Frustrated and dejected, Tanya walks out and her application is never processed.

The next day, Tanya interviews for a position at a fast food restaurant. Her resume reads “Tanya Williams,” which is the name she gives the manager who interviews her, and at no point does the manager questions her name or gender.⁶ The interview goes well, and later that day she receives a call from the manager saying the company would like to hire her. Company policy, in accordance with federal employment law, requires that prospective employees bring in two forms of government-issued identification and then fill out paperwork with required information like legal name, social security number, and contact information, among other things, before the company can for-

women, and uses a fictionalized transgender woman in the opening paragraphs to illustrate the impacts of the statute.

4. *Apply for Cash, SNAP (Food Stamps) & Medical Assistance*, ILL. DEP’T HUM. SERVS., <http://www.dhs.state.il.us/page.aspx?item=33698> (last visited Jan. 17, 2017) (explaining that applying for food or medical assistance requires documents proving identity, residence, Social Security numbers, and other types of documents depending on the circumstances).

5. This is an example of transphobia. Transphobia refers to discrimination, fear, hatred, or violence directed toward transgender people on the basis of their gender. Common examples of transphobia include invasive questions about a trans person’s genitalia and accusations that they are “lying” about their gender. *LGBTQ+ Definitions*, *supra* note 2.

6. This is an example of passing. The term “passing” commonly refers to when a transgender person’s gender expression is “read” consistent with their gender identity (e.g., when a transgender woman is read as a woman). *LGBTQ+ Definitions*, *supra* note 2. “Gender expression” refers to how people outwardly express their gender to the world through things like mannerisms, voice, hair, and clothing, while “gender identity” refers to a person’s internal sense of being a woman, man, neither, or both. *Transgender Terminology*, *supra* note 3. Everybody, whether they are transgender or cisgender, has a gender expression and a gender identity, and both may change multiple times throughout a person’s lifetime, or even from day to day. *Id.*; *Understanding Gender*, GENDER SPECTRUM, <https://www.genderspectrum.org/quick-links/understanding-gender/> (last visited Jan. 11, 2017).

mally complete the hiring process.⁷ Excited, Tanya brings them her state ID card and social security card. On the paperwork, she uses the name “Tanya Williams” and checks the “Female” box. The human resources representative looks at her documents, and asks Tanya why she “didn’t tell them her real name was Thomas,” the name on her state ID and social security card. Tanya attempts to explain that she is transgender and has not been able to legally change her name, and the human resources representative just nods silently, avoiding eye contact. Later, Tanya receives a phone call from the human resources representative saying that the company was rescinding her employment offer. She suspects it is because her documents outed⁸ her as transgender to the human resources representative.

One might wonder why Tanya did not simply change her name on her state ID and social security card if it causes her so many problems.⁹ Tanya was not eligible to change her legal name because four years prior, she was convicted of class-four felony Retail Theft. In Illinois, a person with any felony conviction is barred from changing their¹⁰ legal name until ten years after the termination of their sentence, and certain convictions, both felony and misdemeanor, cre-

7. *I-9, Employment Eligibility Verification: Purpose of Form*, USCIS, <https://www.uscis.gov/i-9> (last visited Mar. 7, 2017).

8. In this context, “outing” refers to a non-voluntary disclosure of one’s transgender identity. *LGBTQ+ Definitions*, *supra* note 2; *see also Tips for Allies of Transgender People*, GLAAD, <http://www.glaad.org/transgender/allies> (last visited Jan. 17, 2017).

9. While many transgender people want to change their names, many also retain their former names, or choose not to change their legal names to reflect their new names. There are many reasons for this. Many transgender people prefer to use names depending on the setting, or even the day of the week. Others might use different names or pronouns depending on the situation for safety reasons, for example if they do not feel safe being “out” as transgender to certain family, friends, or co-workers. These are all legitimate expressions of transgender identity, and each person’s gender self-determination should be respected. *See TRANSFORMATIVE JUSTICE LAW PROJECT OF ILL., TRANSGENDER 101: A QUICK GUIDE ON BEING AN ALLY TO PEOPLE WHO ARE TRANSGENDER AND GENDER NON-CONFORMING* (2013), <http://tjlp.org/wp-content/uploads/2013/04/Transgender-101-download.pdf> [hereinafter *TRANSGENDER 101*]. Out of respect for transgender people’s autonomy, this Comment does not advocate that all transgender people should change their legal names, even if it might appear to some people that doing so could promote safety and reduce incidents like in the hypothetical situation described here. This Comment focuses on the criminal name-change restrictions and their relation to trans communities because of the large proportion of transgender people who want to change their legal names and whom this statute negatively impacts.

10. This Comment intentionally uses “they” as a singular pronoun, rather than using the phrase “he or she,” which reflects a widely accepted practice among transgender communities. *Id.* The reason transgender communities have adopted this grammatical practice is that the phrase “he or she” is binary and is not inclusive of the pronoun choices of many transgender people who identify outside of the gender binary. *Id.* An important aspect of life as a transgender person is to ask that others respect their self-determination over how others refer to them, and “he or she” is not inclusive and even offensive to many transgender people. *Id.*; Davey Shlasko, *How Using ‘They’ as a Singular Pronoun Can Change the World*, *FEMINISTING*

ate permanent bars to changing a legal name.¹¹ This Comment refers to those clauses of the statute as “the ten-year wait period” and the “permanent name-change restrictions,” respectively, and refers to them collectively as the “criminal name-change restrictions.” This is not the only law of its kind in the United States, but Illinois’ name change felony wait period is by far the longest in the country, and only six other states have permanent bars.¹² Taken together, these restrictions have a profound impact on transgender people throughout Illinois.

One such impact concerns transgender people—particularly transgender women of color—who are disproportionately criminalized and targeted by the police.¹³ Some studies estimate that 47% of Black transgender people, 30% of Native American transgender people, 25% of Latinx transgender people, 13% of Asian transgender people, and 12% of white transgender people can expect to be arrested at some point in their lives.¹⁴ These discrepancies are a result of racist and transphobic policing, as well as disproportionate rates of poverty and homelessness among these demographics.¹⁵ Due to the disproportionate rates of criminal convictions among transgender people, Illinois’ name-change statute could potentially prevent roughly six thousand transgender people in Illinois from changing their legal names on their identity documents.¹⁶

(2015), <http://feministing.com/2015/02/03/how-using-they-as-a-singular-pronoun-can-change-the-world/>.

11. 735 ILL. COMP. STAT. 5/21-101 to -105 (2014).

12. See *infra* notes 114–48 and accompanying text (providing comparison of name-change laws across all fifty states).

13. *Criminal Justice? New Fast Facts About Transgender People, Police, and Incarceration*, FORGE, http://avp.org/wp-content/uploads/2017/04/FORGE_Trans_People_Police_Incarceration_Facts.pdf (last visited Jan. 11, 2017); see also ANTI-VIOLENCE PROJECT, HATE VIOLENCE AGAINST TRANSGENDER COMMUNITIES, https://avp.org/wp-content/uploads/2017/04/ncavp_trans_hvfactsheet.pdf (last visited Jan. 11, 2017). This Comment primarily focuses on how transgender women of color are impacted by the criminal name-change restrictions because transgender women of color are disproportionately criminalized compared to white transgender people or transgender men of all races, this Comment will focus primarily on how transgender women of color are impacted by the criminal name-change restrictions.

14. JAIME M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 163 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

15. See *infra* notes 151–91 and accompanying text (explaining how disproportionate rates of poverty and police targeting among transgender people of color leads to disproportionate rates of arrest and incarceration).

16. There is no existing data on exactly how many transgender people in Illinois are impacted by the criminal name-change restrictions. Claire Miller, *The Search for the Best Estimate of the Transgender Population*, N.Y. TIMES, (June 8, 2015), http://www.nytimes.com/2015/06/09/upshot/the-search-for-the-best-estimate-of-the-transgender-population.html?_r=0. Based on the author’s first-hand experience helping petitioners change their legal names, the author knows, an-

Additionally, in the age of the War on Terror, the United States has increased surveillance and scrutiny of both identity documents and criminal history in virtually every aspect of daily life: housing, education, employment, public benefits, and transportation—just to name a few.¹⁷ This trend has had an impact on transgender people in particular.¹⁸ Nationally, forty-one percent of transgender people are living with a government identification card that does not match their preferred name and gender identity.¹⁹ When a transgender person’s preferred name and gender presentation do not “match” the legal name on their identity documents, they become more vulnerable to transphobic violence and discrimination in the areas of employment, housing, education, law enforcement, correctional facilities, and other institutions that require proof of identification.²⁰ Of the reported incidences, forty percent of transgender people who presented an identification card that does not match their gender identity or gender expression were harassed, three percent were physically attacked, and

ecdotally, of hundreds of trans people in Chicago alone who have been denied a name change based solely on the basis of their criminal history. A very rough estimate of transgender Illinoisans impacted is 6000. This number derives from one study that estimates approximately 0.51% of adults in Illinois identify as transgender; putting the potential transgender population in Illinois at around 49,750, compared to the national transgender population of 1,397,150. ANDREW R. FLORES ET AL., *THE WILLIAMS INST., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES?* 3 tbl.1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf> (using data from 2014). Nationally, about sixteen percent of transgender people report having spent time in jail or prison. GRANT ET AL., *supra* note 14, at 163. This percentage is likely higher in large metropolitan areas like Chicago because of the greater overall population. The higher concentration of transgender people, combined with hyper-policing, results in higher incarceration rates for this population. Assuming that sixteen percent of trans people in Illinois have been incarcerated, potentially 8024 transgender people in Illinois have criminal records. However, some of those people may have been incarcerated and never convicted (e.g., incarcerated pending trial). Some have convictions that do not subject them to any criminal name-change restrictions, and some of them were, at one time, subject to the wait period that has since elapsed after the termination of their sentences. *See id.* at 5; *see also* 735 ILL. COMP. STAT. 5/21-101. Further, some of those trans people with criminal records do not want to change their legal names. *See* TRANSGENDER 101, *supra* note 9. Therefore, for purposes of this Comment, the final estimate of trans people in Illinois who are subject to the criminal name-change restrictions is 6000.

17. Dean Spade, *Documenting Gender*, 59 *HASTING L.J.* 731, 731–39 (2008).

18. *Id.*

19. GRANT ET AL., *supra* note 14, at 5.

20. *See* TRANSFORMATIVE JUSTICE LAW PROJECT OF ILL., *QUICK GUIDE TO THE CRIMINALIZATION OF TRANSGENDER AND GENDER NON-CONFORMING PEOPLE* (2013), <http://tjlp.org/wp-content/uploads/2013/04/Quick-Guide-to-the-Criminalization-of-Transgender-and-Gender-Non-Conforming-People-download.pdf> [hereinafter *QUICK GUIDE*]; *see also* DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF THE LAW* 144 (2011).

fifteen percent were asked to leave the premises of the employer, business, or wherever they presented their identification card.²¹

While Illinois law does not prohibit people with criminal convictions from changing their legal gender markers—there exists a separate name-change process for each identity document, which usually require a letter from a medical doctor or a mental health professional rather than a court order²²—transgender people like Tanya can just as easily be outed on the basis of their name alone.²³ Those who have the resources sometimes feel compelled to move to different states that do not have criminal name-change restrictions, leaving behind their support systems in Illinois solely in order to change their legal names.²⁴

This Comment argues for completely eliminating the ten-year wait period and the permanent bars from Illinois' name-change statute. Criminal history should be considered irrelevant for the purpose of changing one's legal name, and when a state prohibits someone from changing their legal name on that basis, the state violates the Fourteenth Amendment's Due Process and Equal Protection Clauses, as well as the First Amendment's Freedom of Speech Clause. Even more, it is harmful public policy. The Illinois criminal name-change restrictions arbitrarily and substantially interfere with the First Amendment's grant of freedom of expression, which this Comment argues should include the right to control one's name. These restrictions have a disproportionately negative impact on transgender peo-

21. GRANT ET AL., *supra* note 14, at 5.

22. See 735 ILL. COMP. STAT. 5/21-101; *Legal Resources for Transgender and Gender Variant*, HOWARD BROWN HEALTH CTR., <http://howardbrown.org/programs-services/transgender-health/legal-resources/> (last visited Jan. 17, 2017) (detailing the processes for changing one's gender marker on an Illinois state ID, driver's license, and birth certificate).

23. See *infra* notes 358–62 (illustrating a case in which a transgender woman was harassed and denied access to a restaurant on the basis of her legal name on her state ID); see also QUICK GUIDE, *supra* note 20 (discussing how transgender people can be outed on the basis of their legal name alone regardless of their legal gender marker).

24. QUICK GUIDE, *supra* note 20. As a transgender woman and activist, the author of this Comment is personally invested in interrupting these patterns, and has seen them play out all too often. Since 2010, the author has been working as a Collective Member at the Transformative Justice Law Project of Illinois (TJLP), a prison abolitionist organization that provides free, holistic legal services and non-legal advocacy to transgender people in Chicago and throughout prisons in Illinois. *Who We Are*, TRANSFORMATIVE JUST. L. PROJECT ILL., <http://tjlp.org/about/who-we-are/> (last visited Jan. 17, 2017). TJLP hosts a monthly Name Change Mobilization where attorneys and trained volunteers help transgender people file petitions to change their legal names. *Name Change Mobilization*, TRANSFORMATIVE JUST. L. PROJECT ILL., <http://tjlp.org/services/name-change-mobilization/> (last visited Jan. 17, 2017). In the author's ongoing work at TJLP, she has seen countless transgender people face discrimination and violence as a consequence of Illinois' criminal name-change restrictions.

ple of color, and they cannot be justified by any compelling state interests.

Part II begins by providing an overview of the historical development of name change laws in general, Illinois' name-change statute, and name-change laws in other states.²⁵ Part II also provides background information on criminal justice trends in the United States—particularly as they relate to transgender people—in order to situate criminal name-change restrictions within the larger context of laws that disproportionately target marginalized groups.²⁶ Part II concludes with an overview of the Constitutional doctrines relevant to arguments to abolish Illinois' criminal name-change restrictions.²⁷

Part III argues that the criminal name-change restrictions should be abolished because they violate the First Amendment Freedom of Speech Clause, the Fourteenth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection Clause.²⁸ Additionally, this Part argues that the restrictions should be abolished because they create practical inconsistencies with Illinois sealing laws and are a part of an insidious trend of mass incarceration.²⁹

Part IV discusses the potential legal and policy implications of removing considerations of criminal history from Illinois' name-change statute, including the impact on transgender people, survivors of domestic violence, and overall community safety.³⁰

Part V concludes that abolishing Illinois' criminal name-change restrictions is necessary to ensure that transgender people, and others who need to change their legal names, are afforded the safety, support, and resources that they deserve.

II. BACKGROUND

This Part provides an overview of Illinois' criminal name-change restrictions and other background information that may be relevant in arguments to abolish them. Section A provides a brief history of name change laws leading up to the adoption of Illinois' criminal name-change restrictions, and then compares those restrictions to

25. *See infra* notes 34–148 and accompanying text. This Comment focuses on the process for changing one's legal name in Cook County, Illinois—where Chicago is located. Cook County is the largest metropolitan area in the state and likely has the highest density of transgender people out of any other county in Illinois.

26. *See infra* notes 149–91 and accompanying text.

27. *See infra* notes 192–297 and accompanying text.

28. *See infra* notes 301–462 and accompanying text.

29. *See infra* notes 463–519 and accompanying text.

30. *See infra* notes 523–68 and accompanying text.

name-change statutes in other states.³¹ Section B provides an overview of criminal justice data and trends, particularly with regards to transgender people.³² Section C is an overview of constitutional amendments that may be relevant in arguments to abolish the criminal name-change restrictions.³³

A. *Overview of Name Change Laws*

While names themselves have existed throughout human history, name-change statutes are a relatively new phenomenon, and criminal restrictions on legal name changes have only existed for about twenty years. This Section begins by describing the historical development of name-change statutes in general.³⁴ It then provides an overview of Illinois' name-change statute, and illustrates the name-change process in Illinois using the process in Cook County as an example.³⁵ This Section concludes with a comparison of name-change statutes in other states.³⁶

1. *The Evolution of Name Change Laws*

For the vast majority of human history, changing one's name was very simple, and the numerous hurdles that exist today were only recently enacted.³⁷ At common law, people were afforded almost unlimited flexibility in naming themselves.³⁸ Surnames did not exist in Anglo naming traditions until the fourteenth century, and they were initially chosen at random based upon physical, mental, or moral characteristics, occupations, or even resemblance to particular animals.³⁹ There were no laws governing name changes.⁴⁰ In England, surnames did not become static and transferrable to descendants until the sixteenth century, but one could still assume a new name without petition to the state.⁴¹

Anglo-American legal systems did not adopt name-change statutes until the early twentieth century.⁴² They adopted name-change stat-

31. *See infra* notes 34–148 and accompanying text.

32. *See infra* notes 149–91 and accompanying text.

33. *See infra* notes 192–297 and accompanying text.

34. *See infra* notes 37–58 and accompanying text.

35. *See infra* notes 59–113 and accompanying text.

36. *See infra* notes 34–148 and accompanying text.

37. Julia Shear Kushner, Comment, *The Right to Control One's Name*, 57 UCLA L. REV. 313, 325 (2009).

38. *Id.*

39. *Id.* at 324–25.

40. *Id.*

41. *Id.* at 325.

42. *Id.* at 328.

utes contemporaneously with identity documents as part of a larger endeavor to keep more detailed records of their residents.⁴³ Before the widespread adoption of government-issued identity documents in the early twentieth century, Churches were the primary keepers of vital records like birth and death dates.⁴⁴ Petitioning the court for a name change was unnecessary because few people were required to have official identity documents displaying their legal names.⁴⁵ Identification cards emerged for three state purposes: colonization, crime control, and war.⁴⁶

Identification systems in the United States were at first only applied to specific oppressed segments of the population.⁴⁷ For example, some of the first government-issued IDs in the United States were slave passes, which listed the name, occupation, and government-assigned number of the enslaved person.⁴⁸ By the turn of the twentieth century, the government relied more on ID cards for the purposes of war and crime control.⁴⁹ The United States adopted national citizen registration systems in the early twentieth century for the purposes of identifying citizens for the draft, tracking international travelers, and identifying potential enemies of the state on the basis of their country of origin.⁵⁰ In fact, most people in the United States did not have any government-issued identity documents like ID cards, passports, or birth certificates until they became mandatory for travel and other purposes during World War I.⁵¹ Around the same time, states adopted fingerprinting technology and began cross-referencing criminal records with identity documents in order to capture people with outstanding arrest warrants when they presented their IDs to institutions.⁵² Thus, states adopted name-change statutes just as they began to rely on identity documents in order to more easily identify, surveil, include, exclude, police, and punish their residents.⁵³

43. DAVID LYON, *IDENTIFYING CITIZENS: ID CARDS AS SURVEILLANCE* 22–23 (2009).

44. See Elizabeth Crabtree Wells, *Church Records*, in *THE SOURCE: A GUIDEBOOK TO AMERICAN GENEALOGY* (Loretto Dennis Szucs & Sandra Hargreaves Luebking eds., 2006).

45. See Kushner, *supra* note 37, at 325–26 (explaining that name-change statutes emerged in tandem with other state efforts to track their residents).

46. LYON, *supra* note 43, at 22.

47. *Id.* at 21.

48. *Id.* at 27–28.

49. *Id.* at 30–34.

50. *Id.* at 33–35.

51. *Id.* at 34–35.

52. LYON, *supra* note 43, at 30–33.

53. *Id.* at 23.

These identification laws and documents did not restrict one's freedom to name oneself any more than the common law tradition.⁵⁴ In fact, when states first enacted name-change statutes, they generally retained the common law right to change one's name without petition to the state, so long as that person consistently used the new name for a sufficiently long period of time.⁵⁵ Thus, the purpose of name-change statutes was to assist states in keeping more detailed records and to codify and supplement the common law tradition, not replace or restrict it.⁵⁶

Today, every state has adopted statutes governing name changes, and while most have not explicitly abrogated the common law avenue for changing one's name, in practice the only way to change one's name on government documents is to petition the court through the established statutory scheme.⁵⁷ Illinois has explicitly abrogated the common law avenue, and without petitioning the court for a legal name change, Illinois residents cannot change their names on their government-issued identification cards, or with their employers, banks, schools, insurance companies, and other institutions with which they must interact on a daily basis.⁵⁸

2. *Overview of the Illinois Name-Change Statute*

Illinois' statute that governs name changes (not including marital and adoptive name changes) was originally passed in the early twentieth century to supplement and codify the common law tradition of changing one's name.⁵⁹ Currently, Illinois law mandates that in order for a petitioner to change their legal name, they must be (1) an Illinois resident, and (2) a resident of the county of filing for at least six months by the time they file their petition.⁶⁰ Further, people under eighteen are considered minors and cannot file on their own.⁶¹ An order may be entered for a minor only if the court finds by clear and convincing evidence that the change is "necessary to serve the best

54. Kushner, *supra* note 37, at 325–26.

55. *Id.*

56. *Id.*

57. *Id.*

58. 735 ILL. COMP. STAT. 5/21-105 (2014) ("Common law name changes adopted in this State on or after July 1, 2010 are invalid."); *see also* TRANSFORMATIVE JUSTICE LAW PROJECT OF ILL., NAME CHANGE 101: CHANGING YOUR LEGAL NAME IN COOK COUNTY, IL, http://tjlp.org/wp-content/uploads/2013/04/NameChange101_2016.pdf (last visited Aug. 13, 2016) [hereinafter NAME CHANGE 101].

59. 735 ILL. COMP. STAT. 5/21-101 to -105; *see* Reinken v. Reinken, 184 N.E. 639, 640 (Ill. 1933).

60. 735 ILL. COMP. STAT. 5/21-101.

61. *Id.*

interest of the child.”⁶² By contrast, an order is entered for an adult if the court finds “no reason why the prayer should not be granted.”⁶³ Generally, a petitioner satisfies this standard if the name change is not sought for the purpose of fraud, or to avoid adverse judgments or debts.⁶⁴

The Illinois name-change statute currently states, “any person convicted of a felony in this State or any other state who has not been pardoned may not file a petition for a name change until 10 years have passed since completion and discharge from [their] sentence.”⁶⁵ Beyond a mandatory waiting period, the Illinois legislature chose to include a list of several convictions that permanently disqualify a person from changing their legal name in Illinois:

[As of January 1, 2007, a] person who has been convicted of identity theft, aggravated identity theft, felony or misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, felony or misdemeanor sexual exploitation of a child, felony or misdemeanor indecent solicitation of a child, or felony or misdemeanor indecent solicitation of an adult, or any other offense for which a person is required to register under the Sex Offender Registration Act in this State or any other state who has not been pardoned shall not be permitted to file a petition for a name change in the courts of Illinois.⁶⁶

When it was first enacted around the turn of the century, Illinois’ name-change statute did not contain any of these restrictions; it was not until almost a century later, in 1993, that the Act was amended to include the name-change criminal restrictions.⁶⁷ On March 2, 1993, then State Representative Tom Dart (current Cook County Sheriff Dart) proposed 1993 H.B. 967 (Public Act 88-25), which provided for a two-year name-change waiting period, beginning from the termination of a felony sentence.⁶⁸ It passed unanimously and went into effect July 6, 1993, and the two-year waiting period remained in effect for approximately three years.⁶⁹

In 1995, the Illinois General Assembly set out to create harsher penalties for sex offenses, and by the end of the legislative session they had passed a number of criminal and civil procedure laws in this

62. *Id.*

63. *Id.*; see Kushner, *supra* note 37, at 334.

64. Kushner, *supra* note 37, at 334.

65. 735 ILL. COMP. STAT. 5/21-101.

66. *Id.*

67. H.B. 967, 88th Gen. Assemb. (Ill. 1993).

68. *Id.*

69. *Id.*

area, including three amendments to the name-change statute.⁷⁰ The first change to the name-change statute came in 1996 with S.B. 146 (Public Act 89-192), which expanded the two-year name change felony waiting period to include misdemeanor sexual offenses: “misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, misdemeanor sexual exploitation of a child, misdemeanor indecent solicitation of a child, or misdemeanor indecent solicitation of an adult.”⁷¹ These were the first convictions to be specifically enumerated in the statute.⁷² The General Assembly presumably added these misdemeanors to the name-change statute because convictions for these crimes required sex offender registration with local police for ten years under the Habitual Child Sex Offender Registration Act of 1986, and legislators wanted to prevent registered sex offenders from changing their legal names and avoiding registration requirements.⁷³ The law passed unanimously and went into effect January 1, 1996.⁷⁴

In 1996, H.B. 3670 (Public Act 89-462) created stricter requirements surrounding the Sex Offender Registry and sex offender community notification procedures.⁷⁵ The 1996 Sex Offender Registration Act created a public database of sex offenders, provided for a maximum of ten years on the Registry for people convicted of various sex offenses (including the offenses enumerated in the name-change statute), and required registered sex offenders to notify neighbors before they move into a neighborhood.⁷⁶ A portion of the Act also amended the

70. State Representative Daniels stated:

We've paid attention to our families and making sure that child killers and sex offenders notify their neighbors when they are in the neighborhood or are put away permanently in jail without any opportunity of getting back on the street. . . . A mother in Mt. Vernon knows her children will be better protected against child sex offenders and killers. . . . Yes, we promised and we delivered.

H.R. Debate Transcript, 89th Gen. Assemb., 138th Leg. Day, at 209–12 (Ill. May 24, 1996) (statement of Rep. Daniels). These policy concerns also reflected trends in the national Congress and in state legislatures across the country, who were writing into law sex offender registries, community notification laws, sexually violent predator laws, and more. See Georgia Harlem, *Unjust and Ineffective*, ECONOMIST, Aug. 6, 2009, <http://www.economist.com/node/14164614>.

71. S.B. 146, 89th Gen. Assemb., Reg. Sess. (Ill. 1995).

72. See H.B. 967, 88th Gen. Assemb., Reg. Sess. (Ill. 1993) (containing no enumerated convictions).

73. See Michelle Olson, *Putting the Brakes on the Preventive State: Challenging Residency Restrictions on Child Sex Offenders in Illinois Under the Ex Post Facto Clause*, 5 Nw. J.L. & SOC. POL'Y 403, 410 n.61 (2010) (citing ILL. REV. STAT. ch. 38, ¶ 222 § 2(B) (1987)).

74. S.B. 146, 89th Gen. Assemb., Reg. Sess. (Ill. 1995).

75. H.B. 3670, 89th Gen. Assemb., Reg. Sess. (Ill. 1996).

76. *Id.* § 120(c).

name-change statute to increase the name-change wait period from two years to ten years.⁷⁷

The longer waiting period originated because some legislators were concerned that a person convicted of a sex offense could evade the ten-year sex offender registration requirement by changing their legal name after completing the two-year name change waiting period.⁷⁸ “What we found out is that you have to register under [the] Sex Offender Registration Act for 10 years, however you could change your name in two, thereby circumventing the intention of the Sex Offender Registration Act.”⁷⁹ That concern was based on the perceived limits of technology and police procedures at the time; as one House Representative remarked,

Police agencies track convicted felons by name and date of birth. If a convicted felon changes his or her name, police agencies would not be able to determine his or her criminal record. The Child Sex Offender Law requires sex offenders to register with local police agencies. If a defendant legally changes his or her name, the defendant could live in the area and no one would know of their criminal background.⁸⁰

H.B. 3670 passed unanimously and went into effect on June 1, 1996.⁸¹

The final change to the name-change statute came in 2007 with H.B. 4179 (Public Act 94-944), which established the lifetime bar to changing one’s legal name for those convicted of sex crimes against children, indecent solicitation of an adult, identity theft, aggravated identity theft, and any crime requiring sex offender registration.⁸² These sex crimes were added to the permanent bar in tandem with legislation that created permanent sex offender registration requirements for the same sex crimes.⁸³ The identity theft crimes, which had never been part of the statute until 2007, were included in the permanent bar as part of a more comprehensive effort to combat the grow-

77. *Id.* § 2(c-5).

78. See H.R. Debate Transcript, 89th Gen. Assemb., 110th Leg. Day, at 107 (Ill. 1996) (statement of Rep. Pedersen).

79. *Id.* at 109 (statement of Rep. Hoffman).

80. *Id.* at 107 (statement of Rep. Pedersen).

81. H.B. 3670, 89th Gen. Assemb., Reg. Sess. (Ill. 1996).

82. H.B. 4179, 94th Gen. Assemb., Reg. Sess. (Ill. 2007).

83. *Id.*

ing problem of identity theft crimes.⁸⁴ The bill passed unanimously and went into effect January 1, 2007.⁸⁵

After these three bills passed, the Illinois name-change statute contained the most restrictive barriers to accessing a legal name change in the country.⁸⁶ These name-change restrictions are divided into three components: (1) the ten-year wait period based on felony convictions; (2) the permanent bars based on sex crime convictions; and (3) the permanent bars based on identity theft convictions.⁸⁷

3. *Filing a Name Change Petition in Cook County, Illinois*

As an example of how this statute is applied today, this sub-section outlines the process for changing an adult's legal name⁸⁸ in Cook County, Illinois.⁸⁹ Changing one's name in Cook County takes approximately three months, and costs a total of \$533.⁹⁰ A petitioner must either pay the fees or petition the county court for a fee waiver.⁹¹ If the fee waiver is granted or if the petitioner does not require a fee waiver, they must then complete and file the following documents:⁹²

84. See H.R. Debate Transcript, 110th Leg. Day, 94th Gen. Assemb., at 101 (Ill. 2006) (statement of Rep. Schock) (“[Senate] Bill 2554 is a piece of legislation dealing with identity theft. It is a compilation of several ideas”); see also *id.* at 88 (statement of Rep. Pihos) (“[I]dentity theft ranks as the fastest growing crime in this nation with more than 11 thousand cases occurring in Illinois in 2004.”).

85. H.B. 4179, 94th Gen. Assemb., Reg. Sess. (Ill. 2007).

86. See *infra* notes 34–148 (illustrating cross-state comparison of name-change criminal restriction statutes).

87. 735 ILL. COMP. STAT. 5/21-101 to -105 (2014).

88. This process does not apply to changing one's gender marker on identity documents, which does not require petition to the court. See *Driver's License / State ID Card*, OFF. ILL. SECRETARY STATE, http://www.cyberdriveillinois.com/departments/drivers/drivers_license/drlcid.html#gender (last visited Mar. 5, 2017).

89. The Cook County model was selected to illustrate the name-change process in Illinois because it contains the State's largest city, Chicago, and thus is accessed by more people than the other counties in Illinois. *Illinois Cities by Population*, ILL. DEMOGRAPHICS, http://www.illinois-demographics.com/cities_by_population (last visited Jan. 17, 2017). Based on those numbers, Chicago should have a higher population of transgender people than other counties, and a higher percentage of the general population is living with criminal convictions, which suggests that most people who are impacted by the criminal name-change restrictions live in Cook County. The process varies only slightly from county to county, and the Cook County process illustrates the same general process used in other parts of the state. See QUICK GUIDE, *supra* note 20.

90. See NAME CHANGE 101, *supra* note 58; see also *A Guide to Procedures in Change of Name Proceedings*, ST. ILL., CIR. CT. COOK COUNTY (2015), <http://www.cookcountycourt.org/ABOUT-THECOURT/CountyDepartment/CountyDivision/ChangeofNameProceedings>.

91. 735 ILL. COMP. STAT. 5/21-101; see NAME CHANGE 101, *supra* note 58.

92. NAME CHANGE 101, *supra* note 58.

(1) the Name Change Petition;⁹³ (2) the Judgment form;⁹⁴ and (3) the Cover Sheet.⁹⁵ The petition asks for the petitioner's current legal name, the new name that the petitioner would like, residency, age, and "any felony or misdemeanors for which the petitioner has been convicted in Illinois or in any other state."⁹⁶ Additionally, the petition includes an affidavit verifying that all of the information contained in the petition is true and correct, which must be signed by a witness.⁹⁷ Finally, the cover sheet requires the petitioner's current legal name and contact information.⁹⁸ Petitioners who do not have a fee waiver must pay a \$359 filing fee.⁹⁹ Once the petitioner has filed, they will be assigned a court date that is usually eight weeks from the date of filing.¹⁰⁰

After filing the petition, the petitioner must publish their intent to change their legal name in a newspaper for a minimum of three consecutive weeks.¹⁰¹ In Cook County, petitioners customarily publish notice of their intended name change in the Chicago Daily Law Bulletin.¹⁰² The petitioner must provide the Chicago Daily Law Bulletin with one copy of the petition (not including the affidavit), the court date, time, name of judge, courtroom, case number, and a publication fee of \$165, unless the petitioner has a fee waiver.¹⁰³ The Chicago Daily Law Bulletin will then publish the petitioner's notice for three consecutive weeks and then mail the petitioner a Certificate of Publication.¹⁰⁴

Finally, the petitioner must attend their court date before a County Judge with their Certificate of Publication, Judgment form, Petition, and Identity Documents.¹⁰⁵ At this hearing, the judge asks the peti-

93. CLERK OF THE CIRCUIT COURT FOR COOK CTY., ILL., PETITION FOR CHANGE OF NAME, http://12.218.239.52/Forms/pdf_files/CCCON039.pdf (last visited Jan. 17, 2017) [hereinafter PETITION FOR CHANGE OF NAME].

94. CLERK OF THE CIRCUIT COURT FOR COOK CTY., ILL., JUDGMENT ORDER, http://12.218.239.52/Forms/pdf_files/CCCO0038.pdf (last visited Aug. 9, 2016).

95. CLERK OF THE CIRCUIT COURT FOR COOK CTY., ILL., COVER SHEET, http://12.218.239.52/Forms/pdf_files/CCCO0520.pdf (last visited Jan. 17, 2017) [hereinafter COVER SHEET].

96. PETITION FOR CHANGE OF NAME, *supra* note 93.

97. *Id.*

98. COVER SHEET, *supra* note 95.

99. NAME CHANGE 101, *supra* note 58.

100. *A Guide to Procedures*, *supra* note 90.

101. *Id.*

102. *Id.*

103. NAME CHANGE 101, *supra* note 58. Petitioners who qualify for a fee waiver can have the publication fee waived. *Id.*

104. *Public Notice*, CHI. DAILY L. BULL., <https://www.lawbulletin.com/legal/public-notice-network> (last visited Sept. 6, 2016).

105. *A Guide to Procedures*, *supra* note 90.

tioner their reasons for seeking a name change, as well as questions regarding criminal history.¹⁰⁶ While the judge does not run criminal background checks, petitioners risk the penalty of perjury if they fail to disclose criminal convictions that would subject them to criminal restrictions.¹⁰⁷ The judge then uses this information to determine whether to grant or deny the name change.¹⁰⁸ The judge may deny the petition if the petitioner is absent, if the petitioner does not bring all of the required documents, or if the judge believes the petitioner is seeking a name change for the purpose of fraud or to avoid debts or adverse judgments.¹⁰⁹

If the judge determines that the name change is consistent with the public interest and that the petitioner does not have a conviction that would subject them to any of the criminal name-change restrictions, the judge must grant the name change and sign the petitioner's court order.¹¹⁰ Upon receiving approval from the judge, the effect of the name change is not automatic; the petitioner must provide a copy of those court orders to every institution that maintains a record of the petitioner's legal name, including the Department of Motor Vehicles, Social Security Administration, Department of Vital Records, Department of Human Services, banks, schools, employers, creditors, and insurance companies.¹¹¹ Each institution has its own procedure for changing names and may charge fees;¹¹² however, once a person has obtained this court order, all institutions and other states must respect that person's name change.¹¹³

4. *Name Change Law in Other States*

Illinois' name-change statute is substantially similar to name-change statutes in other states, with the exception of the name-change criminal restrictions. In all states, an adult¹¹⁴ petitioner's name change pe-

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*; see 735 ILL. COMP. STAT. 5/21-101 (2014).

110. 735 ILL. COMP. STAT. 5/21-101.

111. See *Legal Resources for Transgender and Gender Variant*, HOWARD BROWN HEALTH CTR., <http://howardbrown.org/programs-services/transgender-health/legal-resources/> (last visited Jan. 17, 2017) (detailing the processes for changing one's gender marker on an Illinois state ID, driver's license, and birth certificate).

112. *Id.*

113. U.S. CONST. art. IV, § 1 ("Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State.").

114. This Comment will not discuss name changes for minors because they entail very different rules and policy considerations than adult name changes. See Kushner, *supra* note 37, at 329 n.88.

tion is granted if: (1) the court¹¹⁵ determines that the name change is consistent with the public interest;¹¹⁶ (2) the court finds that the petitioner has valid reasons for seeking a name change;¹¹⁷ (3) the petitioner is a resident of the state;¹¹⁸ and (4) the petitioner publishes notice of their name change for a number of weeks.¹¹⁹ Generally, courts presume a name change to be consistent with the public interest if it is done for the reason of marriage, divorce, or adoption.¹²⁰ Further, in every state, anyone may object to a name change for any reason, and judges may consider those objections when determining whether granting the name change would be consistent with the public interest.¹²¹ Finally, in all states, if a name change petitioner is re-

115. In at least two states (Alabama and North Carolina), name changes are granted or denied by clerks and petitioners do not go before a judge. See ALA. CODE § 12-13-1(b)(10) (Westlaw through Act 2017-277 of the 2017 Reg. Sess.); N.C. GEN. STAT. ANN. § 101-5 (West, Westlaw through S.L. 2017-9 of the 2017 Reg. Sess.). In Hawaii, the Lieutenant Governor has the sole authority to hear name change petitions. See HAW. REV. STAT. ANN. § 574-5 (West, Westlaw through Act 15 of the 2017 Reg. Sess.).

116. See, e.g., FLA. STAT. ANN. § 68.07 (West, Westlaw through 2017 1st Reg. Sess.); MASS. GEN. LAWS ANN. ch. 210, § 12 (West, Westlaw through ch. 9 of the 2017 1st Ann. Sess.); MO. ANN. STAT. § 527.270 (West, Westlaw through legislation effective as of March 30, 2017); 54 PA. STAT. AND CONS. STAT. ANN. § 702 (West, Westlaw through Act 1 of the 2017 Reg. Sess.). Some states use the terms “good or sufficient reason,” “reasonable cause,” and “not detrimental to the interests of any other person.” Kushner, *supra* note 37, at 330 & n.90. The analysis is roughly equivalent for each standard: a name change should be granted if it is not done for the purpose of fraud, to harm others, or to avoid debts or adverse judgments. *Id.* at 334.

117. See, e.g., 735 ILL. COMP. STAT. 5/21-101 (2014); TENN. CODE ANN. § 29-8-101 (West, Westlaw through legislation effective as of Apr. 17, 2017); WASH. R. GRANT DIST. CT. LCRLJ 65 (West, Westlaw through legislation effective as of Aug. 15, 2016). In some states, the petitioner bears the burden of proving sufficient reasons for changing their names before their petition is granted; in other states, name-change statutes require the judge to grant the petition in the absence of any compelling reason to the contrary. Kushner, *supra* note 37, at 333.

118. See, e.g., ARK. CODE ANN. § 9-2-101 (West, Westlaw through legislation effective as of May 4, 2017); D.C. CODE ANN. § 16-2501 (West, Westlaw through legislation effective as of Apr. 24, 2017); KAN. STAT. ANN. § 60-1402 (West, Westlaw through legislation effective as of Apr. 27, 2017); 54 PA. STAT. AND CONS. STAT. ANN. § 702; TENN. CODE ANN. § 29-8-101; VA. CODE ANN. § 8.01-217 (West, Westlaw through 2016 Reg. Sess.); WIS. STAT. ANN. § 786.36 (West, Westlaw through 2017 Act 6).

119. See, e.g., 735 ILL. COMP. STAT. 5/21-103; GA. CODE ANN. § 19-12-1 (West, Westlaw through Act 139 of the 2017 Leg. Sess.), amended by 2017 Ga. Laws Act 222; N.M. STAT. ANN. § 40-8-2 (West, Westlaw through ch. 137 of the 53d Leg., 1st Reg. Sess.). *But see, e.g.,* MICH. COMP. LAWS ANN. § 711.3 (West, Westlaw through P.A. 2017, No. 33 of the 2017 Reg. Sess.). In some states name change petitioners are not required to publish notice if doing so would put that person in danger, for example if the petitioner proves they are a victim of stalking. See, e.g., CAL. CIV. PROC. CODE § 1277(a)(5) (West, Westlaw through ch. 9 of 2017 Reg. Sess.) (stating that petitioners changing their name for purposes of gender transition are exempt from publication requirement).

120. HAW. REV. STAT. § 574-5; 54 PA. STAT. AND CONS. STAT. ANN. § 704; VA. CODE ANN. § 20-121.4.

121. See, e.g., DEL. CODE ANN. tit. 10, § 5901(c)(2) (West, Westlaw through ch. 10, 81 Laws 2017); GA. CODE ANN. § 19-12-2; MONT. CODE ANN. § 27-31-202 (West, Westlaw through legis-

quired to register as a sex offender, either the petitioner or the court that granted the name change must notify law enforcement after the name change takes effect.¹²²

Beyond these general requirements, each state falls into one of three categories with respect to how it treats non-incarcerated name change petitioners who have criminal convictions.¹²³ These categories are detailed below, starting with the least statutorily restrictive approach (Group A) and proceeding to the most statutorily restrictive approach (Group C).

In Group A, consisting of thirteen states, petitioners are not statutorily required to disclose their criminal history during name change proceedings, and judges are not statutorily required to consider criminal history when determining whether to grant the name change.¹²⁴ Group A states do not expressly forbid judges from inquiring about

lation effective as of April 21, 2017); R.I. GEN. LAWS ANN. § 33-22-28 (West, Westlaw through ch. 542 of the Jan. 2016 Sess.); S.D. CODIFIED LAWS § 21-37-9 (Westlaw through legislation effective as of Apr. 13, 2017).

122. See, e.g., NEB. REV. STAT. ANN. § 25-21,271 (Westlaw through legislation effective as of May 11, 2017); IDAHO CODE ANN. § 7-805 (West, Westlaw through 1st Reg. Sess. of the 64th Leg.); MD. CODE ANN., RULE § 15-901 (West, Westlaw through legislation effective as of Feb. 1, 2017); WYO. STAT. ANN. § 7-19-302(a)(i) (West, Westlaw through legislation effective as of Mar. 17, 2017), amended by 2017 Wyo. Laws ch. 144.

123. These categories do not take account of whether the state permits name changes of incarcerated people because such policies entail different considerations. Some states in Groups A, B, and C permit name changes for incarcerated people under certain circumstances. See, e.g., DEL. CODE ANN. tit. 10, § 5901; LA. STAT. ANN. § 13:4751(D) (Westlaw through 2017 First Extraordinary Sess.); N.Y. CIV. RIGHTS LAW § 61 (McKinney, Westlaw through 2017 N.Y. Laws ch. 58); *In re Cruchelow*, 926 P.2d 833, 834–35 (Utah 1996) (holding that incarceration status is not a substantial reason to deny a name change petition from a prisoner in the state department of corrections, absent evidentiary support). Other states in all three categories expressly prohibit name changes for incarcerated people. See, e.g., TEX. FAM. CODE ANN. § 45.103 (West, Westlaw through ch. 8 of the 2017 Reg. Sess.); *In re Verrill*, 660 N.E.2d 697, 699 (Mass. App. Ct. 1996) (holding that a prisoner's name change petition should be denied because it had the potential to cause confusion in his criminal records); *Brown v. Wyrick*, 626 S.W.2d 674, 679 (Mo. Ct. App. 1981) (holding that granting a name change to a prisoner would be detrimental to the administration of the penal system).

124. ALASKA R. CIV. P. 84 (Westlaw through Apr. 15, 2017); D.C. CODE ANN. § 16-2501 (West, Westlaw through Apr. 24, 2017); GA. CODE ANN. § 19-12-1; KAN. STAT. ANN. § 60-1402 (West, Westlaw through legislation effective as of Apr. 27, 2017); KY. REV. STAT. ANN. § 401.030 (West, Westlaw through 2017 Reg. Sess.); MASS. GEN. LAWS ANN. ch. 210, § 12 (West, Westlaw through ch. 9 of the 2017 1st Ann. Sess.); MISS. CODE ANN. § 93-17-1 (West, Westlaw through legislation effective as of Apr. 18, 2017); MO. ANN. STAT. § 527.270 (West, Westlaw through legislation effective as of March 30, 2017); MONT. CODE ANN. § 27-31-101; NEB. REV. STAT. ANN. § 25-21, 271; N.M. STAT. ANN. § 40-8-1; S.D. CODIFIED LAWS § 21-37-5; WYO. STAT. ANN. § 1-25-101. Petitioners in Maine are not statutorily required to disclose criminal history, but probate judges have discretion to order a background check and use the results to determine whether the name change is consistent with the public interest. ME. REV. STAT. ANN. tit. 18-a § 1-701 (Westlaw through ch. 47 of the 2017 1st Reg. Sess.)

criminal convictions and do not have any permanent bars or waiting periods.¹²⁵

In Group B, consisting of twenty-nine states, petitioners must submit to either a mandatory criminal background check, or they must disclose on their petitions if they have ever been convicted or are facing pending charges for a felony or certain enumerated crimes, or they must disclose if they are currently required to register as a sex offender.¹²⁶ Criminal convictions are considered relevant in determining whether the name change is consistent with the public interest, but they do not create a permanent bar, and they do not initiate a name change waiting period.¹²⁷ In some Group B states, the court of filing sends notice of the petitioner's name change to law enforcement or to

125. ALASKA R. CIV. P. 84 (2015); D.C. CODE ANN. § 16-2501; GA. CODE ANN. § 19-12-1; KAN. STAT. ANN. § 60-1402; KY. REV. STAT. ANN. § 401.030; MASS. GEN. LAWS ANN. ch. 210, § 12; MISS. CODE ANN. § 93-17-1; MO. ANN. STAT. § 527.270; MONT. CODE ANN. § 27-31-101; NEB. REV. STAT. ANN. § 25-21, 271; N.M. STAT. ANN. § 40-8-1; S.D. CODIFIED LAWS § 21-37-5; WYO. STAT. ANN. § 1-25-101. *But see*, ME. STAT. tit.18 § 1-701 (Westlaw through ch 47 of the 2017 1st Reg. Sess.).

126. ALA. CODE § 15-20A-36 (Westlaw through Act 2017-277 of the 2017 Reg. Sess.); ARIZ. REV. STAT. ANN. § 12-601 (Westlaw through legislation effective as of May 3, 2017); ARK. CODE ANN. § 9-2-101 (West, Westlaw through legislation effective as of May 4, 2017); CAL. CIV. PROC. CODE § 1279.5(d) (West, Westlaw through ch. 9 of 2017 Reg. Sess.); COLO. REV. STAT. ANN. § 13-15-101(1)(b) (West, Westlaw through legislation effective as of Apr. 18, 2017); CONN. GEN. STAT. ANN. § 52-11 (West, Westlaw through legislation effective as of May 16, 2017); DEL. CODE ANN. tit. 10, § 5901; D.C. CODE ANN. § 16-2501 (West, Westlaw through Apr. 24, 2017); HAW. REV. STAT. ANN. § 574-5; IDAHO CODE ANN. § 7-804; IND. CODE ANN. § 34-28-2-3 (West, Westlaw through legislation effective as of Apr. 18, 2017); MD. CODE ANN., Rule 15-901 ; MICH. COMP. LAWS ANN. § 711.1(1)-(2) (West, Westlaw through P.A. 2017, No. 33 of the 2017 Reg. Sess., 99th Leg.); MINN. STAT. ANN. § 259.13(a) (West, Westlaw through legislation effective as of May 13, 2017); NEV. REV. STAT. ANN. § 41.290-3 (West, Westlaw through legislation effective as of Mar. 30, 2017); N.H. CIR. CT. FAM. DIV. § 9.4 (Westlaw through legislation effective as of Apr. 15, 2017); N.J. STAT. ANN. § 2A:52-1 (West, Westlaw through 2017 Laws, ch. 66); N.Y. CIV. RIGHTS LAW § 61-1(a); N.C. GEN. STAT. ANN. § 101-5 (West, Westlaw through S.L. 2017-9 of the 2017 Reg. Sess.); N.D. CENT. CODE ANN. § 32-28-02 (West, Westlaw through legislation effective as of May 3, 2017); OKLA. STAT. ANN. tit. 12, § 1631 (West, Westlaw through ch. 302 of the 2017 1st Reg. Sess.); OR. REV. STAT. ANN. § 33.420 (West, Westlaw through ch. 21 of the 2017 Reg. Sess.) (some counties require disclosure of prior convictions), *amended by* 2017 Oregon Laws H.B. 2673; R.I. GEN. LAWS ANN. § 33-22-28; S.C. CODE ANN. § 15-49-20(A)(1), (4) (Westlaw through 2017 Act No. 14); TEX. FAM. CODE ANN. § 45.103(a)-(b); VT. STAT. ANN. tit.15, § 817 (West, Westlaw through Law No. 10 of the 2017 1st Sess.); VA. CODE ANN. § 8.01-217-D (West, Westlaw through 2016 Reg. Sess.); WASH. R. GRANT DIST. CT. LCRLJ 65 (Westlaw through Aug. 15, 2016); WIS. STAT. ANN. § 301.47 (West, Westlaw through 2017 Act 6).

127. ALA. CODE § 15-20A-36; ARIZ. REV. STAT. ANN. § 12-601; ARK. CODE ANN. § 9-2-102; CAL. CIV. PROC. CODE § 1279.5(d); COLO. REV. STAT. ANN. § 13-15-101; CONN. GEN. STAT. ANN. § 52-11; FLA. STAT. ANN. § 68.07 (West, Westlaw through 2017 1st Reg. Sess.); HAW. REV. STAT. ANN. § 574-5; IDAHO CODE ANN. § 7-804; IND. CODE ANN. § 34-28-2-3; MD. CODE ANN., Rule 15-901; MICH. COMP. LAWS § 711.1; MINN. STAT. ANN. § 259.13(a); NEV. REV. STAT. ANN. § 41.290; N.D. CENT. CODE ANN. § 32-28-02; N.H. CIR. CT. FAM. DIV. § 9.4 (Westlaw through legislation effective as of Apr. 15, 2017); N.J. STAT. ANN. § 2A:52-1; N.Y. CIV. RIGHTS LAW § 61-1(a); N.C. GEN. STAT. ANN. § 101-5; OKLA. STAT. tit. 12 § 1631; S.C. CODE ANN. § 15-49-20;

the prosecutor that obtained the conviction, and the prosecutors and police are given an opportunity to object to the name change.¹²⁸ In other Group B states, law enforcement, prosecutors, and courts are only notified after the name change has been granted, for record keeping purposes.¹²⁹ In some Group B states, petitioners must disclose convictions but notice is never sent to law enforcement.¹³⁰ In two Group B states, Michigan and North Dakota, petitioners with felony convictions are presumed to be changing their names for fraudulent purposes, and the petitioner has the burden of rebutting that presumption.¹³¹ Finally, in some Group B states, people who are required to register with the Sex Offender Registry are prohibited from changing their legal names until they are no longer required to register, at which point they become eligible to change their legal names.¹³²

In Group C, consisting of nine states, including Illinois, petitioners with certain convictions are permanently barred from changing their legal names, and in some Group C states petitioners with felony convictions are subject to a mandatory waiting period before they become eligible to change their names.¹³³ In Tennessee and Ohio, petitioners with convictions for murder or sex crimes are permanently barred from changing their names, but there are no waiting periods.¹³⁴ In Louisiana, petitioners previously convicted of a “crime of violence” are permanently barred from changing their name, and petitioners with all other felony convictions are eligible to change their names

TEX. FAM. CODE ANN. § 45.103; VT. STAT. ANN. tit.15, § 816; VA. CODE ANN. § 8.01-217 (West, Westlaw 2016); WASH. R. GRANT DIST. CT. LCRLJ 65; WIS. STAT. ANN. § 301.47.

128. ALA. CODE § 15-20A-36; COLO. REV. STAT. ANN. § 13-15-101; CONN. GEN. STAT. ANN. § 52-11; IND. CODE ANN. § 34-28-2-3; MINN. STAT. ANN. § 259.13; TEX. FAM. CODE ANN. § 45.103; VT. STAT. ANN. tit.15, § 817; WASH. R. GRANT DIST. CT. LCRLJ.

129. N.J. STAT. ANN. § 2A:52-1 (West, Westlaw through 2017 Laws, ch. 66); S.C. CODE ANN. § 15-49-20.

130. See, e.g., HAW. REV. STAT. ANN. § 574-5; NEV. REV. STAT. ANN. § 41.290-3.

131. MICH. COMP. LAWS ANN. § 711.1; N.D. CENT. CODE ANN. § 32-28-02.

132. W. VA. CODE ANN. § 48-25-107 (West, Westlaw through legislation effective Mar. 14, 2017); WIS. STAT. ANN. 301.47 (West, Westlaw through 2017 Act 6). *But see* CAL. CIV. PROC. CODE § 1279.5(d) (stating that the court may not grant name change of person required to register as sex offender unless it determines that doing so is in the best interest of justice and would not pose a public safety risk); VT. STAT. ANN. tit. 15, § 817 (note that Vermont’s Sex Offender Registry is notified and given an opportunity to object, but sex offender registration is not a *per se* bar to changing one’s name).

133. LA. STAT. ANN. § 13:4751(D) (Westlaw through 2017 1st Extraordinary Sess.); 735 ILL. COMP. STAT. 5/21-101 (2014); 54 PA. STAT. AND CONS. STAT. ANN. § 702 (West, Westlaw through 2017 Reg. Sess. Act 1); TENN. CODE ANN. § 29-8-101 (West, Westlaw through Apr. 17, 2017); TEX. FAM. CODE ANN. § 45.103; W. VA. CODE ANN. § 48-25-103.

134. OHIO REV. CODE ANN. § 2717.01 (West, Westlaw through 2017 File 5) (establishing a permanent name change restriction for identity fraud convictions); TENN. CODE ANN. § 29-8-101.

immediately upon terminating their sentences for those felonies.¹³⁵ In Pennsylvania, the waiting period expires two years after completion of the petitioner's felony sentence, and the statute imposes permanent bars for convictions for murder, sex crimes, robbery, arson, aggravated assault, kidnapping, or car theft.¹³⁶ In Utah, people who are required to register as sex offenders for life are permanently barred from changing their legal names.¹³⁷ In West Virginia, petitioners are permanently barred if they have been convicted of a felony while incarcerated or are required to register as a sex offender for life; if petitioners have convictions for first-degree murder or kidnapping, they do not become eligible to change their names until ten years have elapsed since the termination of their sentences.¹³⁸ In Iowa and Florida, petitioners with felony convictions are restricted from changing their legal names until their suspended civil rights have been restored through a grant of executive clemency, completion of sentence and supervisory periods, and full payment of restitution.¹³⁹ In Florida, certain convictions lead to permanent restrictions on changing one's legal name, while others invoke waiting periods between five and seven years.¹⁴⁰

In Illinois, petitioners convicted of *any felony* are not eligible to change their names for ten years after completing their sentences, and convictions for certain felonies and misdemeanors relating to sex crimes or identity theft create a permanent bar to changing their legal names.¹⁴¹ Illinois is one of six states with permanent name-change bars, and Illinois has the longest waiting period that encompasses the largest number of convictions.¹⁴² Therefore, Illinois has the most restrictive name-change statute in the country.¹⁴³

135. LA. STAT. ANN. § 13:4751(D); LA. STAT. ANN. § 14:2(B) (West, Westlaw through 2017 1st Extraordinary Sess.).

136. 54 PA. STAT. AND CONS. STAT. ANN. § 702.

137. UTAH CODE ANN. § 42-1-1 (Westlaw through 2016 3d Spec. Sess.);

138. W. VA. CODE ANN. §§ 15-12-3, 48-25-103, 61-2-14.

139. FLA. STAT. ANN. § 68.07 (West, Westlaw through 2017 1st Reg. Sess.); IOWA CODE ANN. § 674.2 (West, Westlaw through legislation effective as of May 5, 2017).

140. FLA. STAT. ANN. § 68.07.

141. 735 ILL. COMP. STAT. 5/21-101 (2014).

142. While West Virginia has a ten-year wait period for murder and for any felony conviction that occurred while the petitioner was incarcerated, Illinois' ten-year wait period applies to all felony convictions. *Compare* W. VA. CODE ANN. § 48-25-103, *with* 735 ILL. COMP. STAT. 5/21-101.

143. Louisiana's criminal name-change restrictions may appear to be more restrictive than Illinois' because Louisiana has permanent bars for forty-five enumerated "violent" felonies. LA. STAT. ANN. §§ 13:4751(D), 14:2(B)(1)-(46) (West, Westlaw through 2017 1st Extraordinary Sess.). Convictions for many of these felonies—including aggravated battery, criminal damage to property, robbery, arson, carjacking, and unlawful use of a weapon—would only subject a

Beyond these statutory guidelines, courts have also developed their own standards for determining whether to grant name change petitions.¹⁴⁴ Courts have denied name change petitions because the names were found to be obscene, offensive, bizarre, confusing, typographically unconventional, fraudulent, misleading, or had the potential to incite violence.¹⁴⁵ However, courts rarely publish or record their decisions from name change proceedings, and they frequently borrow standards from other states that have similar statutory language.¹⁴⁶ While name change caselaw is fairly consistent among states with similar statutory schema, judges are vested with a great amount of discretion in deciding whether to grant or deny a petition.¹⁴⁷ Appellate courts are generally deferential to county courts, although some appellate judges are now more frequently reversing name-change denials for failure to cite evidence that the name change is not in the public interest.¹⁴⁸

B. Criminalization

To understand why the Illinois name-change criminal restrictions exist, it is imperative to understand the social and legal landscape of mass incarceration in which the 1993, 1996, and 2007 amendments to the name-change statute were passed.¹⁴⁹ The following Sections provide a historical overview of mass incarceration, as well as current demographic data regarding groups who are disproportionately repre-

petitioner to a ten-year wait period in Illinois. By comparison, in Illinois, certain felony identity theft and misdemeanor sex crimes convictions subject petitioners to permanent bars, while those convictions do not create a name change barrier in Louisiana. 735 ILL. COMP. STAT. 5/21-101. Further, Louisiana does not have any waiting periods, while Illinois' ten-year wait period applies to many non-violent felonies that do not invoke any restrictions in Louisiana, e.g., possession of a controlled substance (720 ILL. COMP. STAT. 570/401 (2014)), prostitution (note that as of 2013, prostitution can no longer be charged as a felony in Illinois, but prior convictions for felony prostitution can still invoke ten-year wait period), retail theft (720 ILL. COMP. STAT. 5/16-25 (2014)), residential burglary (720 ILL. COMP. STAT. 5/19-3 (2014)), and criminal trespass to state property (720 ILL. COMP. STAT. 5/21-5 (2014)). On these bases, Illinois criminal name-change restrictions are at least as restrictive as Louisiana's, if not more restrictive, because of the barriers for certain misdemeanors and non-violent offenses.

144. Kushner, *supra* note 37, at 333.

145. *Id.* at 334.

146. *Id.* at 332.

147. *Id.* at 335.

148. *Id.* at 333.

149. Change of Name: Convicted Felons, Ill. Public Act No. 88-25 (1993) (codified as amended at 735 ILL. COMP. STAT. 5/21-101 (2014)); Change of Name: Prisoners, Ill. Public Act No. 89-192 (1996) (codified as amended at 735 ILL. COMP. STAT. 5/21-101); An Act in Relation to Criminal Offenders, Ill. Public Act 89-462, § 10 (1996) (codified as amended at 730 ILL. COMP. STAT. 150/10 (2014)); Ill. Public Act 94-944 (2007) (codified as amended at 735 ILL. COMP. STAT. 5/21-101).

sented in the criminal legal system—in particular, transgender people of color.¹⁵⁰

1. *Prohibiting Name Changes in the Age of Mass Incarceration*

Illinois’ criminal name-change restrictions were enacted during the modern era of mass racialized incarceration.¹⁵¹ As this Comment argues, Illinois’ criminal name-change restrictions are one component of the prison-industrial complex (PIC), and one cannot understand how these criminal name-change restrictions function on a systemic scale without understanding the surrounding context of mass incarceration.¹⁵²

Today, the United States is home to five percent of the world’s population, yet it has twenty-five percent of the world’s prisoners.¹⁵³ The United States is the world’s leader in incarceration, with 2.3 million people currently housed in the nation’s prisons or jails.¹⁵⁴ “Combining the number of people in prison and jail with those under parole or probation supervision, 1 in every 31 adults, or 3.2 percent of the population is under some form of correctional control.”¹⁵⁵ Together, Black and Latinx people made up fifty-eight percent of all prisoners in 2008, even though they represented approximately twenty-five percent of the U.S. population.¹⁵⁶ Black people are incarcerated at nearly six times the rate of white people.¹⁵⁷ One in ten Black men in their thirties is in prison or jail on any given day,¹⁵⁸ and one in three Black men born in 2001 can expect to spend time in prison during his lifetime.¹⁵⁹

150. *See infra* notes 151–91 and accompanying text.

151. Much has been written about the extent, history, collateral consequences, and underlying causes of mass incarceration. *See generally, e.g.*, ANGELA DAVIS, *ARE PRISONS OBSOLETE?* (2003). This Comment will not provide an extensive analysis of mass incarceration. However, this context is important to understand the relevance of the name change felony wait period.

152. *See infra* notes 463–519 and accompanying text (arguing criminal name-change restrictions are part of the PIC); *see also* DAVIS, *supra* note 151, at 23 (defining prison-industrial complex).

153. *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited Jan. 17, 2017); *Criminal Justice Facts*, SENT’G PROJECT, <http://www.sentencingproject.org/criminal-justice-facts/> (last visited Jan. 17, 2017).

154. *Criminal Justice Fact Sheet*, *supra* note 153.

155. *Id.*

156. *Id.*; *see also* *U.S. Has World’s Highest Incarceration Rate*, POPULATION REFERENCE BUREAU, <http://www.prb.org/Publications/Articles/2012/us-incarceration.aspx> (last visited Jan. 17, 2017).

157. *U.S. Has World’s Highest Incarceration Rate*, *supra* note 156.

158. *Fact Sheet: Trends in U.S. Incarceration*, SENT’G PROJECT, <http://www.sentencingproject.org/publications/trends-in-u-s-corrections/> (last visited Mar. 7, 2017).

159. *Criminal Justice Fact Sheet*, *supra* note 153.

Yet, studies show that Black people do not engage in criminal activity any more than white people.¹⁶⁰

The criminal legal system has not always looked this way: From the time the penitentiary was invented in Colonial America until the end of the Civil War, prisoners were predominantly white.¹⁶¹ The demographics began to shift in the years following the Civil War, with the passage of racist laws like the Black Codes.¹⁶² The total prison population then skyrocketed and the race gap exponentially widened starting in the 1970s, when the United States launched the War on Drugs.¹⁶³ Due to factors such as increased government spending on police and disparate sentencing in drug laws, the combined state and federal prison population in the United States has quintupled in the last forty years.¹⁶⁴ Much of this increase occurred in the 1990s, when Congress and state legislatures passed a series of “tough on crime” laws, including “three-strikes” sentencing laws,¹⁶⁵ sex offender registration laws,¹⁶⁶ and “truth in sentencing” laws.¹⁶⁷ One of the driving motivations behind the passage of these laws was the public perception that “dangerous criminals,” like “sexual predators,” were on the rise.¹⁶⁸ Meanwhile, crime rates remained stable during this time period, and some studies indicate that they were actually declining.¹⁶⁹ Because of this enormous expansion of the prison system, today

160. MICHAEL TONRY, *PUNISHING RACE: A CONTINUING AMERICAN DILEMMA* 39–47 (2011).

161. DAVIS, *supra* note 151, at 26–33 (explaining how prisons went from majority white to majority people of color in the years following the Civil War).

162. *Id.* For a more detailed description of the Black Codes, see *id.* at 28.

163. *Id.*; MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 40–50 (2011) (explaining how the “war on drugs” and “law and order” rhetoric were part of a conservative backlash against the Civil Rights movement); TONRY, *supra* note 160, at 35 (providing a graph displaying growing racial disparities in incarceration).

164. *Criminal Justice Fact Sheet*, *supra* note 153.

165. *See, e.g.*, Violent Crime Control & Law Enforcement Act of 1994, 18 U.S.C. § 3559(c) (2012).

166. *See, e.g.*, 18 U.S.C. § 2250 (2012).

167. *See, e.g.*, 730 ILL. COMP. STAT. 5/3-6-3 (2014). *See generally* DAVIS, *supra* note 151, at 23; Arit John, *A Timeline of the Rise and Fall of ‘Tough on Crime’ Drug Sentencing*, ATLANTIC (Apr. 22, 2014), <https://www.theatlantic.com/politics/archive/2014/04/a-timeline-of-the-rise-and-fall-of-tough-on-crime-drug-sentencing/360983/> (explaining how the factors listed here contributed to the growth of the prison population); *Criminal Justice Facts*, *supra* note 153.

168. LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* 214 (2009) (“[The sexual predator] provides an urgent and perpetually refreshed motive for the full repudiation of the ideal of rehabilitation and the turn to fierce neutralization and vengeful retribution that has characterized U.S. penal policy since the late 1970s.”).

169. DAVIS, *supra* note 151, at 92; WACQUANT, *supra* note 168, at 212 (“[T]he tally of rapes in the country recorded by the National Crime Victimization Survey reveals a stagnation at around 2.5 victims per 1,000 persons age twelve or older from 1973 till 1988, followed by a steady decline until 1995 . . . just when the furor over sex-related crimes peaked.”).

nearly one in three adults in the United States has a criminal record.¹⁷⁰

2. *The Criminalization of Transgender People of Color*

Transgender people are disproportionately criminalized.¹⁷¹ In 2011, the National Transgender Discrimination Survey report *Injustice at Every Turn* detailed the inordinately high numbers and “wide range of alarming experiences of transgender and gender non-conforming people with police and the criminal justice system.”¹⁷² “Black and Latin[x] incidences of being incarcerated due only to gender identity/expression were at 41% and 21% respectively. . . . Sixteen percent (16%) of respondents reported being sent to jail or prison ‘for any reason.’”¹⁷³ One year later, the Center for American Progress noted that although “gay and transgender youth represent just 5 percent to 7 percent of the nation’s overall youth population, they compose 13 percent to 15 percent of those currently in the juvenile justice system.”¹⁷⁴ Transgender and gender nonconforming people are over-represented in the criminal legal system due to racist and transphobic policing, lack of trans-competent legal advocacy, and poverty resulting from intersectional discrimination in education, housing, employment, and medical care.¹⁷⁵

Transgender people disproportionately face poverty for a number of reasons.¹⁷⁶ One reason is that they may be kicked out of their home at an early age because their parents or guardians are not supportive of their transition.¹⁷⁷ Housing instability can become a barrier to finishing school and obtaining employment.¹⁷⁸ Transgender young people may also be pushed out of school due to harassment from

170. *Americans with Criminal Records*, SENT’G PROJECT, <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf> (last visited Jan. 17, 2017).

171. JOEY L MOGUL ET AL., *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* 46–48 (Michael Bronski ed., 2011).

172. GRANT ET AL., *supra* note 14, at 158.

173. *Id.* at 163. This study only surveyed transgender people who were not incarcerated at the time, so this number is likely much higher.

174. *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System*, AM. PROGRESS, <https://www.americanprogress.org/issues/lgbt/reports/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/> (last visited Jan. 17, 2017).

175. See QUICK GUIDE, *supra* note 20; see also SYLVIA RIVERA L. PROJECT, *SYSTEMS OF INEQUALITY: CRIMINAL JUSTICE*, https://srp.org/files/disproportionate_incarceration_1.pdf (last visited Jan. 27, 2017) [hereinafter *SYSTEMS OF INEQUALITY*].

176. See QUICK GUIDE, *supra* note 20; see also *SYSTEMS OF INEQUALITY*, *supra* note 175.

177. GRANT ET AL., *supra* note 14, at 88.

178. GRANT ET AL., *supra* note 14, at 23, 106.

other students, being forced to use a bathroom that does not comport with their gender, or because teachers refuse to use the correct name and gender pronouns for the student.¹⁷⁹ Even if they are able to complete school, it is extremely difficult to apply for and secure work without an address.¹⁸⁰ As a result of these factors, many transgender people resort to committing survival crimes, like retail theft or sex work, in order to feed or house themselves.¹⁸¹ A criminal record is often a bar to employment, which then forces trans people back into participating in survival crimes, and the cycle of poverty and criminalization continues.¹⁸²

In addition, police often profile transgender women of color as sex workers.¹⁸³ While many transgender people do engage in sex work as a form of survival—particularly when doors to legitimate work are closed due to discrimination on the basis of trans identity or criminal history—television shows, news articles, and movies have created a stereotype of transgender women of color in particular as sex workers.¹⁸⁴ Police, judges, and attorneys are not immune to that subconscious bias.¹⁸⁵ As a result, many transgender women of color report having been arrested for merely being in public—a phenomenon that some trans people have termed “walking while trans.”¹⁸⁶

Once transgender people enter the criminal legal system, they face discrimination from judges and attorneys who do not understand the connections between their transgender identities and alleged criminal activities.¹⁸⁷ Post-conviction, they may be sent to prison or jail, where they are almost exclusively housed according to their gender as assigned at birth, meaning that transgender women are housed in men’s facilities.¹⁸⁸ Correctional staff and other prisoners relentlessly punish

179. *Id.* at 33 (stating that seventy-eight percent of transgender people report being harassed at school, thirty-one percent being harassed by teachers or staff, and fifteen percent report that they dropped out due to severe harassment).

180. *Id.* at 106.

181. *Id.* at 119 (stating that sixty-nine percent of currently homeless transgender people report working in an underground economy to survive, and fifty-five percent report engaging in sex work).

182. SYSTEMS OF INEQUALITY, *supra* note 175.

183. GRANT ET AL., *supra* note 14, at 158.

184. *Id.*; MOGUL ET AL., *supra* note 171, at 61.

185. GRANT ET AL., *supra* note 14, at 158.

186. Chase Strangio, *Arrested for Walking While Trans: An Interview with Monica Jones*, ACLU (Apr. 2, 2014, 11:19AM), <https://www.aclu.org/blog/arrested-walking-while-trans-interview-monica-jones>.

187. MOGUL ET AL., *supra* note 171, at 72–79.

188. Very little data exists regarding incarceration rates and experiences of violence in prison for transgender men, compared to similar data for transgender women. When transgender men are incarcerated, they are almost exclusively housed in women’s prisons. Lori Girshick, *Out of*

gender nonconformity with threats, violence, and sexual assault, causing long-lasting psychological trauma that, even by itself, contributes to recidivism and creates yet another barrier to employment and other resources.¹⁸⁹ Many transgender people understand these risks, which make them more likely to accept plea deals, even if they are innocent, simply to minimize the risks associated with being incarcerated as a transgender person.¹⁹⁰

Due in part to these trends in criminalization, thousands of transgender people in Illinois have criminal records, and a disproportionate number of them are women of color.¹⁹¹

C. *Constitutional Doctrines*

Illinois' criminal name-change restrictions potentially impact thousands of transgender people, and the Constitution, as the legal foundation of fundamental rights and protections for marginalized minority groups, is an appealing source of arguments in favor of abolishing the restrictions.¹⁹² Three constitutional provisions are relevant to challenging Illinois' criminal name-change restrictions: the First Amendment Freedom of Speech Clause and the Fourteenth Amendment Due Process and Equal Protection Clauses.¹⁹³

1. *First Amendment Jurisprudence*

The First Amendment of the United States Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."¹⁹⁴ While this Amendment only explicitly refers to "speech," the Court has traditionally interpreted this Clause to protect "freedom of ex-

Compliance: Masculine-Identified People in Women's Prisons, in *CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX* 189, 190 (Eric A. Stanley & Nat Smith eds., 2011); see also *MOGUL ET AL.*, *supra* note 171, at 107.

189. Girshick, *supra* note 188, at 189–206; see also *MOGUL ET AL.*, *supra* note 171, at 106–09; Julia Sudbury, *Maroon Abolitionists: Black Gender-Oppressed Activists in the Anti-Prison Movement in the U.S. and Canada*, 9 *MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM*, 2009, at 1, 14–17.

190. *MOGUL ET AL.*, *supra* note 171, at 76.

191. See *supra* note 16 and accompanying text (estimating the number of transgender Illinoisans subject to the criminal name-change restrictions).

192. See Erwin Chemerinsky, *The Constitution and Fundamental Rights*, 18 *U. FLA. J.L. & PUB. POL'Y* (2007) (discussing how the U.S. Constitution protects fundamental rights, particularly for minority groups).

193. See *infra* notes 194–297 and accompanying text.

194. U.S. CONST. amend. I.

pression,” which more broadly includes the ability of an individual or group of individuals to verbally or nonverbally express their beliefs, thoughts, ideas, and emotions about different issues, free from government censorship.¹⁹⁵

From the time that the First Amendment was framed through the early twentieth century, the legal theory upon which freedom of speech was based was the notion of the “free market of ideas,” mirroring the *laissez-faire* approach that the government took in regulating the free market economy.¹⁹⁶ In other words, the Court reasoned that the First Amendment protected freedom of expression because, like a capitalist economy, a public exchange of ideas free of government restrictions would enhance the progress of the nation as a whole.¹⁹⁷ In the New Deal Era, the Court deemphasized this legal theory and took the approach that freedom of expression should be protected because freely expressing oneself is inherent to the functioning of a democratic society.¹⁹⁸ While some forms of speech may be provocative or challenging, a democratic government cannot censure public expression merely because it causes “inconvenience, annoyance, or unrest.”¹⁹⁹

Today, the predominant legal theory behind the First Amendment is to protect and enhance individual autonomy. Self-expression, either verbally or through their actions, is a crucial process of self-definition that cannot be abrogated except in extreme circumstances.²⁰⁰ Under this view of the First Amendment, each person is respected as an autonomous individual and should be granted a great degree of deference in how they express themselves.²⁰¹ Freedom of expression has intrinsic value as an end in itself, and the state’s paternalistic censorship of a person’s expression is wrong because it interferes with that person’s autonomy.²⁰² As Justice Thurgood Marshall wrote, “The First Amendment serves not only the needs of the polity but also

195. David A. Strauss, *Persuasion, Autonomy, and Freedom of Expression*, 91 COLUM. L. REV. 334, 337–38 (1991).

196. See, e.g., *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring), *overruled in part by* *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

197. C. Edwin Baker, *Scope of the First Amendment Freedom of Speech*, 25 UCLA L. REV. 964, 990–91 (1978).

198. *Id.* at 995.

199. *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

200. Baker, *supra* note 197, at 966.

201. See David Richards, *Free Speech and Obscenity Law: Toward a Moral Theory of the First Amendment*, 123 U. PA. L. REV. 45, 62 (1974).

202. See Baker, *supra* note 197, at 966; see also Strauss, *supra* note 195, at 354 (arguing that a central principle of the First Amendment is that government may not stop speech for reason of its power to persuade the listener, and that “[v]iolating the persuasion principle is wrong for some of the reasons that lies of this kind are wrong: both involve a denial of autonomy in the sense that they interfere with a person’s control over her own reasoning process”).

those of the human spirit—a spirit that demands self-expression. To suppress expression is to reject the basic human desire for recognition and affront the individual’s worth and dignity.”²⁰³

This “spirit of autonomy” that the First Amendment protects is exemplified in the case of *West Virginia State Board of Education v. Barnette*.²⁰⁴ In that case, a group of parents challenged a public school’s regulation requiring students to salute the American flag and recite the pledge of allegiance.²⁰⁵ The Court ruled that freedom of speech may only be restricted “to prevent grave and immediate danger to interests which the state may lawfully protect.”²⁰⁶ The State argued that it had an interest in maintaining the policy because “[n]ational unity is the basis of national security,” and failing to compel students to recite the pledge of allegiance would pose a grave threat to national security.²⁰⁷ The Court disagreed, however, holding that the school district overstepped its constitutional limitations and “invade[d] the sphere of intellect and spirit” by compelling students to salute the flag and recite the pledge.²⁰⁸

The Court extended this principle in *Wooley v. Maynard*,²⁰⁹ in which a New Hampshire resident challenged a conviction under a state law that made it a crime to obscure the state motto “Live Free or Die” on license plates.²¹⁰ The defendant objected to the motto on ideological grounds.²¹¹ The State argued that police officers needed to be able to see the state motto on license plates in order to readily identify cars registered in New Hampshire.²¹² The Court found the State’s argument unpersuasive and struck down the statute because it “broadly stifle[d] fundamental personal liberties.” Further, the means of the law were not necessary to achieving the stated ends.²¹³ The Court was concerned that the statute forced the defendant to use his “private property as a ‘mobile billboard’ for the State’s ideological message—or suffer a penalty”²¹⁴ This problem was compounded

203. *Procurier v. Martinez*, 416 U.S. 396, 427 (1974) (Marshall, J., concurring).

204. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), *overruled on other grounds by Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514 (11th Cir. 1993).

205. *Id.* at 626, 629.

206. *Id.* at 639.

207. *Id.* at 640 (citing *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 595 (1940), *overruled by W. Va. State Bd. of Educ.*, 319 U.S. 624).

208. *Id.* at 642.

209. 430 U.S. 705 (1977).

210. *Id.* at 709.

211. *Id.* at 707.

212. *Id.* at 716.

213. *Id.*

214. *Id.* at 715.

by the fact that displaying a license plate was a necessary condition for driving a car, which in turn was a “virtual necessity for most Americans.”²¹⁵ The Court reasoned that, even if the government had a compelling interest in identifying its residents, police could identify New Hampshire license plates by reading the actual letters and numbers on the plate without reference to the motto.²¹⁶ Thus, the means were not necessary to achieve the purpose of identifying New Hampshire residents.²¹⁷

The First Amendment right to freedom of expression is one of the most well-established fundamental rights.²¹⁸ Unless the state can articulate a grave and immediate danger that requires censorship of a person’s expression, the Court is very deferential to people’s autonomy over how they express themselves.²¹⁹

2. *Due Process Jurisprudence*

The Due Process Clause of the Fourteenth Amendment protects fundamental rights, particularly for minority groups,²²⁰ and states, “No state shall . . . deprive any person of life, liberty, or property without due process of law.”²²¹ The Supreme Court has developed substantive due process review as a means of protecting the rights of individuals from legislation that is enacted by the majority and exceeds government authority.²²² The Supreme Court has applied strict scrutiny substantive due process review to any law that directly impinges upon a fundamental right (e.g., the right to privacy) which qualifies as a “liberty” interest under the Due Process Clause.²²³ Areas of privacy that the Court has protected under this line of cases include reproductive decisions;²²⁴ a parent’s right to make decisions regarding the education, care, control, and custody of their chil-

215. *Wooley*, 430 U.S. at 715.

216. *Id.* at 716.

217. *Id.* at 717.

218. *Baker*, *supra* note 197, at 965; *see also* *Strauss*, *supra* note 195, at 340.

219. *Strauss*, *supra* note 195, at 334.

220. *Kushner*, *supra* note 37, at 342.

221. U.S. CONST. amend. XIV, § 1.

222. *See* *Washington v. Glucksberg*, 521 U.S. 702, 756–65 (1997) (discussing the historical development of substantive due process review).

223. *See* *Carrey v. Population Servs., Int’l*, 431 U.S. 678, 684 (1977); *Roe v. Wade*, 410 U.S. 113, 164 (1973); *Eisenstadt v. Baird*, 405 U.S. 438, 454–55 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), *overruling recognized in* *State v. Parvin*, 326 P.3d 832, 837 (Wash. Ct. App. 2014); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 533–34 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

224. *See, e.g., Troxell v. Granville*, 530 U.S. 57, 65 (2000); *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983), *overruled by* *Planned Parenthood v. Casey*, 505 U.S. 833, 870 (1992); *Bellotti v. Baird*, 443 U.S. 622, 647 (1979); *Carrey*, 431 U.S. at 684; *Planned Parenthood*

dren;²²⁵ the right to intimate association;²²⁶ and the right to decide family living arrangements.²²⁷

The Court has used two tests to determine whether an asserted interest qualifies as a fundamental privacy right, thus triggering strict scrutiny under substantive due process review.²²⁸ The conservative approach asks whether that asserted privacy interest is a “fundamental right deeply rooted in the nation’s history or in the concept of ordered liberty.”²²⁹ For example, in *Washington v. Glucksberg*,²³⁰ the Court held that the right to assisted suicide is not “deeply rooted in the nation’s history” because laws have criminalized suicide since the nation’s founding.²³¹ By contrast, in *Moore v. City of East Cleveland*,²³² the Court invalidated a city zoning ordinance that restricted occupancy to members of a single nuclear family because living arrangements involving extended family members were just as “deeply rooted in the nation’s history.”²³³ Justice Powell’s plurality opinion acknowledged that while “the history of the *Lochner* era demonstrates” why substantive due process review must be used with “caution and restraint.”²³⁴ Justice Powell continued, “Appropriate limits on substantive due process come not from drawing arbitrary lines but rather from ‘careful respect for the teachings of history [and] solid recognition of the basic values that underlie our society.’”²³⁵

The liberal approach asks whether an asserted privacy interest is “central to personal dignity and autonomy or is at the heart of liberty.”²³⁶ The Court has used the liberal approach to protect freedom of thought, expression, and intimate conduct, particularly for minority groups.²³⁷ For example, in the case of *Lawrence v. Texas*,²³⁸ the Court struck down a state law criminalizing sodomy because the right to inti-

v. Danforth, 428 U.S. 52, 69 (1976); *Roe*, 410 U.S. at 153; *Eisenstadt*, 405 U.S. at 454-55; *Griswold*, 381 U.S. at 485; *Skinner*, 316 U.S. at 541; *Pierce*, 268 U.S. at 533.

225. *Pierce*, 268 U.S. at 533; *Meyer*, 262 U.S. at 403.

226. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *Turner v. Safley*, 482 U.S. 78, 99 (1987); *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978); *Loving v. Virginia*, 388 U.S. 1, 11-12 (1967).

227. *Moore v. City of E. Cleveland*, 431 U.S. 494, 498-99 (1977).

228. Kushner, *supra* note 37, at 343.

229. *Washington v. Glucksberg*, 521 U.S. 702, 727 (1997); see Kushner, *supra* note 37, at 343.

230. 521 U.S. 702.

231. *Id.* at 774.

232. 431 U.S. 494.

233. *Id.* at 503.

234. *Id.* at 502-03.

235. *Id.*

236. *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)); Kushner, *supra* note 37, at 343.

237. Kushner, *supra* note 37, at 343.

238. 539 U.S. 558.

mate association is “central to personal dignity and autonomy.”²³⁹ In *Roe v. Wade*,²⁴⁰ the Court famously struck down a state statute that restricted abortions because laws proscribing abortion impinged upon a fundamental privacy right to decide whether to bear a child.²⁴¹ By contrast, in *Planned Parenthood v. Casey*,²⁴² the Court applied the liberal standard to uphold a portion of a state law that imposed a twenty-four hour waiting period on obtaining an abortion because it merely imposed an inconvenience rather than “substantially burdening” a fundamental privacy right.²⁴³

If a state law impinges upon a fundamental right under one of these tests, then the Court uses strict scrutiny to analyze the constitutionality of that law.²⁴⁴ To satisfy strict scrutiny, a state law must be a necessary means of achieving a compelling governmental interest.²⁴⁵ By balancing the ends and means of a state statute, the Due Process Clause acts as a check on the state’s power to restrict an individual’s personal dignity.²⁴⁶

3. *Equal Protection Jurisprudence*

The Equal Protection Clause of the Fourteenth Amendment also protects against abuses of government authority,²⁴⁷ stating that “no state shall deny to any person within its jurisdiction the equal protection of its laws.”²⁴⁸ This clause was included in the Fourteenth Amendment in order to counteract the Black Codes enacted after the Civil War and to establish congressional authority to protect formerly enslaved people by making equal protection a federal constitutional matter.²⁴⁹ Part of the philosophy behind the Equal Protection Clause was that minority groups who do not have an equal say in the government process deserve more judicial protection in order to prevent the tyranny of the majority, and also to prevent the government from establishing permanent castes of people.²⁵⁰ The heart of the Equal Pro-

239. *Id.* at 574 (quoting *Casey*, 505 U.S. at 851).

240. 410 U.S. 113 (1973).

241. *Id.* at 164.

242. 505 U.S. 833.

243. *Id.* at 887.

244. *See, e.g., Roe*, 410 U.S. at 150.

245. *Id.*

246. Kushner, *supra* note 37, at 326.

247. Suzanne B. Goldberg, *Equality Without Tiers*, 77 S. CAL. L. REV. 481, 516 (2004).

248. U.S. CONST. amend XIV, § 1.

249. *The Heritage Guide to the Constitution: Equal Protection*, HERITAGE, <http://www.heritage.org/constitution/#!/amendments/14/essays/171/equal-protection> (last visited Jan. 18, 2017).

250. *Id.*

tection analysis is that the government must treat similarly situated people similarly by guaranteeing equal fundamental rights for all.²⁵¹

The Court has developed three tiers of Equal Protection analysis: strict scrutiny, intermediate scrutiny, and minimal scrutiny.²⁵² In order to determine which standard to apply, the Court typically begins by analyzing the classification involved.²⁵³ The Court applies a higher tier of scrutiny if the classification is “suspect” or “quasi suspect,” depending on the following factors: (1) if the classification is an immutable trait that is an accident of birth for which the individual should bear no responsibility; (2) if the classification has the goal of “invidious discrimination”; (3) if the classification is historically based on prejudice and bias; or (4) if the classification is directed at a “discrete and insular minority group” subject to a history of purposeful discrimination or relegated to a position of political powerlessness.²⁵⁴

The Court has applied strict scrutiny to classifications based on race and alienage.²⁵⁵ Under strict scrutiny, the state’s statutory classification must be a “necessary” means of achieving a “compelling” government interest.²⁵⁶ The Court has used strict scrutiny to invalidate racially segregated schools,²⁵⁷ anti-miscegenation laws,²⁵⁸ racial segregation in prisons,²⁵⁹ and state laws denying welfare benefits to non-citizens.²⁶⁰ Conversely, the Court has applied strict scrutiny to uphold laws that are facially neutral yet have a disparate racial impact, if the Court finds insufficient proof of intent to discriminate.²⁶¹ For example, in *Washington v. Davis*,²⁶² the Court upheld a police test that disproportionately excluded Black people from serving on the city police force because the Court found that the police did not explicitly intend to exclude Black people.²⁶³

Additionally, the Court has applied strict scrutiny to state laws that impinge upon fundamental constitutional rights such as voting and

251. *Id.*

252. Goldberg, *supra* note 247, at 482.

253. *Id.* at 494.

254. *Id.* at 496 (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938)).

255. *Id.* at 500.

256. *Id.* at 543; *see also* KATHLEEN SULLIVAN & NOAH FELDMAN, *CONSTITUTIONAL LAW* 602 (18th ed. 2013).

257. *See, e.g.*, *Brown v. Bd. of Educ.*, 349 U.S. 294, 298 (1955).

258. *See, e.g.*, *Loving v. Virginia*, 388 U.S. 1, 11–12 (1967).

259. *See, e.g.*, *Johnson v. California*, 545 U.S. 162 (2005).

260. *See, e.g.*, *Graham v. Richardson*, 403 U.S. 365, 376 (1971).

261. SULLIVAN & FELDMAN, *supra* note 256, at 643.

262. 426 U.S. 229 (1976).

263. *Id.* at 249.

equal access to the courts.²⁶⁴ Under this branch of strict scrutiny, the Court struck down laws imposing poll taxes,²⁶⁵ laws restricting the right to vote to property owners,²⁶⁶ and laws denying free appointed counsel to criminal appellants.²⁶⁷ The Court has been generally protective of voting rights because the Constitution explicitly refers to them, and also because the Court considers them to be too fundamental to be restricted in most cases.²⁶⁸ In *Harper v. Virginia State Board of Elections*,²⁶⁹ the Court applied strict scrutiny and struck down a poll tax.²⁷⁰ The Court reasoned that voting protects all other rights through the democratic process, and thus “the right to vote is too precious, too fundamental to be so burdened or conditioned.”²⁷¹ By contrast, in *Crawford v. Marion County Election Board*,²⁷² a plurality opinion upheld Indiana’s Voter ID law under strict scrutiny because the Court found that there was a compelling government interest in preventing in-person voter fraud, even though the State presented no evidence that anyone had ever attempted such a thing in Indiana.²⁷³

The Court has applied intermediate scrutiny to classifications based on gender.²⁷⁴ Under intermediate scrutiny, the state has the burden of proving that a statutory classification serves “important” government objectives, and the means employed must be “substantially” related to those objectives.²⁷⁵ In order to be “important,” the state’s objectives must not rely on a generalization, and must be genuine, rather than hypothesized or invented post hoc.²⁷⁶ For example, in *United States v. Virginia*,²⁷⁷ the Court used intermediate scrutiny to hold that a men-only military academy violated the Equal Protection clause because no other institution in the state provided that kind of instruction, and the women-only military academy in the state was inferior in terms of the quality of education provided.²⁷⁸ Thus, the state

264. SULLIVAN & FELDMAN, *supra* note 256, at 768.

265. See *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966).

266. See *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 213 (1970); *Cipriano v. City of Houma*, 395 U.S. 701, 706 (1969); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 633 (1969).

267. *Douglas v. California*, 372 U.S. 353 (1963).

268. SULLIVAN & FELDMAN, *supra* note 256, at 768 (noting that the Fourteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments limit state power over voting access).

269. 383 U.S. 663.

270. *Id.* at 666.

271. *Id.* at 670.

272. 553 U.S. 181 (2008).

273. *Id.* at 200–02.

274. SULLIVAN & FELDMAN, *supra* note 256, at 715.

275. *Craig v. Boren*, 429 U.S. 190, 197 (1976).

276. See *id.* at 200–04.

277. 518 U.S. 515 (1996).

278. *Id.* at 524.

did not have an “important” interest in excluding women, and the means were not “substantially related.”²⁷⁹

The Court generally applies minimal scrutiny analysis to classifications based on poverty,²⁸⁰ disability,²⁸¹ age,²⁸² and felony status.²⁸³ Under minimal scrutiny, the Court balances the means and ends of the law, and it will strike down a law whose means are not reasonably related to reasonable governmental interests.²⁸⁴ Simply providing any reason for the law is not sufficient to survive minimal scrutiny: “[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.”²⁸⁵ In the case of *Richardson v. Ramirez*,²⁸⁶ a person with a felony conviction who had completed his sentence alleged that a state law disenfranchising people with felony convictions violated the Equal Protection Clause because it impinged upon the fundamental right to vote.²⁸⁷ While the Court agreed that voting is a fundamental right, it applied minimal scrutiny to the classification based on felony status because section two of the Fourteenth Amendment explicitly permits disenfranchisement of people who have “participat[ed] in rebellion, or other crime.”²⁸⁸ The Court ultimately upheld the law on the grounds that denying people with felony convictions the right to vote is reasonably related to the reasonable governmental interest of preventing voter fraud.²⁸⁹ Courts have similarly applied minimal scrutiny to laws that prohibit people with certain convictions from holding certain jobs²⁹⁰ and living in subsidized hous-

279. *Id.*

280. *See, e.g.*, *James v. Valtierra*, 402 U.S. 137, 142 (1971) (upholding California constitutional requirement that no low rent housing projects be developed without prior approval by referendum).

281. *See, e.g.*, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (striking down ordinance requiring special use permit to build a home for people with cognitive disabilities).

282. *See, e.g.*, *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307 (1976) (upholding mandatory retirement age for state police).

283. *See, e.g.*, *Richardson v. Ramirez*, 418 U.S. 24 (1974) (holding that a law disenfranchising felons did not violate the Equal Protection clause).

284. *See id.*; *see also* *Williamson v. Lee Optical*, 348 U.S. 483 (1955).

285. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

286. 418 US 24 (1974).

287. *Id.* at 24–26.

288. *Id.* at 42; *see also* U.S. CONST. amend. XIV, § 2.

289. *Richardson v. Ramirez*, 418 U.S. 24, 55–56 (1974).

290. *See, e.g.*, *Smith v. Fussenich*, 440 F. Supp. 1077 (D. Conn. 1977) (upholding a law prohibiting people with felony convictions working as private detective); *Butts v. Nichols*, 381 F. Supp. 573 (S.D. Iowa 1974) (upholding a law prohibiting people with felony convictions from holding civil service jobs).

ing,²⁹¹ because these restrictions do not interfere with fundamental rights because there is no fundamental right to food,²⁹² employment,²⁹³ or shelter;²⁹⁴ courts have upheld the restrictions on the basis that they are reasonably related to the state interest of protecting the public.²⁹⁵

The Equal Protection Clause mandates that the state treat similarly situated people similarly.²⁹⁶ The Court has traditionally used the Equal Protection Clause to strike down state laws that intentionally discriminate against minority groups or that restrict fundamental rights, that is unless the Constitution expressly permits such restrictions.²⁹⁷

* * *

The Illinois name-change statute has one of the most restrictive criminal barriers in the country by a staggering margin. Some of the legislative motivations behind passing these criminal name-change restrictions include the desire to prevent fraudulent name changes and fears that the police could not maintain and disseminate accurate criminal records if people with certain convictions were eligible to change their legal names. These criminal name-change restrictions were passed in the context of the mass incarceration of people of color. The next Part of this Comment argues that Illinois' criminal name-change restrictions violate the U.S. Constitution and must be abolished.

III. ANALYSIS

The Illinois name-change statute contains three criminal restrictions: (1) the ten-year wait period for felonies; (2) the permanent restrictions for certain sex crimes; and (3) the permanent restrictions for certain identity theft crimes.²⁹⁸ All three restrictions should be abolished because they violate the First Amendment Freedom of Speech

291. See *Hous. Auth. for Prince George's Cty. v. Williams*, 784 A.2d 621 (Ct. App. Md. 2001) (upholding eviction of family from public housing after tenant's minor child was convicted of drug possession).

292. See, e.g., *Dandridge v. Williams*, 397 U.S. 471 (1970) (upholding under minimal scrutiny absolute cap on AFDC funds per family regardless of family size).

293. See, e.g., *Butts*, 381 F. Supp. at 579.

294. See, e.g., *Lindsey v. Normet*, 405 U.S. 56 (1972).

295. See *Dandridge*, 397 U.S. 471; *Hous. Auth. for Prince George's Cty.*, 784 A.2d at 626–27; *Smith*, 440 F. Supp. at 1080; *Butts*, 381 F. Supp. at 578–82.

296. Goldberg, *supra* note 247, at 485.

297. *Id.* at 485–87.

298. 735 ILL. COMP. STAT. 5/21-101 to -105 (2014).

Clause²⁹⁹ and the Fourteenth Amendment Due Process and Equal Protection Clauses.³⁰⁰ These restrictions are not sound government policy.

A. *The First Amendment and the Fundamental Right to Name Oneself*

The Illinois name-change statute violates the First Amendment right to freedom of expression. When evaluating a constitutional claim that a statute or policy violates the First Amendment, the Court considers whether the state has compelling interests in maintaining that law, and if so, whether the law is a necessary means of protecting those interests when weighed against the extent to which the law stifles freedom of expression.³⁰¹ Freedom of expression may only be restricted “to prevent grave and immediate danger to interests which the State may lawfully protect.”³⁰² The right to self-definition and autonomy over one’s identity are at the heart of First Amendment jurisprudence.³⁰³

Like the school policy at issue in *Barnette*, the Illinois name-change statute “invades the sphere of intellect and spirit” by unnecessarily compelling people convicted of certain crimes, including many transgender people, to use names that do not reflect their true identities.³⁰⁴ This First Amendment analysis begins with the state interests in maintaining the statute, and strict scrutiny is then applied to those interests.³⁰⁵ The Court generally upholds state legislation when the state can articulate a grave and immediate danger that requires censorship of a person’s expression.³⁰⁶

The state has two recognized, general interests in exercising control over the name change process: identification and communication.³⁰⁷ “Identification” means the state’s ability to distinguish individuals from one another, “track records, allocate benefits, attribute blame or credit, grant rights, . . . impose responsibilities,” and promote public safety.³⁰⁸ “Communication” refers to the ways in which the state reg-

299. U.S. CONST. amend. I.

300. U.S. CONST. amend. XIV, § 1.

301. *Wooley v. Maynard*, 430 U.S. 705, 706, 715–17 (1977).

302. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943), *overruled on other grounds by Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514 (11th Cir. 1993).

303. Kushner, *supra* note 37, at 318.

304. *Barnette*, 319 U.S. at 642.

305. Kushner, *supra* note 37, at 318.

306. Strauss, *supra* note 195, at 334.

307. *Id.*

308. *Id.*

ulates names in order to “foster[] interactions among individuals, organizations, and institutions.”³⁰⁹ Communication, particularly verbal, is an important public interest because the alternative—being referred to by a number—would be dehumanizing and oppressive.³¹⁰

More specifically, the Illinois General Assembly enacted the ten-year waiting period and the permanent bars for sex crimes out of a concern for people required to register as sex offenders who could circumvent the community notification requirement by changing their legal names.³¹¹ One study estimates that nationally, one in six people convicted of sex offenses illegally manipulate their names, birthdays, and Social Security numbers to avoid registration requirements;³¹² however, the Illinois Attorney General reports that ninety-three percent of sex offenders are compliant with registration requirements.³¹³ Based on this data, Illinois might argue that it has a compelling interest in maintaining the permanent bars for sex crimes in order to protect the public from dangerous sex offenders who could change their legal names and then “live in the area and no one would know of their criminal background.”³¹⁴

The State may also posit that it has a compelling interest in maintaining accurate records of its residents, particularly criminal records. Regarding the permanent bars for people convicted of identity theft crimes, the State may argue that people convicted of identity theft are more likely to change their names for fraudulent purposes, and therefore, the State has an interest in preventing the public from such fraud.³¹⁵ Finally, regarding the ten-year waiting period for people convicted of all other felonies, the state may argue that it has an interest in maintaining accurate criminal records.

Like the statute at issue in *Barnette*, the means of Illinois’ name-change statute sweep too broadly because prohibiting people convicted of felonies, sex crimes, or identity theft crimes from changing their legal names is not necessary “to prevent grave and immediate

309. *Id.*

310. *Id.* at 322.

311. *See supra* notes 67–85 and accompanying text (discussing legislative history of criminal name-change restrictions that pertain to sex offenses).

312. *One in Six Sex Offenders Change Names to Avoid Registration: Study*, HUFFINGTON POST (July 26, 2012), http://www.huffingtonpost.com/2012/07/25/sex-offenders-change-identity-study_n_1703282.html.

313. *Keeping Communities Safe*, ILL. ATTORNEY GEN., <http://www.illinoisattorneygeneral.gov/communities/somb/registry.html> (last visited Aug. 12, 2016).

314. H.R. Debate Transcript, 110th Leg. Day, 89th Gen. Assemb., at 107 (Ill. 1996) (statement of Rep. Pedersen).

315. *See supra* notes 67–85 and accompanying text (discussing legislative history of criminal name-change restrictions that pertain to identity theft convictions).

danger” to the public.³¹⁶ The waiting period and permanent bars for sex crimes were enacted in the 1990’s because some Illinois House Representatives believed police maintained criminal records on the basis of a person’s name and date of birth.³¹⁷ Today, because more than one person can have the same name, law enforcement agencies maintain criminal records according to a fingerprint number unique to each individual, and not on the basis of names.³¹⁸ Police, employers, creditors, and other institutions can also locate a person’s criminal records by searching according to their Driver’s License number or Social Security number.³¹⁹

Further, when a person registers on the Sex Offender Registry, and for every year that they are required to register, they must submit a DNA sample, fingerprints, a recent photo, proof of current address, and several pieces of government-issued ID, thereby further enhancing the state’s ability to locate and identify them.³²⁰ While first and last names are displayed on the Sex Offender Registry, states like Vermont have demonstrated that both the state and the public can easily identify registered sex offenders even if they change their legal name.³²¹ In those states, notice of the name change is simply sent to the Registry, and the name change is granted if the Registry does not object.³²² Any of these procedures would be more than sufficient to prevent fraud and to maintain accurate records without barring name changes on the basis of criminal history.³²³

The ten-year wait period sweeps more broadly, encompassing countless non-sex-crime felony convictions, to which the logic of “protecting the public from predators” does not apply because it does not require sex offender registration. For example, a person convicted of felony retail theft or possession of cannabis would be subject to the same ten-year wait period as a person convicted of criminal sexual

316. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943), *overruled on other grounds* by *Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514 (11th Cir. 1993); *see* 735 ILL. COMP. STAT. 5/21-101 (2014).

317. H.R. Debate Transcript, 89th Gen. Assemb., 110th Leg. Day, at 107 (Ill. 1996) (statement of Rep. Pedersen).

318. In Illinois, one’s fingerprint number is called an “Internal Record Number” or “IR Number.” *Ransberry v. Dart*, No. 10-C-2911, 2014 WL 1052938, at *2 & n.4 (N.D. Ill. Mar. 19, 2014).

319. ILL. STATE POLICE INFO. & TECH. COMMAND BUREAU OF IDENTIFICATION, GUIDE TO UNDERSTANDING CRIMINAL BACKGROUND CHECK INFORMATION 8–10, 24, <http://www.isp.state.il.us/docs/chriguide.pdf> (last visited Jan. 24, 2017) [hereinafter *CRIMINAL BACKGROUND CHECKS*].

320. 730 ILL. COMP. STAT. 5/5-4-3 (2014).

321. VT. STAT. ANN. tit. 15, § 817 (West, Westlaw through Law No. 10 of the 2017 1st Sess.).

322. *Id.*

323. *Id.*

assault.³²⁴ Therefore, the means of this law are too broad and are not necessary to “prevent grave and immediate danger” to the public.³²⁵

The State may argue that there is a closer nexus between a conviction for identity theft and changing one’s legal name because identity theft is a crime of dishonesty and petitioners with identity theft convictions are more likely to change their names for fraudulent purposes, rather than for the legitimate purpose of self-expression.³²⁶ Permanently barring someone from changing their legal name is still not necessary to protect the public from people with identity theft convictions seeking fraudulent name changes. Two reasons support this assertion.

First, the name change process already sufficiently protects against fraudulent name changes without relying on criminal convictions: the name change petitioner must certify that everything in the petition is true and correct under penalty of perjury;³²⁷ the petitioner must publish notice of the petition for three consecutive weeks;³²⁸ anyone may object to the name change;³²⁹ and the judge is required to ask a petitioner’s reason for changing their name and make a determination of whether that reason is fraudulent.³³⁰

Second, only six states have permanent bars or waiting periods, and none of them include identity theft.³³¹ In nineteen other states, people with identity theft convictions are not required to disclose their convictions when petitioning for a name change.³³² In twenty-six other states—including Illinois’ neighboring States of Indiana, Michigan, Minnesota, and Wisconsin—people with identity theft convictions or any other criminal convictions are permitted to change their legal names, and notice of their name change is simply sent to law enforcement and prosecutors for record keeping purposes and to give them an opportunity to object to the name change.³³³ While sending

324. See, e.g., 720 ILL. COMP. STAT. 5/16-25(f)(1) (2014); Cannabis Control Act, 720 ILL. COMP. STAT. 550/5(c) (2014).

325. See *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943), *overruled on other grounds by Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514 (11th Cir. 1993).

326. See *supra* notes 67–85 accompanying text (describing legislative history of the identity theft clauses); see *supra* notes 307–15 and accompanying text (describing the state’s interests in names).

327. PETITION FOR CHANGE OF NAME, *supra* note 93.

328. 735 ILL. COMP. STAT. 5/21-103 (2014); *A Guide to Procedures*, *supra* note 90.

329. 735 ILL. COMP. STAT. 5/21-101 (as implied through notice).

330. *Id.* §§ 21-101 to -102; see *supra* notes 105–09 and accompanying text (describing the standard a judge must use to determine whether a name change is sought for the purpose of fraud).

331. See *supra* notes 133–40 and accompanying text (describing Group C states).

332. See *supra* notes 124–25 and accompanying text (describing Group A states).

333. See *supra* notes 126–32 and accompanying text (describing Group B states).

notice of a legal name change would require Illinois to adopt new procedures, a state cannot censure public expression merely because it causes “inconvenience, annoyance, or unrest.”³³⁴ These alternatives and procedural safeguards such as notice demonstrate that a lifetime bar to changing one’s legal name is not necessary to protect the public from people with identity theft convictions, even if they might be seeking fraudulent name changes. Therefore, all three of Illinois’ criminal name change restrictions are unnecessary to “prevent grave and immediate danger.”

Further, a person’s interest in expressing their identity through their name is too fundamental to be restricted for any reason because doing so violates their fundamental autonomy, “invades the sphere of intellect and spirit,” and restricts their ability to engage in a crucial process of self-definition.³³⁵ Forcing someone to use a name that does not reflect their identity fundamentally contradicts the two private interests in names: self-expression and identity-formation.³³⁶ Self-expression refers to a name’s role as a speech act: Names are a way for people to express who they are to others, including their gender, ethnicity, nationality, social status, religion, and kinship.³³⁷ Names are also important for “identity-formation,” which refers to a name’s function in describing and symbolizing an individual.³³⁸ While names express many of a person’s identities to others, they also inform that person’s sense of self with regard to those identities.³³⁹ Empirical studies have found links between one’s name and one’s personality, level of achievement, and mental health.³⁴⁰

For transgender people, names have even more significance.³⁴¹ Names help identify a transgender person’s gender to the world.³⁴² Outwardly expressing one’s gender when that gender is not the one that was assigned at birth, or the one that is commonly perceived by others, can be a very important, courageous, and often dangerous

334. *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

335. See David A. Richards, *Free Speech and Obscenity Law: Toward a Moral Theory of the First Amendment*, 123 U. PA. L. REV. 45, 62 (1975).

336. Kushner, *supra* note 37, at 318.

337. *Id.*

338. *Id.* at 324.

339. *Id.* at 322.

340. *Id.* at 345 (citing A. Arthur Hartman et al., *Unique Personal Names as a Social Adjustment Factor*, 75 J. SOC. PSYCHOL. 107, 107 (1968)); see also Avner Falk, *Identity and Name Changes*, 62 PSYCHOANALYTIC REV. 647, 651–53 (1975); Albert Mehrabian, *Interrelationships Among Name Desirability, Name Uniqueness, Emotion Characteristics Connoted by Names, and Temperament*, 22 J. APPLIED SOC. PSYCHOL. 1797, 1797 (1992).

341. TRANSGENDER 101, *supra* note 9.

342. *Id.*

act.³⁴³ When someone is transitioning from the gender they were assigned at birth to the gender with which they currently identify, choosing their new name is often one of the first steps in building their new identity that will be presented to the world.³⁴⁴

Given that transgender people typically choose new names in the beginning stages of their gender transitions, names carry unique weight in terms of identity-formation.³⁴⁵ Choosing a name that conforms with the gender with which one identifies is a literal act of identity-formation for many transgender people.³⁴⁶ For example, when a transgender woman chooses a traditionally feminine name for herself, she not only expresses to the world that she is a woman, but also internally affirms and develops her gender identity.³⁴⁷ The Court has determined that a state violates the First Amendment right to freedom of expression when it mandates that a man display the state motto on his license plate or requires a student to say the pledge of allegiance, so the state certainly violates that same right when it mandates a person's name—their very identity—based merely on that person's criminal history.³⁴⁸

The state statute that criminalized obstructions over the state motto on license plates in *Wooley* is analogous to Illinois' criminal name-change restrictions.³⁴⁹ In striking down the statute, the Court was particularly concerned with the fact that the law forced a man to use his mandatory state-issued license plate to display a message with which he did not identify.³⁵⁰ When the state of Illinois prohibits someone from changing their legal name for any reason—including criminal history—the state forces that person to use a name with which they do not identify on their state-issued ID cards.³⁵¹ A name is far more central to one's identity than a license plate.

Making matters worse, just as the *Wooley* Court noted that owning a license plate and driving a car are a “virtual necessity for most

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. TRANSGENDER 101, *supra* note 9.

348. *See, e.g.,* *Wooley v. Maynard*, 430 U.S. 705, 716–17 (1977); *City of Chicago v. Wilson*, 389 N.E.2d 522, 523–35 (Ill. 1978) (holding that a city ordinance criminalizing “cross dressing” violated transgender people’s First Amendment rights because it was “fundamentally inconsistent with ‘values of privacy, self-identity, autonomy, and personal integrity that . . . the Constitution was designed to protect’” (alteration in original) (quoting *Kelley v. Johnson*, 425 U.S. 238, 250–51 (1976))).

349. *Wooley*, 430 U.S. at 716–17.

350. *Id.*

351. *See* TRANSGENDER 101, *supra* note 9.

Americans,”³⁵² state-issued identity documents are required for driving, renting an apartment, enrolling in school, building credit, voting in elections, obtaining a job, obtaining medical insurance, applying for welfare, visiting the doctor, traveling by airplane, entering certain spaces like government buildings and bars, exiting and re-entering the country, and more.³⁵³ Additionally, non-government identification (ID) cards that people must use daily, like employee badges and student ID cards, typically display names based on the government-issued identity documents that were submitted to the employer or school.³⁵⁴

As a condition of living in society, everyone is forced to display, write, and utter their legal name on a daily basis.³⁵⁵ Illinois’ criminal name change restrictions force some transgender people to use a name that does not reflect their true gender identity. When a transgender person’s gender expression does not “match” the legal name on their identity documents, it can create a frustrating and sometimes embarrassing exchange between the person looking at the document and the person presenting it, as in the case of Tanya mentioned in the Introduction of this Comment.³⁵⁶ At worst, it can create an unsafe situation for the transgender individual.³⁵⁷

Transgender people become vulnerable to violence and discrimination on the basis of their legal names. In 2010 a transgender woman attempted to enter a bar and nightclub in Chicago with some friends.³⁵⁸ The security guard at the door asked her for identification, and in front of a large line of people the guard announced that the ID displayed a masculine name, and asked the woman if she was “a woman or a man or a faggot.”³⁵⁹ The guard did not allow her in because he “did not know which bathroom [she] would use.”³⁶⁰ The other customers waiting in line outside who overheard the conversa-

352. *Wooley*, 430 U.S. at 715.

353. *See Spade, supra* note 17, at 734; *see also* TRANSGENDER 101, *supra* note 9.

354. *See Spade, supra* note 17, at 733–34.

355. *See id.*

356. *See supra* notes 1–8 and accompanying text (describing a common situation involving a hypothetical transgender woman, named Tanya, who was denied food stamps because of her identity document); *see also* SPADE, *supra* note 20, at 144.

357. *See* SPADE, *supra* note 20, at 146; TRANSGENDER 101, *supra* note 9.

358. *Manzanares v. Lalo’s Rest.*, No. 10-P-18 (City of Chi. Comm’n on Hum. Relations May 16, 2012). In this case, the City of Chicago Commission on Human Relations held that a restaurant violated the Chicago Human Rights Ordinance, which prohibits discrimination on the basis of gender identity or expression, when it excluded a transgender woman on the basis of a state ID that did not reflect her true gender identity. *Id.* The restaurant was ordered to pay a \$500 fine to the City and \$6,000 in damages to the complainant. *Id.*

359. *Id.* at 2–3.

360. *Id.* at 3.

tion began jeering slurs and threatening the woman until she left.³⁶¹ Experiences like this one are commonplace for transgender people who lack government ID that accurately reflects their names and genders, and they can often escalate into physical violence and possibly even death.³⁶²

The Defendant in *Wooley* was not subjected to anything nearly as grave when the New Hampshire statute forced him to display the state motto on his license plate, yet the Court still found that the state statute violated his First Amendment right to freedom of expression.³⁶³ When the state of Illinois mandates a transgender person's legal name, it not only censors that person's beliefs, ideas, and emotions, but it invalidates their very identity—and potentially puts them at risk of violence as a result. Therefore, the Illinois criminal name change restrictions “broadly stifle fundamental personal liberties” and violate the First Amendment right to freedom of expression.³⁶⁴

Having autonomy over one's name should be considered a fundamental right under the First Amendment because naming oneself is a literal act of identity formation and self-determination—particularly for transgender people—which the First Amendment was intended to protect.³⁶⁵ The name change process is the first step a transgender individual must take to obtain documents that better fit their identity and gain access to the spaces and resources listed above.³⁶⁶ When a transgender person is granted a legal name change, that person then has a greater ability to live as their true self, to accomplish their goals, and to live with less fear and hesitation.³⁶⁷ Unfortunately, thousands transgender people in Illinois find themselves unable to live as their true identities because of criminal restrictions on changing their legal names.³⁶⁸ Practically speaking, while anyone can simply start using a new name without petition to the government, that person would still be forced to use their legal name throughout the day to function in modern society.³⁶⁹ A person's interest in such a fundamental form of expression cannot be overridden by the state because, in the words of Justice Marshall, “[t]o suppress expression is to reject the basic human

361. *Id.* at 3–4.

362. See SPADE, *supra* note 20, at 146; TRANSGENDER 101, *supra* note 9.

363. *Wooley v. Maynard*, 430 U.S. 705, 716–17 (1977).

364. *Id.* at 716.

365. See TRANSGENDER 101, *supra* note 9; see also Kushner, *supra* note 37, at 317–18.

366. See TRANSGENDER 101, *supra* note 9.

367. *Id.*

368. See *supra* note 16 and accompanying text (estimating the number of transgender people impacted by criminal name-change restrictions).

369. 735 ILL. COMP. STAT. 5/21-105 (2014) (“Common law name changes adopted in this State on or after July 1, 2010 are invalid.”).

desire for recognition and affront the individual's worth and dignity."³⁷⁰

B. *Due Process and the Fundamental Privacy Right in Names*

Illinois' criminal name-change restrictions violate the Due Process Clause of the Fourteenth Amendment. Substantive Due Process review has been used to protect fundamental rights, including privacy interests.³⁷¹ The Court has used two approaches to protect privacy interests.³⁷² The conservative approach asks whether the interest is a fundamental right "deeply rooted in [the nation's] history and traditions, or so fundamental to. . . [the] concept of ordered liberty."³⁷³ The liberal approach is to ask whether that interest is "central to personal dignity and autonomy or is at the heart of liberty."³⁷⁴ If a state law impinges upon a fundamental right under one of these tests, then the Court uses strict scrutiny to analyze the constitutionality of that law.³⁷⁵ To satisfy strict scrutiny, a state law must be a "necessary" means of achieving a "compelling" governmental interest.³⁷⁶

The criminal name-change restrictions of the Illinois name-change statute would trigger strict scrutiny under both the conservative and liberal approaches of substantive due process review because they impinge upon the First Amendment right to determine one's name established in the preceding section, and they impinge upon a fundamental privacy right.³⁷⁷

First, under the liberal standard of review, the ability to control one's name is certainly "central to personal dignity and autonomy" because names are crucial to the private interests of identity-formation and expression, particularly for transgender people.³⁷⁸ Illinois' criminal name-change restrictions diminish autonomy because choos-

370. *Procunier v. Martinez*, 416 U.S. 396, 427 (1974) (Marshall, J., concurring), *overruled by Thornburgh v. Abbott*, 490 U.S. 401 (1989).

371. *See, e.g., Carey v. Population Serv. Int'l*, 431 U.S. 678, 684 (1977); *Roe v. Wade*, 410 U.S. 113, 164 (1973); *Eisenstadt v. Baird*, 405 U.S. 438, 453–54 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 481–82 (1965); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 544 (1942); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 533–34 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

372. Kushner, *supra* note 37, at 343.

373. *Washington v. Glucksberg*, 521 U.S. 702, 720–21, 727 (1997); Kushner, *supra* note 37, at 343.

374. Kushner, *supra* note 37, at 343.

375. *Id.* at 343 & n.156.

376. *Id.* at 343.

377. *See id.* at 346.

378. *See supra* notes 341–47 and accompanying text (explaining the significance of names for transgender people).

ing a name that conforms with the gender with which one identifies is a literal act of gender identity-formation for many transgender people.³⁷⁹ The criminal name-change restrictions impinge upon the dignity of transgender people with felony convictions by forcing them to “out” themselves—an extreme invasion of privacy—to employers, schools, banks, and other institutions that require proof of identity documentation, making them vulnerable to discrimination and violence.³⁸⁰ Some courts have held that transgender people have a constitutionally protected privacy right to maintain the confidentiality of their identities both as a form of medical privacy, and due to the risk of “hostility and intolerance from others.”³⁸¹

It is true that people with felony convictions are generally considered to have diminished privacy interests because they are outweighed by the state interest in preserving public safety, but the ability to control one’s name does not become any less “central to personal dignity and autonomy” simply because one has been convicted of a crime.³⁸² As previously argued, the right to name oneself is so central to personal autonomy that it should qualify as a fundamental First Amendment right.³⁸³ Further, courts have extended the right to privacy in one’s transgender identity to prisoners, where inmates typically have limited privacy expectations.³⁸⁴ Thus, the right to name oneself is “central to personal dignity and autonomy” and is a fundamental privacy interest under the liberal approach.³⁸⁵

Second, under the conservative approach, the right to name oneself would also qualify as a fundamental privacy interest because the ability to control one’s name free of criminal restrictions is “deeply rooted in [the] Nation’s history and tradition.”³⁸⁶ When the Court applied the conservative approach in *City of Cleveland* to strike down an ordinance restricting occupancy to nuclear families, it noted that living arrangements involving extended family members date back to the

379. TRANSGENDER 101, *supra* note 9.

380. *See supra* notes 7–8, 22–23 and accompanying text (explaining how transgender people can be outed on the basis of their legal name as displayed on identity documents, and the potentially disastrous results); *see also* GRANT ET AL., *supra* note 14, at 5 (describing results of study in which transgender people reported discrimination and violence on the basis of identity documents).

381. *See, e.g.*, *Powell v. Schriver*, 175 F.3d 107, 111–12 (2d Cir. 1999).

382. *See* Kushner, *supra* note 37, at 343.

383. *See supra* notes 200–19 and accompanying text (arguing that the right to name oneself is a fundamental right under the First Amendment).

384. *Powell*, 175 F.3d 107, at 112–13.

385. *See* Kushner, *supra* note 37, at 344.

386. *Washington v. Glucksberg*, 521 U.S. 702, 720–21; Kushner, *supra* note 37, at 343.

founding of the country.³⁸⁷ Name-change statutes did not exist until the mid nineteenth century, and anyone could change their name with relative ease until the criminal restrictions were passed in the “tough-on-crime” era of the 1990s.³⁸⁸ Thus, for the majority of this nation’s history, people with criminal convictions were allowed to change their names without even petitioning the court, and have only been explicitly restricted from changing their names for about twenty years.³⁸⁹

Further, permanently barring a name change on the basis of a criminal conviction is by no means “essential to the concept of ordered liberty” because only six states have name change felony wait periods or permanent bars, nineteen states do not consider criminal records at all in name change proceedings, and many states even continue to recognize the common law approach to changing one’s name.³⁹⁰ Clearly the majority of American courts have deemed that public policy is furthered by not considering prior criminal acts. Therefore, the ability to control one’s name free of restrictions based on criminal history qualifies as a fundamental privacy right under the conservative approach.³⁹¹

Strict scrutiny is required to analyze the constitutionality of the law under substantive due process review because Illinois’ criminal name-change restrictions impinge upon a fundamental privacy right under both the liberal and conservative approaches and the law impinges upon a fundamental First Amendment right.³⁹² The next issue is whether the criminal name-change restrictions are a necessary means of achieving a compelling government interest.³⁹³

The government interests in maintaining the restrictions are the two public functions of names described in the preceding Section: identification and communication.³⁹⁴ The state of Illinois may also contend that it has a compelling interest in maintaining public safety through

387. *Moore v. E. Cleveland*, 431 U.S. 494, 507–08 (1977).

388. *See supra* notes 37–58 and accompanying text (discussing the historical development of name change restrictions).

389. *See supra* notes 67–85 and accompanying text (discussing legislative history of criminal name-change restrictions that pertain to identity theft convictions).

390. *See, e.g.*, Cal. Civ. Proc. § 1279.5(a) (West, Westlaw through ch. 9 of 2017 Reg. Sess.) (discussing common law name change); *see supra* notes 124–25, 133–40 and accompanying text (describing states in Groups A and C); *see also* Kushner, *supra* note 37, at 328 & n.79 (listing states that have explicitly abrogated common law name changes).

391. *Glucksberg*, 521 U.S. at 756; Kushner, *supra* note 37, at 346–47.

392. Kushner, *supra* note 37, at 352.

393. *Id.* at 350–51.

394. *See supra* note 307 and accompanying text.

surveillance of people with certain convictions,³⁹⁵ preventing fraud,³⁹⁶ and maintaining accurate, consistent criminal records.³⁹⁷

Even if these government interests are “compelling,” neither a ten-year wait period nor a permanent bar is necessary to achieve those interests. Again, in this technological age of surveillance, the state easily and routinely identifies residents through Social Security numbers, driver’s license numbers, and more, rather than on the basis of names.³⁹⁸ In Illinois, criminal records are maintained on the basis of a number assigned to each person’s fingerprint; records are no longer kept on the basis of name and date of birth as they were in 1990s when the ten-year wait period and permanent bars based on sex crime convictions went into effect.³⁹⁹ When people register for the Sex Offender Registry, they are required to submit a DNA sample, fingerprint, and a host of other unique identifying information.⁴⁰⁰ Further, as a broad practice in Illinois and among many other states, changing one’s legal name requires publishing notice of the name change for a number of weeks, which creates a public record of the name change and can assist the state in maintaining accurate and consistent records.⁴⁰¹ Finally, a majority of states do not have any name change bars or wait periods, so these restrictions are not necessary to preserve accurate records and protect public safety.⁴⁰² Thus, the means of this law are not necessary to achieve the ends.

Therefore, Illinois’ criminal name-change restrictions violate the Due Process Clause of the Fourteenth Amendment.⁴⁰³ This law requires strict scrutiny analysis because it substantially burdens a fundamental First Amendment right and a fundamental privacy right, particularly for transgender people.⁴⁰⁴ The means of this law are not necessary to achieve compelling government interests, so it must fail the strict scrutiny substantive due process review. The Due Process Clause of the Fourteenth Amendment was intended to prohibit the government from doing exactly what the Illinois criminal name-

395. See *supra* notes 307–15 and accompanying text (discussing state interests in names).

396. See *supra* notes 67–85 and accompanying text (discussing legislative history of criminal name-change restrictions that pertain to identity theft convictions).

397. Kushner, *supra* note 37, at 318.

398. Spade, *supra* note 17, at 731–32; see SPADE, *supra* note 20 at 146.

399. CRIMINAL BACKGROUND CHECKS, *supra* note 319, at 8.

400. 730 ILL. COMP. STAT. 5/5-4-3 (2014)

401. 735 ILL. COMP. STAT. 5/21-101 (2014); see *A Guide to Procedures*, *supra* note 90.

402. See *supra* notes 60–148 and accompanying text (comparing criminal name-change restrictions among the fifty states).

403. Kushner, *supra* note 37, at 342–43.

404. See *supra* notes 192–297 and accompanying text (discussing how criminal name-change restrictions burden fundamental rights under liberal and conservative approaches).

change restrictions do: violate the fundamental dignity of a marginalized minority group. It must be abolished.

C. *Equal Protection and Preventing Second-Class Citizenship*

The criminal restrictions contained in Illinois' name change statute violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.⁴⁰⁵ Like the Due Process Clause, the Equal Protection Clause was intended to protect fundamental rights, particularly for politically disempowered minority groups, by requiring the government to treat similarly situated people similarly.⁴⁰⁶ The Court has developed three tiers of scrutiny which it applies depending on the classifications involved: strict scrutiny has traditionally been applied to classifications based on laws that impinge upon fundamental rights, intermediate scrutiny to classifications based on gender, and minimal scrutiny to classifications based on felony convictions.⁴⁰⁷

The restrictions in Illinois' name-change statute apply to three classifications of people: (1) people with any felony convictions; (2) people convicted of identity theft crimes; and (3) people convicted of sex crimes.⁴⁰⁸ While the nature of these classifications may appear to be facially neutral, the criminal justice data suggests otherwise.⁴⁰⁹ Racist policing practices and disproportionate rates of poverty cause these classifications to disproportionately include transgender people of color. This is not to say that the Illinois General Assembly, when they passed the criminal name-change restrictions consciously set out to penalize this group in particular;⁴¹⁰ however, Illinois' criminal name-change restrictions impinge upon the fundamental rights of a politically marginalized group—namely, transgender women of color.⁴¹¹

Illinois' criminal name change restrictions should be subject to strict scrutiny because they impinge upon a proposed fundamental First Amendment right to autonomy over one's name and identity, which in turn is contributing to the creation of a permanent caste system.⁴¹² Identity documents are required in order to access education, employ-

405. U.S. CONST. amend. XIV, § 1.

406. Goldberg, *supra* note 247, at 485 & n.14.

407. See *supra* notes 252–97 and accompanying text (discussing three tiers of Equal Protection scrutiny).

408. 735 ILL. COMP. STAT. 5/21-101 (2014).

409. See *supra* notes 171–91 and accompanying text (providing statistics on disparate impact of incarceration on communities of color).

410. See *supra* notes 67–85 and accompanying text (describing legislative history of Illinois' criminal name-change restrictions, wherein transgender people are not mentioned at all).

411. See *supra* notes 192–297 and accompanying text (describing how criminal name-change restrictions impinge upon fundamental privacy and expressive rights of transgender people).

412. See *supra* notes 335–47 and accompanying text (describing private interests in names).

ment, certain buildings, and travel, among others.⁴¹³ While the Court has held that there is no fundamental right to education, it has stated that access to education has a “fundamental role in maintaining the fabric of society.”⁴¹⁴ Because these restrictions force transgender people with criminal convictions to “out” themselves as transgender, rendering them vulnerable to discrimination and violence in contexts where identity documents are required, Illinois’ name-change statute creates significant barriers to living a safe, stable, and fulfilling life for many transgender people.⁴¹⁵

For people subject to the permanent bars, these barriers can last a lifetime.⁴¹⁶ Illinois’ criminal name-change restrictions thus help create a permanent caste of transgender people of color who are locked out of formal education, employment, housing, and countless other opportunities that are fundamental to living in a free democratic society.⁴¹⁷ The Equal Protection clause was intended to prevent exactly this kind of permanent caste system, and thus strict scrutiny should be applied.⁴¹⁸

Additionally, Illinois’ criminal name-change restrictions impinge upon the fundamental right to vote by rendering transgender people who are unable to change their legal names vulnerable to discrimination at the polls.⁴¹⁹ While voters in Illinois are generally not required to present ID at the polls in order to vote, early voters and new voters who did not provide identification when they initially registered may be required to present ID at the polls.⁴²⁰ When a transgender person’s legal name on their ID does not “match” their gender presentation, they are often harassed, accused of lying, or forced to leave the polling location where they presented their ID.⁴²¹ While there have been no empirical studies of whether this occurs in Illinois, the plural-

413. SPADE, *supra* note 20, at 146.

414. *Plyler v. Doe*, 457 U.S. 202, 221 (1982), *superseded by statute as recognized in Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005), *aff’d sub nom. Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007).

415. QUICK GUIDE, *supra* note 20 (explaining how transgender people can be outed on the basis of their legal name alone regardless of their legal gender marker).

416. See 735 ILL. COMP. STAT. 5/21-101 (2014).

417. See *Plyler*, 457 U.S. at 202, 230 (concerning the statute that threatened to create permanent caste violated Equal Protection); see also GRANT ET AL., *supra* note 14, at 5 (discussing the effects of identity documents that do not match one’s appearance); QUICK GUIDE, *supra* note 20.

418. *Plyler*, 457 U.S. at 221–22; Goldberg, *supra* note 247, at 509–10.

419. See *supra* notes 248–97 and accompanying text (describing fundamental rights branch of Equal Protection jurisprudence).

420. 10 ILL. COMP. STAT. 5/1A-16(a)(3) (2014).

421. See *supra* notes 19–21 and accompanying text (listing statistics regarding discrimination on the basis of ID); see also *Love v. Johnson*, 146 F. Supp. 3d 848, 855 (E.D. Mich. 2015) (concerning a transgender petitioner who was publically outed and embarrassed after presenting ID

ity in *Crawford v. Marion County Election Board* did not require Indiana to prove that in-person voter fraud had ever occurred when the Court upheld its voter ID law.⁴²² Thus, the strong possibility that Illinois' criminal name-change restrictions may impinge upon transgender people's access to the polls should be sufficient to trigger strict scrutiny.

Under strict scrutiny, the state's statutory classification must be a "necessary" means of achieving a "compelling" government interest.⁴²³ Illinois' interests in maintaining the name change felony wait period and the permanent bars based on sex crimes include protecting the public from convicted sex offenders, and maintaining accurate records of state residents.⁴²⁴ Illinois' interest in maintaining the permanent bars based on identity theft crimes is to prevent fraudulent name changes.⁴²⁵ The Court would likely consider these state interests to be "compelling" because Illinois' interest in protecting the public by keeping accurate criminal records would fall under the state's police powers.⁴²⁶

The means of Illinois' criminal name-change restrictions are, however, vastly overbroad for achieving these goals because Illinois can maintain accurate criminal records without restricting name changes—for example, by sending notice of the name change to law enforcement agencies, the Sex Offender Registry, and prosecutors' offices, as many other states do.⁴²⁷ Further, the permanent bars for identity theft convictions are overbroad because Illinois' name change procedures already sufficiently guard against fraudulent name changes.⁴²⁸ Finally, the ten-year name change felony wait period is both over inclusive and under inclusive for achieving the government interests involved. This portion of the statute is over inclusive because it restricts people convicted of crimes that have nothing to do with sex

at polling location, and other transgender petitioners who were embarrassed and accused of lying after presenting ID at retail stores and bars).

422. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 202–03 (2008).

423. Goldberg, *supra* note 247, at 496, 500–01.

424. *See supra* notes 307–15 and accompanying text (describing the state's interests in names).

425. *See supra* notes 67–85 and accompanying text (describing legislative history of the identity theft clauses).

426. *See Plyler v. Doe*, 457 U.S. 202, 217–20 (1982), *superseded by statute as recognized in Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005), *aff'd sub nom. Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007).

427. *See supra* notes 34–148 and accompanying text (showing a cross-state comparison of name-change statutes).

428. *See supra* notes 326–34 and accompanying text (listing existing procedural safeguards against fraud).

or fraud (e.g., drug felonies), from changing their legal names.⁴²⁹ It is under inclusive because even if someone is convicted of a non-identity-theft crime involving dishonesty or fraud (e.g., passing bad checks),⁴³⁰ that person would only be restricted from changing their legal name for ten years, compared to the lifetime ban for people convicted of identity theft.⁴³¹

Thus, even if Illinois' interests in preventing fraudulent name changes and keeping accurate criminal records are "compelling," restricting someone's access to a legal name change for life—or even for ten years—is not a "necessary" means of achieving those goals. Illinois' criminal name-change restrictions fail under Equal Protection strict scrutiny because the state's interests in protecting the public from fraud and sexual violence do not justify relegating an already politically powerless group to a permanent second-class status. The right to determine one's name free of governmental restrictions is simply too fundamental.

Alternatively, intermediate scrutiny could be applied to Illinois' criminal name change restrictions and they would still violate the Equal Protection Clause. Names are a reflection of one's inner identity—in particular, their gender identity.⁴³² Names convey a person's gender to such an extent that a transgender person can be "outed" on the basis of their legal name alone, regardless of their legal gender marker as listed on their ID.⁴³³ When Illinois prohibits people with certain criminal convictions from changing their legal names, the state in effect, mandates the gender that person must present to their employer, school, and any other institution that must verify their identity.⁴³⁴ Therefore, Illinois' name-change statute involves classifications based on gender, and intermediate scrutiny would be appropriate.⁴³⁵

Under intermediate scrutiny, the state has the burden of proving that a statutory classification serves "important" government objectives, and that the means employed are "substantially" related to

429. 735 ILL. COMP. STAT. 5/21-101 (2014).

430. 720 ILL. COMP. STAT. 5/17-1(B) (2014).

431. 735 ILL. COMP. STAT. 5/21-101.

432. See *supra* notes 335–47 and accompanying text (describing private interests in names and their role in gender expression).

433. See *supra* notes 1–8 and accompanying text (describing a common situation involving the hypothetical Tanya, a transgender woman who was denied food stamps on the basis of her identity document).

434. SPADE, *supra* note 20, at 144–45.

435. SULLIVAN & FELDMAN, *supra* note 256, at 715 (noting that the Court applies intermediate scrutiny to gender classifications).

those objectives.⁴³⁶ If Illinois' interests in its criminal name-change restrictions would likely be considered "compelling" under strict scrutiny, they would also likely be considered "important" under intermediate scrutiny because it is a lower standard.⁴³⁷ However, the means of achieving those objectives are not "substantially" related because they are both over-inclusive and under-inclusive, as argued above.⁴³⁸

Further, the Court in *United States v. Virginia* noted that the men-only military academy was the only institution of its kind in the state, and the women-only alternative was inferior in terms of the quality of education; on this basis, the state could not justify excluding women from the academy.⁴³⁹ Similarly, the state of Illinois has the sole authority over how people assume a new name, because in practice the only way to assume a new name is by petitioning the court through the established statutory scheme.⁴⁴⁰ Illinois cannot justify barring people with certain convictions from the only means of changing their name on the overbroad grounds that they might seek a fraudulent name change or seek to avoid sex offender registration, because the name change process already sufficiently protects against fraudulent name changes without relying on criminal convictions. Therefore, Illinois' criminal name change restrictions are not "substantially" related to its goals of preventing fraudulent name changes and keeping accurate criminal records, and they fail under intermediate scrutiny.

While the Court has historically applied minimal scrutiny to classifications based on felony status, Illinois' criminal name-change restrictions are distinguishable from that line of cases, and minimal scrutiny analysis is not appropriate here.⁴⁴¹ In *Richardson*, the Court recognized that felon disenfranchisement laws directly and severely encroach upon the fundamental right to vote.⁴⁴² However, the Court applied minimal scrutiny and upheld the laws because the Fourteenth Amendment expressly permits felon disenfranchisement.⁴⁴³ By contrast, the Constitution does not expressly permit states to restrict one's ability to name oneself on the basis of criminal convictions.⁴⁴⁴ In fact,

436. *Craig v. Boren*, 429 U.S. 190, 197 (1976).

437. SULLIVAN & FELDMAN, *supra* note 256, at 715.

438. *See supra* notes 427–31 and accompanying text.

439. *United States v. Virginia*, 518 U.S. 515 (1996).

440. 735 ILL. COMP. STAT. 5/21-105 (2014) ("Common law name changes adopted in this State on or after July 1, 2010 are invalid."); *see* NAME CHANGE 101, *supra* note 58; *see also* TRANSFORMATIVE JUSTICE LAW PROJECT OF ILL., CHANGING YOUR LEGAL NAME IN COOK COUNTY, ILLINOIS, <http://tjlp.org/services/online-resources/> (last visited Jan. 30, 2017).

441. *See, e.g., Richardson v. Ramirez*, 418 U.S. 24, 33 (1974).

442. *Id.* at 52, 54.

443. *Id.* at 54–56.

444. Kushner, *supra* note 37, at 348–49.

when the Fourteenth Amendment was framed, name-change statutes did not exist yet; anyone could easily change their name via the common law tradition at the time, such restrictions would have sounded completely alien to the framers of this Amendment.⁴⁴⁵ Therefore, the reasoning from *Richardson* does not apply to Illinois' criminal name change restrictions, and minimal scrutiny is not an appropriate test of their constitutionality.

Further, Illinois' criminal name change restrictions are distinguished from other collateral consequence legislation to which courts have applied minimal scrutiny. The Court has traditionally applied minimal scrutiny in this line of cases because it found no fundamental right to employment, food, shelter, or government benefits.⁴⁴⁶ By contrast, Illinois' criminal name-change restrictions interfere with the fundamental First Amendment right to name oneself,⁴⁴⁷ as well as the fundamental right to vote.⁴⁴⁸ Courts have applied strict scrutiny to statutory restrictions based on felony status when the law impinges upon a fundamental right.⁴⁴⁹ Therefore, minimal scrutiny should not be applied here.

Even if minimal scrutiny were applied to Illinois' criminal name-change restrictions, the restrictions fail the test because the means of the law are not reasonably related to reasonable state interests.⁴⁵⁰ Some courts have invalidated criminal restrictions on employment under minimal scrutiny when those restrictions "fail to recognize the obvious differences in fitness and character," such that the restriction is not reasonably tailored to the required job skills and to the legislative goal of protecting "social and moral welfare."⁴⁵¹ For example, in *Schanuel v. Anderson*, the Seventh Circuit upheld an Illinois state law requiring people convicted of a "felony or crime of moral turpitude" to wait ten years until they become eligible to work as armed security guards, reasoning that the law rationally promotes social and moral

445. See *supra* notes 37–58 and accompanying text (describing common law tradition of changing one's name and history of name-change statutes).

446. See *supra* notes 290–95 and accompanying text (listing other cases in which courts have upheld collateral consequences of convictions).

447. See *supra* notes 301–70 and accompanying text (arguing name change restrictions impinge on fundamental First Amendment rights).

448. See *supra* notes 264–73 and accompanying text (arguing name change restrictions impinge on fundamental right to vote).

449. See, e.g., *In re D.W.*, 827 N.E.2d 466, 481, 485 (Ill. 2005) (denying mother parental rights based on criminal convictions triggered strict scrutiny because the family is deeply rooted).

450. *Richardson v. Ramirez*, 418 U.S. 418, 24, 33 (1974); *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955).

451. See *Schanuel v. Anderson*, 708 F.2d 316, 320 (7th Cir. 1983) (citing *Smith v. Fussenich*, 440 F. Supp. 1077 (D. Conn. 1977)).

welfare because the Act prevents potentially dangerous people from accessing deadly weapons.⁴⁵² Illinois’ blanket criminal name-change restrictions do not allow courts to consider individual “fitness and character” at all; even if it did, a person with a criminal conviction cannot threaten “social and moral welfare” by using a valid, government-issued ID that reflects a new legal name—particularly if police agencies have records of the name change.⁴⁵³ If anything, carrying an ID that accurately reflects one’s name and gender reduces the likelihood of violence and confusion for society as a whole.⁴⁵⁴

Additionally, the means of this law are vastly under inclusive if the purpose is to protect the public from fraud and from sex offenders.⁴⁵⁵ For example, a person changing their name by marriage or divorce may, pursuant to Illinois’ Marriage and Dissolution Act, change their name regardless of felony status.⁴⁵⁶ There is no reasonable basis upon which to permanently bar a person with an identity theft or sex crime conviction from adopting a new name that is more in line with their actual identity, yet permit that same person to change their name for the reason of marriage.⁴⁵⁷ A person with a sex crime or identity theft conviction does not become less dangerous or more trustworthy simply because they are getting married. Other collateral consequences that courts have upheld under minimal scrutiny have not contained an exception as arbitrary and attenuated as marriage, and therefore the means of this law are not reasonably related to reasonable state interests.⁴⁵⁸ Further, the marriage exception offends the very core of the Equal Protection Clause because it arbitrarily treats similarly situated people differently.⁴⁵⁹

The Illinois criminal name-change restrictions fail under strict, intermediate, and minimal scrutiny Equal Protection analysis. This law encroaches upon the fundamental rights to self-definition and to access certain resources and institutions needed to survive in the mod-

452. *Id.*

453. *See supra* notes 126–32 and accompanying text (describing Group B states).

454. SPADE, *supra* note 20, 144–45; *see* GRANT ET AL., *supra* note 14, at 139 (discussing how incidents of violence are more likely when someone’s ID does not accurately reflect their name and gender).

455. *See supra* notes 67–85 and accompanying text (describing legislative history of criminal name-change restrictions with regards to sex crime convictions).

456. Illinois Marriage & Dissolution Act, 750 ILL. COMP. STAT. 5/413 (2014).

457. *Id.*

458. *See* Kushner, *supra* note 37, at 340. *But see* ARK. CODE ANN. § 12-12-906 (West, Westlaw through May 4, 2017 of the 2017 1st Extraordinary Sess.) (allowing people required to register as sex offenders to change name for reason of marriage).

459. Goldberg, *supra* note 247, at 485.

ern world.⁴⁶⁰ Those who are impacted by these restrictions, particularly transgender people of color, suffer egregious harms as a result of being forced to keep names that do not reflect their true identities.⁴⁶¹ This is exactly the type of harm that the framers of the Fourteenth Amendment intended to prevent when they wrote the Equal Protection Clause, and the criminal name-change restrictions must be abolished.⁴⁶²

D. Public Policy

Finally, the criminal name-change restrictions should be abolished on public policy grounds. In practice, these restrictions create inconsistencies with Illinois legislation that mitigates the negative collateral consequences of criminal records.⁴⁶³ Further, they are a devastating consequence of mass incarceration and must be abolished as part of a larger goal of dismantling systems of criminalization.⁴⁶⁴

1. Practical Inconsistencies with Illinois Sealing Legislation

The first criminal restrictions were added to Illinois' name-change statute in the early 1990s, when Congress and state legislatures routinely passed "tough on crime" laws as a response to a perceived but mythological increase in crime rates.⁴⁶⁵ Since then, circumstances in Illinois have changed significantly and the criminal name-change restrictions are out of step with current Illinois laws.⁴⁶⁶ For example, since the Illinois General Assembly passed the criminal name change restrictions, Illinois has passed numerous expansions of sealing laws, recognizing a need to mitigate the collateral consequences of criminal convictions.⁴⁶⁷ A sealed criminal record does not appear on most criminal background checks for employment, housing, and other private institutions, which prevents discrimination on the basis of that

460. See also GRANT ET AL., *supra* note 14, at 5 (describing results of study in which transgender people reported discrimination and violence on the basis of identity documents).

461. See *Plyler v. Doe*, 457 U.S. 202, 221 (1982), *superseded by statute as recognized in Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005), *aff'd sub nom. Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007).

462. See Goldberg, *supra* note 247, at 485.

463. Criminal Identification Act, 20 ILL. COMP. STAT. 2630/1 to /14 (2014).

464. See *supra* notes 151–91 and accompanying text (providing overview of mass incarceration).

465. See *supra* notes 164–70 and accompanying text (providing examples of tough on crime legislation).

466. See *supra* notes 114–48 and accompanying text (providing comparison of name change laws across all fifty states).

467. 20 ILL. COMP. STAT. 2630/5.2.

record.⁴⁶⁸ The name-change felony wait period runs contrary to those laws by continuing to punish people with felony convictions well after they have completed their sentences, and in some cases, after they have become eligible to seal that conviction.⁴⁶⁹

For example, consider a person who was convicted in 2015 of class-four felony possession of marijuana: They are sentenced to the maximum of three years in prison, and then serve a subsequent sentence of one year Mandatory Supervised Release, so the latest they would finish their sentence would be 2019.⁴⁷⁰ Provided that this person has not been convicted of any more crimes, under the Illinois' Criminal Identification Act this person would be eligible to seal that conviction four years from the date of conviction, which in this example would be 2019.⁴⁷¹ However, that same person would not be eligible to change their legal name until ten years have elapsed from the termination of their sentence, which in this example would be 2029, ten years after they were eligible to seal the conviction.⁴⁷² While the sealed conviction may no longer appear on background checks, the same sealed conviction would prevent that person from changing their name.

The purpose of sealing law is to mitigate the collateral consequences of criminal convictions by not requiring people to disclose their criminal history to potential employers, landlords, and others, who may discriminate against them on that basis.⁴⁷³ More broadly, sealing laws function to ensure that criminal convictions stop posing a barrier to obtaining employment and housing at a certain point.⁴⁷⁴ The name-change felony wait period defeats that purpose because certain sealed convictions can continue to prevent transgender people from obtaining housing, employment, and government benefits due to discrimination on the basis of their legal name on identity documents.⁴⁷⁵

The public interest in preventing discrimination and violence on the basis of identity documents and mitigating the collateral consequences of criminal convictions require of the abolition of Illinois' criminal name-change restrictions. Sealing law recognizes the need to give

468. *Id.*

469. *Id.* (setting the maximum waiting period for sealing a felony conviction in Illinois at four years from the date of conviction).

470. Cannabis Control Act, 720 ILL. COMP. STAT. 550/5(c) (2014).

471. 20 ILL. COMP. STAT. 2630/5.2.

472. *Id.*

473. *Id.* §§ 1–14. See generally *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS INCARCERATION* (Marc Mauer & Meda Chesney-Lind eds., 2002).

474. See *INVISIBLE PUNISHMENT*, *supra* note 473.

475. *QUICK GUIDE*, *supra* note 20.

people second chances, and abolishing these restrictions would do just that.

2. *The Long-Term Necessity of Prison Abolition*

Illinois' criminal name-change restrictions are more than outdated and inconsistent with sealing laws—they are part of the devastating and unjust prison-industrial complex (PIC), and these restrictions should be abolished as part of an effort to ultimately end mass incarceration and criminalization of communities of color.⁴⁷⁶ This Comment uses the term PIC to refer to the systems of laws and institutions that drive mass incarceration, as well as the ideologies that see the use of prisons and policing in the United States as a “solution” to social, political, and economic problems such as poverty, violence, and discrimination.⁴⁷⁷ The PIC also encompasses collateral consequences of criminal convictions (like the name-change felony wait period), human rights violations, the death penalty, private prisons, police, courts, media, imprisonment of political prisoners, and the punishment of lawful dissent.⁴⁷⁸

Illinois' criminal name-change restrictions are only one of the many ways in which the state systemically disempowers marginalized communities through restrictions on what a person with a criminal record can and cannot do. In *The New Jim Crow*, Michelle Alexander, Associate Professor of Law at Ohio State University, argues that all arenas in which it is currently lawful to discriminate against a person on the basis of their criminal record (e.g., housing, employment, etc.) mirror the same arenas in which it was once lawful to discriminate on the basis of race under Jim Crow laws.⁴⁷⁹ Because people of color are disproportionately criminalized, and because businesses, landlords, and schools can lawfully discriminate against applicants based on their criminal records, Alexander argues that mass incarceration has functionally replaced Jim Crow in the lives of poor communities of color.⁴⁸⁰

Illinois' criminal name-change restrictions cause the transgender people who are subject to them to become vulnerable to transphobic discrimination on the basis of their identity documents, in addition to

476. See *supra* notes 151–91 and accompanying text (providing an overview of mass incarceration).

477. See DAVIS, *supra* note 151, 84–104 (defining the prison-industrial complex); see also *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/not-so-common-language/> (last visited Aug. 12, 2016).

478. DAVIS, *supra* note 151, at 84–104; see *What is the PIC?*, *supra* note 477.

479. ALEXANDER, *supra* note 163, at 55–58.

480. *Id.*

discrimination on the basis of their underlying conviction, in all the arenas that Alexander discusses: housing, employment, education, among others.⁴⁸¹ In this way, Illinois' criminal name-change restrictions are one face of the New Jim Crow, and must be abolished.

In the era of mass incarceration, it is imperative to link efforts to abolish collateral consequence laws, like Illinois' criminal name-change restrictions, with a long term vision of completely abolishing—not reforming—the PIC.⁴⁸² Prison abolition is a movement that aims to dismantle the PIC, and to build a world that has no need for prisons, jails, immigrant detention centers, military, police, judges, states attorneys, and parole officers.⁴⁸³ Abolitionists believe these institutions have direct historical ties to chattel slavery and imperialism, and are therefore inherently oppressive;⁴⁸⁴ therefore, the goal of abolition is not to “replace” prisons and police with some equivalent form of oppressive punishment or policing.⁴⁸⁵ Rather, the goal of abolition is to build a world where prisons and police are obsolete by addressing the root causes of violence and oppression in communities.⁴⁸⁶

Instead of reacting to violence and conflict with more police and more prisons, which do not make society safer but rather cause more violence and poverty,⁴⁸⁷ prison abolition begins with the fundamental

481. See SPADE, *supra* note 20, at 146–47.

482. Compare DAVIS, *supra* note 151, at 106 (arguing that movements to end the death penalty must be linked with strategies for prison abolition because “[t]he death penalty has coexisted with the prison” since its inception; likewise, collateral consequences reinforce the PIC by locking criminalized populations out of employment, housing, etc., which in many cases leads to them committing crimes of survival and become reincarcerated. In this way, collateral consequences and prisons are part of the same cycle, and efforts to abolish name change restrictions must be informed by and support larger movements to abolish the PIC as a whole), with SPADE, *supra* note 20, at 91 (stating that legal reform, by itself, is insufficient), and ANGELA DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 92 (2005) (“[T]he law cannot on its own create justice and equality.”).

483. See DAVIS, *supra* note 151, at 107 (discussing alternatives to criminal punishment that could render the PIC obsolete).

484. See *id.* at 22–39, 56 (discussing historical ties between modern PIC and chattel slavery); see also MOGUL ET AL., *supra* note 171, at 1–19 (discussing historical ties between modern PIC and colonialism); see also *id.* at 51–52 (noting that “Slave patrols were among the first state-sponsored police forces in the United States” and arguing that “their purpose, targets, and tactics have remained much the same.”).

485. DAVIS, *supra* note 151, at 107; see MOGUL ET AL., *supra* note 171, at 1–19, 51–52; William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL’Y 101, 145 n.190 (2006) (arguing the PIC cannot be replaced with a single alternative).

486. See SPADE, *supra* note 20, 196–197.

487. See Sudbury, *supra* note 189, 15–16 (discussing how prisons cause violence against transgender people); see also JAMIE BISSONETTE, *WHEN THE PRISONERS RAN WALPOLE: A TRUE STORY IN THE MOVEMENT FOR PRISON ABOLITION* 10 (2008) (arguing that prisons themselves are a root cause of violence and therefore must be abolished); Todd Clear, *The Effects of High*

question: Why do people cause harm in the first place, and how can we prevent that harm?⁴⁸⁸ In contrast with the popular notion that “criminals are bad people” who want to do harm, abolitionists believe that most people are criminalized because they are poor and commit certain crimes to survive, the root cause of which may be due to issues with mental health or addiction, or because they are re-enacting violence that has been perpetrated against them.⁴⁸⁹ In this way, abolitionists seek to humanize people with criminal backgrounds, and to empower them by chipping away at punitive systems that make their lives more unlivable.⁴⁹⁰ The ultimate goal of prison abolition is to eliminate all of those punitive systems and instead respond to harm with dialogue, healing, and restorative practices, and prevent harm in the first place by instituting free high-quality education, mental health and addiction treatment, community building and empowerment, universal healthcare, affordable housing and transportation, guaranteed income for all, access to food and water, redistribution of wealth, reparations, and more.⁴⁹¹

Imprisonment Rates on Communities, 37 CRIME & JUST. 97, 117–23 (2008) (explaining that prisons destabilize communities, cause more violence, and increase the chance of criminal behavior); Sasha Abramsky, *Toxic Persons*, SLATE (Oct. 8, 2010, 7:34AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2010/10/toxic_persons.html (prisons contribute to systemic poverty); James Hamblin, *Mass Incarceration Is Making Infectious Diseases Worse*, ATLANTIC (July 18, 2016), <http://www.theatlantic.com/health/archive/2016/07/incarceration-and-infection/491321/>; Keeanga-Yamahtta Taylor, *Fewer Police, Safer Communities?*, IN THESE TIMES (Nov. 10, 2015), <http://inthesetimes.com/article/18571/fewer-police-safer-communities> (arguing that fewer police would lead to less crime and violence); John Tierney, *Prison and the Poverty Trap*, N.Y. TIMES (Feb. 18, 2013), http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0 (discussing how prisons contribute to poverty); *We Can Have Safer Communities and Few People Behind Bars*, ACLU, <https://www.aclu.org/in-fographic/we-can-have-safer-communities-and-few-people-behind-bars> (last visited Aug. 12, 2016) (providing examples of states that have decreased incarceration rates and as a result decreased the rates of violent and property crimes).

488. See Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1207–08 (2015) (prison abolition aims to displace criminal laws by focusing on root causes).

489. DAVIS, *supra* note 151, at 112–13 (explaining that everyone has broken the law at some point, but certain people are more likely to be arrested, incarcerated, and labeled a “criminal” depending on their gender, race, and class); SPADE, *supra* note 20, 121–22 (arguing that people are more likely to commit crimes and be arrested if they live in a poor community or struggle with untreated mental health problems); M. Glasser et. al., *Cycle of Child Abuse: Links Between Being a Victim and Becoming a Perpetrator*, 179 BRITISH J. PSYCHIATRY 482, 488–91 (2001) (experiencing sexual trauma increases the likelihood of perpetrating sexual violence).

490. Sudbury, *supra* note 189, at 14.

491. *Id.*; see DAVIS, *supra* note 151, at 105–15; see also, e.g., Chyrsalis Collective, *Beautiful, Difficult, Powerful: Ending Sexual Assault Through Transformative Justice*, in THE REVOLUTION STARTS AT HOME: CONFRONTING INTIMATE VIOLENCE WITHIN ACTIVIST COMMUNITIES 189–205 (Ching-In Chen et al. eds., 2011) (illustrating how healing and transformative practices can address community violence without relying on the criminal legal system); Mychal Denzel Smith, *Abolish the Police. Instead, Let’s Have Full Social, Economic, and Political Equality*, NATION (Apr. 9, 2015), <https://www.thenation.com/article/abolish-police-instead-lets-have-full-so>

Until mass movements for prison abolition, led by non-lawyers,⁴⁹² can build a world without prisons, police, and collateral consequences of criminal convictions, lawyers can help reduce the harm of mass incarceration by practicing abolitionist lawyering.⁴⁹³ Abolitionist lawyering means practicing law in ways that directly empower and support those targeted by the PIC, without creating additional divisions between the perceived “deserving and undeserving.”⁴⁹⁴ Abolitionist activists differentiate between “reformist reforms” and “abolitionist reforms.”⁴⁹⁵ Reformist reforms might make the PIC at least appear to be less oppressive and more protective, while actually giving more resources, legitimacy, and power to the system.⁴⁹⁶ By contrast, aboli-

cial-economic-and-political-equality/ (listing alternatives to the police); see also *supra* note 490 and accompanying text.

492. Quigley, *supra* note 486, at 144 n.187; see also Gabriel Arkles et al., *The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change*, 8 SEATTLE J. SOC. JUST. 579, 594–607 (2010) (arguing that attorney leadership within social justice movements has historically tended to de-radicalize the movements, undermine the leadership of those most directly impacted, and reinforce the status quo). “The central limitation to attorney work for social change is that typical tools of legal advocacy, such as direct services, impact litigation, and lawyer-led advocacy for policy reform, do not, at their core, shift broader problems of misdistribution of wealth and life chances in our culture. Rather, these strategies can exacerbate those power differences, reifying elite professionals as leaders.” *Id.*

493. See DAVIS, *supra* note 480, at 93 (arguing that lawyers must use the law as a tool for progressive change while recognizing the limits of the law); Sudbury, *supra* note 189, at 14 (linking reformist legal work to a broader struggle for prison abolition allows activists to meet the needs of those impacted by the PIC while simultaneously challenging the legitimacy of the system).

494. SPADE, *supra* note 20, at 92 (“In both prison and immigration reform contexts, transgender activists are raising concerns about the danger of dividing affected populations by mobilizing ideas about who constitutes a ‘deserving’ or ‘undeserving’ subject.”).

495. Liat Ben-Moshe, *The Tension Between Abolition and Reform*, ACADEMIA, http://www.academia.edu/3483590/The_tension_between_abolition_and_reform (last visited Jan. 27, 2017). The distinction between “reformist reforms” and “non-reformist reforms” originated with French socialist Andre Gorz, who first defined the terms with reference to radical labor organizing in his book *STRATEGY FOR LABOR: A RADICAL PROPOSAL* (1968). Dr. Ruthie Gilmore applied the distinction to debate between prison abolition versus prison reform in her book *THE STRUGGLE WITHIN: PRISONS, POLITICAL PRISONERS, AND MASS MOVEMENTS IN THE UNITED STATES* (2014).

496. SPADE, *supra* note 20, 91–92 (“Abolitionists caution that a system designed from its inception as a technology of racialized control through exile and punishment will use any rationale necessary to achieve that purpose. . . . [L]aw reform projects often provide rationales and justifications for the expansion of harmful systems.”); see also *id.* at 91 (“[Law reform work] merely tinkers with systems to make them look more inclusive while leaving their most violent operations intact . . .”). A commonly cited example of a reformist reform is hate crime legislation. See, e.g., The Matthew Sheppard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (2012). Abolitionists argue that these laws have not made life significantly safer for LGBTQ people, and like most other criminal laws, have been used to incarcerate a disproportionate number of people of color. DEAN SPADE, *Their Laws Will Never Make Us Safer, in AGAINST EQUALITY: PRISONS WILL NOT PROTECT YOU* 1–12 (Ryan Conrad ed., 2012); see also SPADE, *supra* note 20, at 82, 87–88. These reforms have strengthened the PIC because hate

tionist reforms make incremental changes with an eye toward eventually creating a world without prisons, police, and collateral consequences of criminalization—without transferring more power and resources to the PIC.⁴⁹⁷

Abolishing Illinois' criminal name-change restrictions would be an abolitionist reform because it would transfer the power to name a person away from the PIC and into the hands of the people whom it marginalizes, including transgender people of color.⁴⁹⁸ Further, abolishing the criminal name-change restrictions is oriented toward liberation for all without creating divisions between who “deserves” to change their legal name.⁴⁹⁹ For example, it would not be aligned with abolition to argue that the Illinois criminal name-change restrictions should be abolished because they primarily impact transgender people who did not commit violent crimes, or sex-related crimes, or identity theft crimes, or who were profiled by the police and did not commit any crime at all.⁵⁰⁰ The argument that transgender people are not “those criminals” falsely assumes that transgender people are never convicted of these crimes, and it also furthers the punitive ideology of the PIC that people convicted of these crimes are “bad criminals” or “predators” who do not deserve autonomy over their identities.⁵⁰¹ The danger of litigation utilizing this non-abolitionist logic is that the court may abolish the felony wait period, or create an exception, for only transgender people to change their names, ultimately ignoring

crime laws rely on a racist system of policing and prosecution. *Id.*; see also *SRLP on Hate Crime Laws*, SYLVIA RIVERA L. PROJECT, <http://srlp.org/action/hate-crimes/> (last visited Jan. 27, 2017); see also SPADE, *supra* note 20, 90–92.

497. Sudbury, *supra* note 189, at 14. An example of an abolitionist reform would be Chicago's Reparations for Burge Torture Victims Ordinance, which secured financial reparations for the dozens of Black men tortured by former Chicago Police Chief John Burge, and provides for a trauma counseling center on the South Side, as well as free college tuition for the families of torture survivors. In these ways, this abolitionist reform aims to uplift entire communities directly and indirectly impacted by the PIC, without giving more funding or power to the system. See *Reparations for Burge Torture Victims*, CITY OF CHI., http://www.cityofchicago.org/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/ORDINANCE.pdf (last visited Jan. 27, 2017); see also Adeshina Emmanuel, *Chicago Passes Ordinance Granting Reparations to Police Torture Survivors*, TRUTHOUT (May 7, 2015), <http://www.truth-out.org/news/item/30667-human-rights-practices-inform-chicago-ordinance-in-police-torture-case>.

498. See SPADE, *supra* note 20, at 91, (“[Abolitionist activists] considering using law reform as a tool . . . have to be extraordinarily vigilant to determine if we are actually strengthening and expanding various systems' capacities to harm, or if our work is part of dismantling those capacities.”).

499. *Id.* at 92.

500. *Id.*

501. *Id.* (“[C]ampaigns about imprisonment that only focus on people convicted of nonviolent crimes . . . risk refining the system in ways that justify and legitimize the bulk of its continued operation by eliminating its most obvious contradictions.”).

the inherent problems in believing that the other condemned demographics “get what they deserve.”⁵⁰²

This non-abolitionist logic furthers the oppressive functioning of the PIC and must be rejected. The notion of the “sexual predator” has often been used to justify harsh criminal laws and collateral consequences, as well as the expansion of the prison system in general. The misconception that incidents of sexual violence perpetrated by strangers are on the rise furthers the false assumption that the majority of people with criminal convictions are innately “bad” or “dangerous” people incapable of transformation.⁵⁰³ This myth has contributed to the expansion of the PIC because it justifies building more prisons, passing more punitive laws, and militarizing the police—all without investing in rehabilitation and institutions that actually prevent harm to the community.⁵⁰⁴

This myth also contributed to Illinois’ adoption of its criminal name-change restrictions. Illinois’ criminal name-change restrictions were enacted because the Illinois General Assembly assumed that people convicted of felonies, sex crimes, and identity theft could only want to change their legal names for nefarious purposes, (i.e., evading the community notification requirement).⁵⁰⁵ The General Assembly determined that the only way to deter these “bad people” from causing future harm would be to add another layer of punishment by prohibiting them from changing their legal names.⁵⁰⁶ Intensifying the collateral consequences of criminal convictions is misguided, oppressive, and fundamentally at odds with prison abolition.⁵⁰⁷

Taking an abolitionist approach, even if a person with a criminal conviction poses some danger to the community, that person is a human and should still have the dignity and autonomy to determine their own name. They may have very legitimate reasons for wanting to change their legal name; even if they are not transgender, perhaps

502. *Id.*

503. Wacquant, *supra* note 168, at 212 (“[T]he tally of rapes in the country recorded by the National Crime Victimization Survey reveals a stagnation at around 2.5 victims per 1,000 persons age twelve or older from 1973 till 1988, followed by a steady decline until 1995 . . . just when the furor over sex-related crimes peaked.”).

504. *Id.* at 214–16, 225 (arguing that the idea of the predator as an “incurable deviant” has intensified criminal punishment and has “eroded if not buried” rehabilitation programs).

505. See *supra* notes 67–85 and accompanying text (discussing legislative history of criminal name-change restrictions that pertain to sex offenses).

506. *Id.*

507. See *Collateral Consequences*, SENT’G PROJECT, <http://www.sentencingproject.org/issues/collateral-consequences/> (last visited Jan. 27, 2017); see also Kevin Sali, ‘The Box,’ and Other ‘Collateral’ Consequences of Criminal Convictions, HUFFINGTON POST (Nov. 05, 2015, 12:06 PM) (explaining the collateral consequences of criminal convictions).

they feel that the name under which they were convicted no longer represents who they are now.⁵⁰⁸ This is particularly true for those who found religion post-conviction or during incarceration, and who want to adopt a new name to reflect this new and profound change in their identities.⁵⁰⁹ The criminal name-change restrictions symbolically keep a person tethered to a name and identity that the state has labeled as undesirable and criminal, and it is reasonable for that person to want to evolve from that past self.⁵¹⁰ Additionally, forcing that person to maintain a name with which they do not identify for the rest of their life—or even for ten years—is vastly disproportionate to whatever harm they might have caused considering names are so central to identity and autonomy.⁵¹¹ Finally, preventing that person from changing their legal name does not address the root causes behind why they might have caused that harm—it is simply punishment for the sake of punishment.⁵¹²

Abolishing the criminal name-change restrictions would undermine such punitive logic because anyone with a criminal conviction would become eligible to change their legal names, and not just people who may seem like more sympathetic figures.⁵¹³ This requires an acknowledgment that most people in the criminal legal system are not in fact dangerous or innately bad, that they deserve a fundamental level of

508. See Hal Arkowitz & Scott Lillienfeld, *Once a Sex Offender, Always a Sex Offender? Maybe Not*, SCI. AM. (Apr. 1, 2008), <http://www.scientificamerican.com/article/misunderstood-crimes/> (“Sex offenders are not all fated to repeat their horrible crimes.”).

509. See STEPHANIE C. BODDIE ET. AL. RELIGION IN PRISONS: A 50-STATE SURVEY OF PRISON CHAPLAINS 11 (2012), <http://www.pewforum.org/2012/03/22/prison-chaplains-exec/> (discussing that according to national study interviewing prison chaplains, between 26% and 51% of prisoners convert to a different religion while incarcerated, and a disproportionate number convert to Islam); see also Nora Caplan-Bricker, *Adam Gadahn, Muhammad Ali, Malcolm X: Why Do Some Muslim Converts Change Their Whole Names and Others Only Part?* SLATE (June 29, 2010), http://www.slate.com/articles/news_and_politics/explainer/2010/06/adam_gadahn_muhammad_ali_malcolm_x.html (“[T]he majority of Muslims who enter the faith choose to alter their names to mark the beginning of a new chapter in their lives.”).

510. ALEXANDER, *supra* note 163, at 161–69 (discussing the stigma of living with a criminal conviction).

511. See *supra* notes 301–70 and accompanying text (discussing how names are a fundamental form of expression and identity formation).

512. Arkowitz, *supra* note 508; see also Girshick, *supra* note 188, at 119 (arguing that stricter punishments for sex offenders merely makes their lives more difficult without making communities safer).

513. See, e.g., Alex Bender & Sarah Crowley, *Haunted by the Past: A Criminal Record Shouldn't Ruin a Career*, ATLANTIC (Mar. 25, 2015), <http://www.theatlantic.com/business/archive/2015/03/haunted-by-the-past-a-criminal-record-shouldnt-ruin-a-career/388138/> (illustrating examples of “trustworthy job applicants” affected by their criminal past).

dignity and autonomy, and they do not deserve to live under a state-imposed “brand”—a legal name with which they do not identify.⁵¹⁴

Abolishing the criminal name-change restrictions in Illinois’ name-change statute support the goals of prison abolition because it eliminates a component of the PIC, thereby helping criminalized people to survive in a world in which collateral consequences of prior convictions—the New Jim Crow—continue to be a reality they must presently live with.⁵¹⁵ Further, abolishing all three criminal name-change restrictions is aligned with prison abolition because it ensures that *everyone* whom this harmful law impacts is afforded the dignity and autonomy they deserve.⁵¹⁶ Eliminating these restrictions would be a necessary and concrete step toward abolishing the PIC.

* * *

Illinois’ criminal name-change restrictions arbitrarily and substantially interfere with the fundamental right to name oneself under the First Amendment Freedom of Speech Clause,⁵¹⁷ and they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment.⁵¹⁸ Further, Illinois’ criminal name-change restrictions are inconsistent with Illinois sealing law, other states’ name-change laws, and the necessary goals of prison abolition.⁵¹⁹ The U.S. Constitution and logical public policy rooted in the principles contained therein require abolishing these restrictions.

IV. IMPACT

The abolition of the Illinois criminal name-change restrictions would go largely unnoticed by the majority of Illinois residents. Not many people are aware that this law exists, in part because only a very small percentage of the population ever changes their legal names, and only a fraction of that group is subject to the felony wait period or permanent bars.⁵²⁰ However, for those to whom this law is relevant—

514. See *supra* notes 301–70 and accompanying text (arguing that names are central to dignity and autonomy).

515. See Sudbury, *supra* note 189, at 14.

516. See SPADE, *supra* note 20, at 115.

517. U.S. CONST. amend. I.

518. U.S. CONST. amend. XIV, § 1.

519. See *supra* notes 463–519 and accompanying text (discussing public policy reasons to abolish the restrictions).

520. For an estimate of transgender Illinoisans subject to the name change felony wait period, see *supra* note 16 and accompanying text. That estimate does not include cisgender people who want to change their legal names but who are subject to the wait period, but that number may be relatively small in comparison. *But see* McClatchey, *Why Are More People Changing Their*

including transgender people and people fleeing violent situations—abolishing the name-change criminal bars would have an enormously beneficial impact on their quality of life.⁵²¹ Further, eliminating the felony criminal name-change restrictions may improve overall community safety.⁵²²

A. *Gender-Affirming Names and Safety for Transgender People*

If the criminal name-change restrictions were abolished from Illinois' name-change statute, potentially thousands of transgender people in Illinois would suddenly become eligible to change their legal names.⁵²³ On a psychological level, all of those people would feel the benefits of having a legal name that reflects their true gender identities.⁵²⁴ For many transgender people, choosing a name that conforms with the gender with which one identifies is a literal act of identity-formation, and this is often the first step that transgender people take in their transition from one gender to another.⁵²⁵ Particularly in the beginning stages, transitioning genders can be full of self-doubt, fears, and hesitation, which in extreme cases may escalate to deciding not to transition, or even to suicide.⁵²⁶

The numerous medical, legal, and social barriers to transitioning—including prohibitively expensive medical treatment, the criminal name-change restrictions, pushback from family and friends, getting fired from one's job, and more—often exacerbate those doubts and risk of suicide.⁵²⁷ The fewer barriers and stigma a transgender person faces in transitioning, and the more external validation that they receive from individuals and institutions, the more likely that trans-

Name?, BBC NEWS (Oct. 18, 2011), <http://www.bbc.com/news/magazine-15333140> (indicating that recent years have seen a rise in people changing their legal names for non-marriage-related reasons, but the number of people seeking to change their legal names remains relatively small).

521. See *infra* notes 523–544 and accompanying text.

522. See *supra* notes 545–51 and accompanying text.

523. See *supra* note 16 (estimating the number of transgender people impacted by criminal name-change restrictions).

524. See *supra* notes 335–47 and accompanying text (discussing private interests in name changes).

525. TRANSGENDER 101, *supra* note 9.

526. *Id.*

527. See Kristen Clements-Nolle et al., *Attempted Suicide Among Transgender Persons: The Influence of Gender-Based Discrimination and Victimization*, 51 J. HOMOSEXUALITY 53, 53–69 (2006); see also ANN P. HASS ET AL., WILLIAMS INST., SUICIDE ATTEMPTS AMONG TRANSGENDER AND GENDER NON-CONFORMING ADULTS (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf> (finding that 41% of transgender people have attempted suicide at some point in their lives, compared to 4.6% of the general U.S. population, and 50–78% of transgender people who have suffered discrimination, harassment, or violence at work or at school have attempted suicide).

gender person will be able to survive and flourish as their true self.⁵²⁸ Simply having government-issued identity documents that reflect one's name is one example of a seemingly small validation of identity that can have a profoundly affirming effect, showing a transgender person that it is okay to transition and take on a different name.⁵²⁹

Similarly, those people would be given an opportunity to move beyond their past criminal convictions and all of the traumatic memories attached to them.⁵³⁰ This is particularly true for those who have already been able to seal their convictions, but for whom the name-change felony wait period continues to punish for the same predicate felony. Many of the people impacted by the criminal name-change restrictions may be prohibited from changing their legal names based on convictions that are over a decade old. After that much time, a person might have changed much more than their gender; they may have found employment, stopped engaging in criminalized behavior, or simply matured in such a way that the convictions of their past no longer reflect who they are now.⁵³¹ Living with the collateral consequences of a traumatic period of one's life is not only unjust, but it can also have profoundly negative psychological consequences.⁵³² The Illinois criminal name-change restrictions force thousands of transgender people to remain tethered to a past that may no longer reflect who they are today, and abolishing the restrictions would allow them a new path forward by eliminating one collateral consequence of their prior conviction.⁵³³

On a societal level, abolishing the criminal name-change restrictions would help reduce incidents of violence and discrimination that transgender people experience.⁵³⁴ Transgender people who are unable to change their legal names are often subjected to harassment when they are forced to present their government issued ID.⁵³⁵ Abolishing the

528. HASS ET AL., *supra* note 527.

529. *Id.*

530. See *Living with a Record: How Past Crimes May Drive Job Seekers Into Poverty*, PBS NEWS HOUR (Jan. 24, 2015), <http://www.pbs.org/newshour/bb/living-record-past-crimes-driving-job-seekers-poverty/> (interview of Ronald Lewis conducted by Stephen Fee); see also Kai Wright, *Boxed In: How a Criminal Record Keeps You Unemployed for Life*, NATION (Nov. 6, 2013), <http://www.thenation.com/article/boxed-how-criminal-record-keeps-you-unemployed-life/> (describing the persistent feelings of dejection, failure, and hopelessness often associated with having a criminal conviction).

531. ALEXANDER, *supra* note 163, at 161–69 (discussing the stigma of living with a criminal conviction).

532. *Id.*

533. See *supra* note 16 and accompanying text (estimating the number of transgender people impacted by criminal name-change restrictions).

534. See GRANT ET AL., *supra* note 14, at 5.

535. *Id.*

criminal name-change restrictions would decrease the risk of these interactions, which can escalate into violence or death.⁵³⁶

Likewise, transgender people who are prohibited from changing their legal names are more vulnerable to discrimination by employers, schools, airports, and other institutions that require verification of identity using a government-issued ID.⁵³⁷ While the criminal name-change restrictions do not preclude transgender people from changing their legal gender markers on their ID's, they can still be outed because names generally carry either masculine or feminine connotations.⁵³⁸ Being outed can lead to loss of employment, denial of employment in the first place, dropping out of school, denial of housing, and more negative implications.⁵³⁹ Abolishing the Illinois criminal name-change restrictions would therefore likely increase rates of employment and formal education among transgender people, leading to decreased rates of poverty.⁵⁴⁰

With employment and housing rates up and rates of violence and poverty down, Illinois could also expect to see a drop in incarceration rates of transgender people as the cycles of poverty and incarceration break.⁵⁴¹ Many transgender people obtain the convictions that bar them from changing their legal names because they were engaging in survival crimes like retail theft or sex work, into which they were forced because they were not able to obtain legitimate work due to transphobic discrimination.⁵⁴² In this way, poverty and criminalization become part of the same cycle for many transgender people.⁵⁴³ Preventing opportunities for discrimination on the basis of identity documents would undoubtedly help break this vicious and unfair cycle in the lives of many transgender people in Illinois.⁵⁴⁴

B. *A New Life for Survivors of Domestic Violence*

Eliminating the Illinois criminal name-change restrictions could also have positive consequences for people fleeing violent situations, including survivors of domestic violence. People change their legal names for a variety of legitimate, non-fraudulent reasons other than

536. *Id.*

537. *Id.*

538. *Id.*

539. *Id.* at 52.

540. See GRANT ET AL., *supra* note 14, at 5, 23.

541. See QUICK GUIDE, *supra* note 17; see also SYSTEMS OF INEQUALITY, *supra* note 175.

542. See *supra* notes 151–93 and accompanying text (describing how transgender people of color are disproportionately criminalized).

543. See SYSTEMS OF INEQUALITY, *supra* note 175.

544. *Id.*

gender transition or marriage.⁵⁴⁵ For people who need to escape domestic violence and abusive relationships, a new legal name could help shield that person from their former abuser or stalker by making the survivor more difficult to find.⁵⁴⁶ The Social Security Administration (SSA) even offers a process whereby survivors of domestic violence may obtain a new Social Security number, and along with the Department of Justice, the SSA explicitly recommends a legal name change as a safety precaution.⁵⁴⁷ However, the SSA is only able to change a legal name within their records by court order, which survivors in Illinois subject to the criminal name-change restrictions cannot obtain.⁵⁴⁸ Abolishing Illinois' criminal name-change restrictions would mean that survivors of domestic violence could obtain the court order that they need in order to obtain a new name, new Social Security number, and new life.⁵⁴⁹

Further, survivors of domestic violence are often criminalized themselves. For example, due to racist policing practices, Black women who call the police during an incident of intimate partner violence are often arrested instead of the person attacking them.⁵⁵⁰ In this way, surviving a situation involving intimate partner abuse can itself lead to a conviction that subjects someone to a name-change criminal restriction, and that restriction in turn can further prolong the violent situation by prohibiting that person from changing their legal name.⁵⁵¹ If the criminal name-change restrictions are abolished, survivors of domestic violence would have a needed avenue for escaping the people

545. Kushner, *supra* note 37, at 355.

546. The Illinois Marriage and Dissolution of Marriage Act does not bar a person with a felony conviction from changing their legal name for reasons of divorce, meaning that someone who wishes to flee an abusive partner by changing their legal name and divorcing that partner would be permitted to do so. See 750 ILL. COMP. STAT. 5/413 (2014). However, people with felony convictions who need to escape from an abusive partner to whom they are not married would be subject to the felony name change wait period.

547. SSA Provides Assistance to Victims of Domestic Violence, SOC. SECURITY ADMIN., https://www.ssa.gov/pressoffice/domestic_fact.html (last visited Jan. 27, 2017) ("In addition to changing your name, you should consider getting an unlisted telephone number, changing jobs, and moving to a new area/state.").

548. SOC. SEC. ADMIN., NEW NUMBERS FOR DOMESTIC VIOLENCE VICTIMS, <https://www.ssa.gov/pubs/EN-05-10093.pdf> (last visited Jan. 27, 2017).

549. *Id.*

550. Tasasha Henderson, *Black Domestic Violence Survivors Are Criminalized from All Directions*, TRUTHOUT (June 4, 2015), <http://www.truth-out.org/news/item/31178-black-domestic-violence-survivors-are-criminalized-from-all-directions>; *Law Enforcement Violence Against Women of Color & Trans People of Color: A Critical Intersection of Gender Violence & State Violence*, INCITE!, <http://www.incite-national.org/page/stop-law-enforcement-violence-toolkit> (last visited Jan. 27, 2017).

551. *Id.*

who abuse them, and would be able to move forward from traumatic criminal convictions.

C. *Sex Offender Registration and Community Safety*

Because Illinois primarily adopted its criminal name-change restrictions due to the perceived dangers that people convicted of sex offenses posed to the community, it is reasonable to ask what impact abolishing these restrictions would have on sex offenders and community safety.⁵⁵² Overall, the effect would likely be minimal, and potentially even positive.

Abolishing the Illinois criminal name-change restrictions would not put the public at greater risk of sexual violence. One study estimates that nationally, one in six people convicted of sex offenses illegally manipulate their names, birthdays, and Social Security numbers to avoid registration requirements,⁵⁵³ however the Illinois Attorney General reports that ninety-three percent, a much higher percentage than the national average, of sex offenders are compliant with registration requirements.⁵⁵⁴ Regardless of which statistic is more accurate, eliminating Illinois' criminal name-change restrictions would probably not alter this percentage because people who want to take advantage of gaps in enforcement would continue to do so and risk punishment, and those who seek lawful name changes would still be required to register.⁵⁵⁵ If anything, providing these people with a legal avenue for changing their names could prevent them from avoiding registration by helping the state better regulate the name-change process (e.g., by sending notice to the Registry).⁵⁵⁶

Further, even people who seek to change their names to avoid registration would not pose a danger to the community if these restrictions are abolished. Many people are required to register as a sex offender for a variety of isolated, non-violent circumstances: from

552. See *supra* notes 37–58 and accompanying text (describing historical evolution of Illinois' criminal name-change restrictions).

553. *One in Six Sex Offenders Change Names to Avoid Registration: Study*, HUFFINGTON POST (July 26, 2012), http://www.huffingtonpost.com/2012/07/25/sex-offenders-change-identity-study_n_1703282.html.

554. *Keeping Communities Safe*, ILL. ATT'Y GEN. (2010), <http://www.illinoisattorneygeneral.gov/communities/somb/registry.html>.

555. See Heather Hope, *Bill Proposed to Thwart OK Sex Offenders from Changing Name*, NEWSON6 (Feb. 27, 2014, 5:57 PM), <http://www.newson6.com/story/24845328/bill-proposed-to-thwart-ok-sex-offenders-from-changing-name> (“Obviously, we don’t want sex offenders driving school buses, but [criminal name-change restrictions don’t] fix it. If a person illegally changes their name, there’s already a penalty for that.”).

556. See *supra* notes 114–48 and accompanying text (listing ways in which other states regulate legal name change process without the use of criminal restrictions).

public urination to sex between a seventeen and sixteen year old.⁵⁵⁷ Further, while the general public believes that 75% of sex offenders will reoffend, sex offenses actually have the lowest recidivism rate out of any crime, at 14% compared to a 76.6% recidivism rate for all offenses, and 63% recidivism rate for non-sex crimes.⁵⁵⁸ A very small percentage of sex offenders have any history of assaulting or abducting people that they do not know: about 90% of sex offenses against children and 75% of sex offenses against adult women are actually committed by a family member, partner, or someone known to the survivor.⁵⁵⁹ Based on these statistics, measures like the Sex Offender Registry—which are designed to protect the community from strangers—do very little to make the community safer, and may even make communities less safe by furthering the misconception that strangers are the primary threat to women and children.⁵⁶⁰ Therefore, people who are required to register would not pose a danger to the community if they are permitted to obtain a lawful name change.

In fact, posting names, addresses and photographs on a sex offender registry can lead to destructive consequences for people labeled as predators—and for the community as a whole.⁵⁶¹ Since the passage of community notification laws, countless people convicted of sex offenses, and in some cases their families have lost their homes, jobs, and support systems, which in some cases can lead to suicide.⁵⁶² Some have been subjected to regular verbal harassment, banishment, beat-

557. See Kevin McDermott, *Illinois, Missouri on Opposite Sides of Sex Offender List Debate*, ST. LOUIS POST-DISPATCH (Apr. 16, 2012), http://www.stltoday.com/news/local/govt-and-politics/illinois-missouri-on-opposite-ends-of-sex-offender-list-debate/article_2f7175bc-ca92-5f55-b5c7-90c15d3ccc7d.html; see also Erin Fuchs, *7 Surprising Things that Could Make You a Sex Offender*, BUS. INSIDER (Oct. 9, 2013), <http://www.businessinsider.com/surprising-things-that-could-make-you-a-sex-offender-2013-10>.

558. Arkowitz, *supra* note 508; Matthew R. Durose et al. *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, BUREAU JUST. STATS. (Apr. 22, 2014), <http://www.bjs.gov/index.cfm?ty=PBdetail&iid=4986>; *Myths and Facts About Sex Offenders*, CTR. FOR SEX OFFENDER MGMT. (Aug. 2000), <http://www.csom.org/pubs/mythsfacts.html>.

559. See *Myths and Facts About Sex Offenders*, *supra* note 558; *Raising Awareness About Sexual Abuse—Facts and Statistics*, NAT'L SEX OFFENDER PUB. WEBSITE, <https://www.nsopw.gov/en-US/Education/FactsStatistics?AspxAutoDetectCookieSupport=1> (last visited Jan. 17, 2017).

560. Paul Heroux, *Sex Offenders: Recidivism, Re-Entry Policy and Facts*, HUFFINGTON POST (Nov. 8, 2011), http://www.huffingtonpost.com/paul-heroux/sex-offenders-recidivism_b_976765.html; see also Wacquant, *supra* note 168, at 227–28 (“Knowing that a ‘sexual predator’ resides on the corner of such-and-such street does no more to reduce the chance of an offense than knowing that drunk drivers are more likely to be on the road at night decreases the chances of having a traffic accident in the afternoon [Registries] ‘may actually increase the risk to children to the degree that it lowers parental vigilance in monitoring the child’s contacts with friends, relatives, and other trusted persons.’”).

561. Wacquant, *supra* note 168, at 223 (describing how sex offenders are frequently harassed, humiliated, insulted, and threatened).

562. *Id.*

ings, or have even been murdered.⁵⁶³ Unnecessary punitive measures like name-change restrictions and the Sex Offender Registry not only stigmatize and brand a person—sometimes for life—but they make them vulnerable to harassment and violence.⁵⁶⁴ While abolishing Illinois’ criminal name-change restrictions would not remove the registration requirement, it would be one step toward truly inclusive community safety for all, including people convicted of sex offenses.

Further, eliminating these restrictions could have rehabilitative effects for people convicted of sex offenses, which would make communities safer. The Illinois criminal name-change restrictions symbolically keep a person tethered to a name and identity that the state has labeled as undesirable and criminal, and it is reasonable for that person to want to evolve from that past self.⁵⁶⁵ Studies have shown that addressing sexual violence with rehabilitation, like cognitive-behavioral therapy and relapse prevention, more effectively combats recidivism than retributive punishments.⁵⁶⁶ Dehumanizing someone as if they will “always be a predator” only discourages them from becoming a positive member of the community.⁵⁶⁷ Returning autonomy and human dignity to that person in the form of their legal name—even if they are still required to register with law enforcement—would contribute to their rehabilitation and promote community safety.⁵⁶⁸

V. CONCLUSION

Illinois’ criminal name-change restrictions violate the Fourteenth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause, the First Amendment Freedom of Speech Clause, and they are not sound government policy. They are not rationally related to serving any rational or compelling state interest, and even if they are, that state interest is substantially outweighed by the massive amounts of violence and discrimination transgender people face as a result of living with a name that does not reflect their true gender identity. This law is also outdated, creates practical inconsistencies

563. *Id.*; see, e.g., Lexi Pandell, *The Vigilante of Clallam County*, ATLANTIC (Dec. 4, 2013), <http://www.theatlantic.com/national/archive/2013/12/the-vigilante-of-clallam-county/281968/> (discussing the vigilante who killed people on the sex offender registry).

564. Pandell, *supra* note 563.

565. See ALEXANDER, *supra* note 163, at 161–69 (describing the stigma of living with a criminal conviction).

566. Heroux, *supra* note 560; see also Arkowitz, *supra* note 508.

567. Arkowitz, *supra* note 508.

568. See BISSONETTE *supra* note 487, at 10–12 (examples of programs that grant more autonomy to prisoners and thereby reduce incidents of violence).

with Illinois sealing law, and it is out of step with the vast majority of other states. Further, they are part of the insidious prison-industrial complex, and eliminating them would move the world one step closer to the necessary goal of prison abolition.

If the criminal restrictions are abolished from the Illinois name-change statute, it would likely contribute to the flourishing of transgender people in Illinois. Potentially six thousand transgender people in Illinois are impacted by these restrictions.⁵⁶⁹ In the age of mass incarceration and The War on Terror, government issued identity documents have become the keys to education, employment, government benefits, travel, voting, and other resources needed to survive.⁵⁷⁰ Abolishing the felony criminal name-change restrictions could lead to lower rates of violence and discrimination against transgender people on the basis of identity documents, which would mean higher rates of employment and formal education. On an individual level, the ability to change a legal name would have deep implications for improved psychological well-being and mental health among transgender people. Additionally, abolishing the restrictions would help survivors of domestic violence escape those who abuse them.

Names go to the heart of self-expression, autonomy, and identity. Abolishing Illinois' criminal name-change restrictions is necessary to ensure that transgender people and all others who want to change their legal names are afforded the safety, support, and resources that they deserve.⁵⁷¹

*Lark Mulligan**

569. See *supra* note 16 (estimate of transgender people impacted by criminal name-change restrictions).

570. See Spade, *supra* note 17, at 738.

571. See Ainsworth & Spiegel, *Quality of Life of Individuals with and Without Facial Feminization Surgery or Gender Reassignment Surgery*, 19 *QUALITY LIFE RES.* 1019–24 (2010) (suggesting that when transgender people are afforded the same treatment and access to resources as cisgender people, free of transphobic discrimination, their risk of suicide dramatically drops to a rate similar to that of the general population).

* Lark Mulligan, J.D. Candidate, 2017. Special thank you to Virginia Macias Gorostiaga and the many law student staffers who spent countless hours over the course of several months cite-checking and editing this long Comment. Thank you also to my colleagues at the Transformative Justice Law Project of Illinois for helping me construct my arguments, reading multiple drafts, and providing creative input. Thank you to the ACLU of Illinois for the assistance in researching state name change laws. Most importantly, thank you to the many transgender name change petitioners who have helped me understand the impact of these criminal name-change restrictions, and who graciously allowed me to draw upon their personal experiences in writing this Comment.

APPENDIX A

NAME CHANGE LAWS BY STATE

GROUP A	GROUP B	GROUP C
Name change petitioners are not required to disclose criminal history. Judges are not required to consider criminal history in name change proceedings.	Name change petitioners must disclose criminal record. Judges are required to consider convictions in name change proceedings, but convictions do not initiate a mandatory waiting period or permanent bar.	Name change petitioners must disclose criminal record. Criminal convictions initiate a mandatory waiting period or permanent bar.
Alaska	Alabama	Florida
Georgia	Arizona	Illinois
Kansas	Arkansas	Iowa
Kentucky	California	Louisiana
Maine	Colorado	Ohio
Massachusetts	Connecticut	Pennsylvania
Mississippi	Delaware	Tennessee
Missouri	District of Columbia	Utah
Montana	Hawaii	West Virginia
Nebraska	Indiana	
New Mexico	Idaho	
South Dakota	Maryland	
Wyoming	Michigan	
	Minnesota	
	Nevada	
	New Hampshire	
	New Jersey	
	New York	
	North Carolina	
	North Dakota	
	Oklahoma	
	Oregon	
	Rhode Island	
	South Carolina	
	Texas	
	Vermont	
	Virginia	
	Washington	
	Wisconsin	