

# Legislative Analysis



## REVISE ACCESS TO DISCHARGE & DISMISSAL INFORMATION FOR DEPT. OF CORRECTIONS

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4966 as enrolled**  
**Public Act 220 of 2013**  
**Sponsor: Rep. Aric Nesbitt**

**House Bill 4969 as enrolled**  
**Public Act 223 of 2013**  
**Sponsor: Rep. Margaret E. O'Brien**

**House Bill 4967 as enrolled**  
**Public Act 221 of 2013**  
**Sponsor: Rep. Kevin Cotter**

**House Bill 5048 as enrolled**  
**Public Act 224 of 2013**  
**Sponsor: Rep. Charles M. Bruner**

**House Bill 4968 as enrolled**  
**Public Act 222 of 2013**  
**Sponsor: Rep. Kurt Heise**

**House Bill 5049 as enrolled**  
**Public Act 225 of 2013**  
**Sponsor: Rep. Sam Singh**

**House Committee: Judiciary**  
**Senate Committee: Judiciary**

### **Second Analysis (1-24-14)**

**BRIEF SUMMARY:** The bills amend six different acts to revise the conditions under which the Department of Corrections and employees of the court, law enforcement agency, or prosecutor's office may access nonpublic records kept by the Department of State Police regarding discharge and dismissals of certain criminal charges. The bills took effect January 1, 2014.

**FISCAL IMPACT:** The bills would have no material fiscal impact on the Department of State Police or the Department of Corrections, and would not impact local units of government.

### **THE APPARENT PROBLEM:**

Under very specific circumstances, Michigan law provides an offender the opportunity to have a criminal charge for certain misdemeanor offenses deferred and then, upon successful completion of a period of probation, have those charges discharged and the case dismissed. During the deferral period, the court proceedings are *closed* to public inspection. If the court enters a judgment of guilt (or, for a juvenile, an adjudication of responsibility), the court records are then *opened* for public inspection. However, if the charges are dismissed and a case discharged, the records remain *closed* and inaccessible by the public.

Though there is no public record of the proceedings of a discharge and dismissal, the Department of State Police (MSP) is required to retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge. This information is available in the Law Enforcement Information Network (LEIN). Access to the nonpublic

information in LEIN is restricted to certain entities and individuals, and then only for statutorily specified purposes.

The statutes pertaining to discharge and dismissals were enacted at different times, and some have been subsequently amended. One result has been that the access afforded to the Department of Corrections (DOC) to LEIN regarding discharge and dismissal information differs depending on the crime involved. Some statutes authorize access to the DOC solely for use in the performance of its duties, whereas other statutes restrict DOC access to employment-related checks only, such as determining if an applicant is eligible for employment or if a current employee has violated terms of employment.

The department says that it needs to do routine monitoring of parolees under its jurisdiction to check for new offenses, which would be a violation of the terms of parole. Since the records are sealed to any other than authorized users for this purpose, DOC does not have the ability to conduct this type of monitoring.

Similarly, employees of the court, law enforcement personnel, and prosecuting attorneys are also restricted in these statutes to access LEIN regarding discharge and dismissal information for use only in the performance of their duties. It is believed it would be helpful to also permit these entities to review discharge and dismissal information in LEIN to verify if their own employees have violated conditions of employment and to check the eligibility of applicants for employment.

In a related matter, the court records of a discharge and dismissal are currently closed to public inspection for a person participating in a veterans treatment court program, even if the person does not successfully complete the program and is found guilty. For consistency with other statutes, the records should be public information after an adjudication of guilt.

Lastly, current law prohibits health professionals from engaging in the practice of their professions with a BAC of .05 grams or greater or if the ability to perform their duties is impaired by the illegal or improper use of controlled substances. The statute currently provides an enhanced penalty for repeat offenses; however, the penalty does not cap the fine that a court may impose. Typically, penal fines are not open ended.

Legislation has been introduced to address the above concerns.

### ***THE CONTENT OF THE BILLS:***

Currently, the Department of Corrections (DOC) is allowed access by several statutes to nonpublic information related to proceedings involving a discharge and dismissal, but only to *ascertain preemployment criminal history or to determine whether a DOC employee has violated conditions of employment*. Similarly, state courts, law enforcement personnel, and prosecuting attorneys are authorized to access such information, but the access is limited *for use only in the performance of their duties*.

**House Bills 4966-4969** amends various acts to strike the language pertaining to the Department of Corrections highlighted above and instead allow the DOC, state courts, law enforcement personnel, or a prosecutor's office access to the information *for use only in the performance of its duties or to determine whether one of its employees has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, DOC, or prosecutor's office.* (Italics added for emphasis.)

House Bill 4966 amends the Michigan Penal Code (MCL 750.350a) to apply to nonpublic records regarding a discharge and dismissal for the crime of an adoptive or natural parent keeping a child away from any other parent or guardian who has valid custody or parenting rights, sometimes referred to as "parental kidnapping."

House Bill 4967 amends the Revised Judicature Act (MCL 600.1076) to apply to the nonpublic records regarding discharge and dismissals issued for various crimes to participants of drug treatment court programs.

House Bill 4968 amends the Code of Criminal Procedure (MCL 769.4a) to apply to the nonpublic records regarding a discharge and dismissal for the crime of domestic violence.

House Bill 4969 amends the Public Health Code (MCL 333.7411) to apply to the nonpublic records regarding a discharge and dismissal for certain drug offenses.

**House Bill 5048** amends the Michigan Penal Code (MCL 750.430). Currently, it is a misdemeanor for a health professional to engage in the practice of the profession with a bodily alcohol content (BAC) of .05 or more grams or to engage in the practice of the profession while under the influence of a controlled substance and – due to the illegal or improper use of the controlled substance – the person's ability to safely and skillfully engage in the practice of the health profession is visibly impaired.

A first offense is punishable by imprisonment for not more than 180 days and/or a fine of not more than \$1,000. A second or subsequent offense is punishable by imprisonment for not more than a year and/or a minimum fine of \$1,000. However, the original legislation did not set a maximum fine for a repeat conviction. The bill would establish a maximum fine of \$2,500.

If no one was physically harmed or injured by the health professional's conduct, and it was a first offense, the health professional is currently eligible to have the proceedings deferred and the charges dismissed upon successful completion of certain conditions and terms imposed by the court. The records of these proceedings are nonpublic records maintained by the Department of State Police and accessible only as allowed in statute.

The bill would make the following changes:

- Specify that the MSP records of the arrest, court proceedings, and disposition would remain as a nonpublic record unless the court enters a judgment of guilt.

- Allow the courts of the state, law enforcement personnel, and prosecuting attorneys to access the nonpublic records for the purposes of showing whether the defendant has already once utilized the discharge and dismissal provision, or also in determining whether the defendant in a criminal action is eligible for discharge and dismissal by a drug treatment court under Section 1076 of the Revised Judicature Act. (Currently, access is provided to a court or police agency for these purposes.)
- Specify that the nonpublic records would be accessible by Michigan courts, law enforcement personnel, the Department of Corrections, and prosecuting attorneys for use only in the performance of their duties or to determine whether an employee of the DOC has violated his or her conditions of employment or whether an applicant meets criteria for employment with the DOC.

**House Bill 5049** would amend the Revised Judicature Act (600.1209) to allow public access to records of the discharge and dismissal proceedings of a veterans treatment court program if a judgment of guilt is entered.

***ARGUMENTS:***

***For:***

The bills would enable the Department of Corrections, as well as state courts, law enforcement personnel, and prosecuting attorneys to access nonpublic information pertaining to discharge and dismissal proceedings for use in the performance of their duties and verify employment eligibility of current or future employees. DOC would also have the ability to routinely monitor persons under its jurisdiction for evidence of the commission of new crimes. House Bill 5049 would allow access by the public to discharge and dismissal proceedings for individuals who failed to complete a veterans treatment court program and were found guilty in the same manner allowed for other discharge and dismissal proceedings when an adjudication of guilt was imposed. House Bill 5048 places a much needed cap on the fine for a repeat offense that a court may impose on a health professional who treats a patient while impaired due to drugs or alcohol.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Mark Wolf

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.