

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Deputy Director
Re: Use of the Term “Maiden Name” in New Jersey Statutes
Date: February 05, 2024

MEMORANDUM

Project Summary

On January 10, 2024, a member of the public inquired about the use of the term “maiden name” in the New Jersey statutes and court forms.¹ This request served as the impetus for an examination of the manner in which the term is used in New Jersey’s statutes.

In New Jersey, the State Registrar (“Registrar”) is responsible for preparing and maintaining a comprehensive and continuous index of all vital records.² In the case of marriages, the Registrar is expected to maintain the surname of a husband and the *maiden name* of the wife.³ When a person is adopted, the Registrar must record the *maiden name* of the “female adopting parent” – if given.⁴ Among the information that qualifies as a personal identifier in the Code of Criminal Justice,⁵ the Civil Service statutes,⁶ and statutes governing Health and Vital Statistics,⁷ is the *maiden name* of an individual’s mother.

A cultural shift is underway that is marked by an acknowledgement and respect for individual choices and identities.⁸ Recently, “the increase in individual choice norms means that individuals can make up their own minds as to how they want to behave when it comes to many aspects of life.”⁹ Advocates recommend a change from terms characterized as gender-biased and archaic to those that focus on an individual’s identity.¹⁰

¹ In-person meeting with Cathy R. Silver (Jan. 11, 2024); N.J. STAT. ANN. § 1:12A-8(c) (providing that it is the duty of the Commission to “[r]eceive and consider suggestions and recommendations from. . . the public generally, for the improvement and modification of the general and permanent statutory law of the State, and bring the law. . . into harmony with modern conceptions and conditions. . .”).

² N.J. STAT. ANN. § 26:8-24(f)(1) (West 2024).

³ N.J. STAT. ANN. § 26:8-40(a) (West 2024).

⁴ N.J. STAT. ANN. § 26:8-40.1(a) (West 2024).

⁵ N.J. STAT. ANN. § 2C:20-1(v) (West 2024) (defining “personal identifying information”).

⁶ N.J. STAT. ANN. § 11A:4-1.4(g) (West 2024) (defining “personal identifying information”).

⁷ N.J. STAT. ANN. § 26:3A2-20.3 (West 2024) (defining “personal identifiable information”).

⁸ Frank Newport, *The Impact of Shifts in American Culture*, GALLUP: POLLING MATTERS, (Aug. 6, 2021), <https://news.gallup.com/opinion/polling-matters/353216/impact-shifts-american-culture.aspx>.

⁹ *Id.*

¹⁰ David Marsh, *What’s your mother’s maiden name? It’s none of your business*, THE GUARDIAN (Oct. 14, 2015), <https://www.theguardian.com/media/mind-your-language/2015/oct/14/whats-your-mothers-maiden-name-its-none-of-your-business>; Kate Tuttle, *Women don’t have “maiden” names: A modest proposal to retire the descriptor*; SALON, originally appeared on DAME (Jul. 6, 2015), [https://www.salon.com/2015/07/06/women_dont_have_maiden_names_a_modest_proposal_to_ditch_the_descriptor_for_good_partner/#:~:text=So%2C%20a%20modest%20proposal%3A%20Let's,name%3B%20it%20is%20her%20name](https://www.salon.com/2015/07/06/women_dont_have_maiden_names_a_modest_proposal_to_ditch_the_descriptor_for_good_partner/#:~:text=So%2C%20a%20modest%20proposal%3A%20Let's,name%3B%20it%20is%20her%20name;); Rena Grant, *Marriage and surnames: Banish maiden*, THE SEATTLE TIMES (June 1, 2023), <https://www.seattletimes.com/opinion/letters-to-the-editor/marriage-and-surnames-banish-maiden/>; *Stop Calling it*

Statutes Considered

N.J.S. 2C:20-1. Definitions

* * *

v. “Personal identifying information” means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual and includes. . . mother’s maiden name....

* * * *

N.J.S. 11A:4-1.4. Entry-level law enforcement officer information tracking database; establishment; oversight and maintenance; requirements

* * *

g. As used in this section:

“Personal identifying information” means information that may be used, alone or in conjunction with any other information, to identify a specific individual and includes. . . mother’s maiden name....

* * * *

N.J.S. 26:3A2-20.3 Definitions relating to drug overdose fatality review

As used in this act:

* * *

“Personally identifiable information” means any information about an individual that can be used to distinguish or trace an individual’s identity, including. . . mother’s maiden name....

* * * *

N.J.S. 26:8-24 Duties of State registrar

The State registrar shall:

* * *

f. Prepare and maintain a comprehensive and continuous index of all vital records registered, the index to be arranged alphabetically:

* * *

My Maiden Name, (Nov. 11, 2015), <https://bellejar.ca/2014/11/11/stop-calling-it-my-maiden-name/#:~:text=Referring%20to%20a%20last%20name,destiny%20and%20lands%20a%20man.>

3. In the case of marriages, by the surname of the husband and also by the maiden name of the wife;

* * * *

N.J.S. 26:8-40.1. Adopted children; special certificate in lieu of birth certificate; contents; original certificate placed under seal

a. When any person is adopted pursuant to provisions of the laws of any state or country, and the adoption has been certified to the State Registrar . . . or there is submitted a certification or a certified copy of the decree or judgment of the court in the adoption proceedings, the State Registrar shall establish, in lieu of the original birth record, a certificate of birth showing: . . . (3) the names of the adopting parents or parent, including the maiden name of the female adopting parent if that name is given in the certification or certified copy of the decree or judgment of the court....

* * * *

Background

The American legal and social customs related to names was inherited from the English common law.¹¹ The term “surname,” originally exclusive to the aristocracy, knights, and gentry, originates from “sir” name or “sire” name.¹² Over time, the adoption of surnames became widespread among the general public, serving, in part, as a method for the state to identify and regulate its citizens.¹³ As the law began to impose restrictions upon a woman’s right to own property, the “English custom developed such that women tended to adopt the surnames of their husbands.”¹⁴

In early American parlance, an “unmarried girl or woman” was referred to as a “maiden.”¹⁵ The term denoted an individual “who had not yet married,” and had “never yet mated.”¹⁶ Similar to the practice in England, it became a customary practice in America for women to adopt their husbands’ surnames, and for their children to legally assume the surnames of their fathers.¹⁷ In accordance with this naming convention, a woman’s “birth name” or “her surname before marriage” came to be referred to as her *maiden name*.¹⁸

¹¹ Deborah J. Anthony, *A Spouse by any Other Name*, 17 WM. & MARY J. WOMEN & L. 187, 190 (2010) (quoting *O’Brien v. Tilson*, 523 F.Supp. 494, 496 (E.D.N.C. 1981)).

¹² *Id.* at 191.

¹³ *Id.*

¹⁴ *Id.* at 192.

¹⁵ MERRIAM-WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990) (defining maiden name as “the surname of a woman before she married.”) [hereinafter MERRIAM-WEBSTER’S].

¹⁶ *Id.* (defining maiden as one who had “never yet mated.”).

¹⁷ Anthony, *supra* note 11, at 198-99 (citing *Chapman v. Phoenix Nat’l Bank*, 85 N.Y. 437, 449 (1881) (opining that “[f]or centuries, by the common law among all English speaking people, a woman, upon her marriage takes her husband’s surname.”).

¹⁸ *Id.* at 206.

The practice of women adopting their husbands' surnames was so ubiquitous that it gained legal recognition.¹⁹ "Historically, the wife was in fact the legal property of the husband, so she took his name as a legal necessity."²⁰ Although a woman could not be stopped from using her birth name, the law was often "employed as a punishment mechanism in the context of... voting, driving, suing and obtaining passports."²¹ Generally, "the justifications [used by the court for withholding such privileges] were rather sparse, typically referencing long-established custom" and "the social shame that would attend a relationship that gives the appearance of illicit cohabitation."²²

As early as 1907, the New Jersey Legislature granted the judiciary the discretion to allow a woman to resume the use of their birth name following the dissolution of her marriage.²³ The statute provided that "upon or after granting a divorce from the bonds of matrimony" a court *may* allow a woman to "resume her *maiden name* or the name of a former deceased husband."²⁴ In 1937, the New Jersey Legislature removed the term *maiden name* from the "Act concerning the use of a name by a wife after divorce."²⁵ The ability of a woman to resume her birth name, however, was still in the discretion of the trial court judge.²⁶ With the court's permission, a woman could resume "*any name* used by her before the marriage...."²⁷ Courts were also vested with the authority to "order the wife to refrain from using the surname of the husband as her name."²⁸

One of the demands proffered by the women's rights movement during the 1970s was a woman's "autonomy in name choice."²⁹ Some women began to view the retention of their birth name as a symbol of "an equal partnership in marriage," echoing the sentiments expressed by Lucy Stone³⁰ almost 120 years earlier.³¹ By the mid-1970s, New Jersey courts recognized that "[a]t common law any adult or emancipated person was at liberty to adopt any name as his legal name except for fraudulent or criminal purposes...."³² Notably, the judiciary recognized that the right to adopt *any name* extended equally to women.³³

¹⁹ Anthony, *supra* note 11, at 200.

²⁰ *Id.* at 210 (citing Jennifer Christman, *The Name Game Despite Options, 90% of Women Choose to Take Husband's Name*, Ark. Democrat-Gazette, F1 (Mar. 8, 2000)).

²¹ *Id.* at 198.

²² *Id.* at 198. *See id.* at 210-13 for Anthony's thorough discussion of "Women as Property and Social Expectations."

²³ L.1907, c. 216, § 30, p. 483.

²⁴ *Id.* (emphasis added).

²⁵ L.1938, c. 188, p. 407, § 1.

²⁶ *Id. Raubar v. Raubar*, 315 N.J. Super. 353, 365 (Law Div. 1998) ("Even more notably, the authority of the court to grant a name change pursuant to this statute has always been discretionary not mandatory.").

²⁷ L.1938, c. 188, p. 407, § 1.

²⁸ *Id.*

²⁹ Anthony, *supra* note 11, at 200.

³⁰ *Id.* at 198, 201-02. Lucy Stone was a prominent abolitionist and suffragist and "was the first known American woman to keep her birth name after [her 1855] marriage to Henry Blackwell." *Id.* at 198. She was subsequently denied the right to vote because of her use of her maiden name. *Id.*

³¹ *Id.*

³² *Egner v. Egner*, 133 N.J. Super. 403, 406(App. Div. 1975) (finding that three women, all mothers of minor children, should not have been denied the right to resume their maiden names based upon the court's unsubstantiated concern about potential harassment of the minor children who retained their father's surname).

³³ *Id. See supra* note 34 and accompanying text.

In 1988, the Legislature modified the statute concerning a person’s right to resume the use of a name prior to marriage.³⁴ As modified, N.J.S. 2A:34-21 was rendered gender neutral and “allowed a citizen to change [their] name to a name never used previously....”³⁵ In 2006, this statute was modified by the legislature to include references to civil unions.³⁶

Analysis

It has been nearly a century since the New Jersey Legislature eliminated the term *maiden name* from statutes concerning matrimonial actions.³⁷ Despite that statutory modification, there are still statutes that use term. As society progresses toward gender-inclusive language and recognizes diverse family structures, the persistence of this term may not only be considered anachronistic but may also have implications for how certain legal matters are interpreted or applied.

The term *maiden name* is recognized as archaic.³⁸ The word “maiden” is no longer commonly used when referring to an unmarried individual.³⁹ Since the time of its original use, societal views and language have evolved to be more inclusive and gender neutral. Amidst this societal change there is a growing awareness of the limitations of such terms.⁴⁰ “Maiden name” harkens back to an era when women were considered the legal property of men⁴¹ or were required to be chaste prior to marriage.⁴² As society reevaluates terminology to align with contemporary perspectives and ensure equality, a similar statutory examination may help ensure fairness and inclusivity.

Retaining references to a person’s *maiden name* in statutes is said to perpetuate an outdated concept and to reinforce the historic transformation of a woman’s name from that of her father to that of her husband, akin to a transfer of ownership.⁴³ This overshadows the agency and autonomy of individuals in choosing their identities.⁴⁴ The absence of a male equivalent to the term *maiden name* underscores the gender-specific nature of this concept.⁴⁵

³⁴ L.1988, c. 153, § 2; N.J. STAT. ANN. § 2A:34-21.

³⁵ N.J. STAT. ANN. § 2A:34-21; *Holshue v. Holshue*, 265 N.J. Super. 599, 601 (Ch. Div. 1993); *Raubar*, 315 N.J. at 364-65. *See Youth & Family Services v. J.L.*, 264 N.J. Super. 304, 310 (Ch. Div. 1993) (holding that “a trial court should not intervene in the name selection process; nor should the court... inhibit, or “chill” an applicant’s freedoms of expression, guaranteed by the First, Fourth and Fourteenth Amendments to the United States Constitution, to be known as he or she desires.”).

³⁶ L.2006, c. 103, § 77; N.J. STAT. ANN. § 2A:34-21.

³⁷ *See supra* notes 4-9 and “Statutes Considered” pp. 2-3.

³⁸ *See e.g.* Tuttle, *supra* note 10.

³⁹ Anthony, *supra* note 11, at 206.

⁴⁰ *See supra* note 10 and accompanying text.

⁴¹ *See supra* note 20 and accompanying text.

⁴² MERRIAM-WEBSTER’S, *supra* note 16.

⁴³ Anthony, *supra* note 11, at 208.

⁴⁴ *Id.*

⁴⁵ *Id.* at 206.

In addition to the concerns expressed above, the use of *maiden name* introduces potential confusion to everyday situations.⁴⁶ If a woman changes her surname prior to marriage and subsequently gives birth or adopts a child, legal documentation may only recognize standard naming structures, inadvertently reinforcing traditional gender norms.⁴⁷ When an institution or entity requests an individual’s mother’s maiden name and the individual has two mothers, or their mother was not married or never changed her name, the request does not fit the facts of that situation.⁴⁸ These examples highlight the ways in which retaining references to *maiden name* in the New Jersey statutes do not seem to reflect the diverse realities of individuals and families in New Jersey.

Pending Bills

In the 2024-2025 legislative session, there are currently no bills pending that would modify the use of the term “maiden” or “maiden name” in the New Jersey statutes.⁴⁹

Conclusion

Staff seeks authorization to conduct additional research and outreach to ascertain whether it would be appropriate to recommend removing the phrase “maiden name” from New Jersey’s statutes and providing a uniform reference to a person’s surname before marriage.

⁴⁶ There are a multitude of situations in which individuals may be required to provide their maiden name. In the interest of brevity, the examples presented herein are limited and not intended to undermine the challenges faced by others in diverse circumstances. *See e.g.* Anthony, *supra* note 11, at 189 (noting that among the myriad of reasons a couple may desire flexibility in selecting a last name include: “a woman may have professional accomplishments under a birth name; she... may [desire] a more gender-equal naming solution; she may have a desire not to lose her identity; she may have a strong connection with a birth name or have children with her current last name.”).

⁴⁷ Anthony, *supra* note 11, at 206-07. *See* New Jersey Directive 20-19, Family – Non Dissolution Matters (FD Docket): Procedures and Forms, (Sept. 3, 2019) (providing a blank for the party’s *maiden name* on the application for modification of a court order or a cross-application for modification of a court order).

⁴⁸ Marsh, *supra* note 10.

⁴⁹ <https://www.njleg.state.nj.us/bill-search> (search the “Keywords” field for “maiden” and then “maiden name”) (last searched Jan. 19, 2024).