



Senate Fiscal Agency
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BILL ANALYSIS



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House Bills 4966 through 4969, 5048, and 5049 (as passed by the House)

Sponsor: Representative Aric Nesbitt (H.B. 4966)
Representative Kevin Cotter (H.B. 4967)
Representative Kurt Heise (H.B. 4968)
Representative Margaret E. O'Brien (H.B. 4969)
Representative Charles M. Bruner (H.B. 5048)
Representative Sam Singh (H.B. 5049)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-12-13

CONTENT

House Bills 4966, 4967, 4968, 4969, and 5048 would amend various statutes to allow a nonpublic record of an arrest, court proceedings, and disposition of a criminal charge that was discharged and dismissed to be open to the Department of Corrections (DOC). Generally, under current law, the nonpublic record is available to the DOC only for ascertaining pre-employment criminal history or determining whether a DOC employee has violated conditions of employment.

House Bill 5049 would permit the public inspection of records of proceedings regarding an individual's participation in a veterans treatment court if the court entered a judgment of guilt.

House Bills 4966 and 5048 would amend the Michigan Penal Code. House Bills 4967 and 5049 would amend the Revised Judicature Act (RJA). House Bill 4968 would amend the Code of Criminal Procedure. House Bill 4969 would amend the Public Health Code.

House Bill 4966 through 4969

Under Section 350a of the Penal Code, when a parent who has not previously been convicted of a kidnapping offense pleads guilty to or is found guilty of parental kidnapping, the court may defer further proceedings and place the parent on probation without entering a judgment of guilt. Upon fulfillment of the terms and conditions of probation, the court must discharge the parent from probation and dismiss the proceedings against him or her.

Chapter 10A of the RJA established and regulates drug treatment courts. Generally, a drug court participant pleads guilty to a criminal charge or responsible for a juvenile offense and remains under the court's jurisdiction until final disposition of the case, but not longer than the appropriate probationary period. With the agreement of the prosecutor and in conformity with a memorandum of understanding entered into under Chapter 10A, the drug court may discharge and dismiss the proceedings against a participant who meets certain criteria.

Under Section 4a of Chapter IX of the Code of Criminal Procedure, a court may defer the proceedings against a first-time domestic assault offender, and dismiss the charges after he or she serves a probationary period. An individual may receive only one discharge and dismissal under Section 4a. The discharge and dismissal must be without adjudication of guilt and is not a conviction for purposes of Section 4a or for disqualifications or disabilities imposed by law upon conviction of a crime.

Under Section 7411 of the Public Health Code, when an individual who has not previously been convicted of a drug-related offense pleads guilty to or is found guilty of certain controlled substance offenses, the court may defer further proceedings and place the person on probation and, upon fulfillment of the terms and conditions of probation, discharge the person and dismiss the proceedings without adjudication of guilt. An individual may receive only one discharge and dismissal under Section 7411.

Under all of the provisions described above, if the record of proceedings is deferred, the record of proceedings during the period of deferral is closed to public inspection. Unless the court enters a judgment of guilt, the Department of State Police must retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge. The nonpublic record is open, however, to Michigan courts, law enforcement personnel, and prosecuting attorneys for use only in the performance of their duties. The bills would add the DOC to that provision in each of the statutes that would be amended.

Currently, the nonpublic record is open to the DOC only for ascertaining pre-employment criminal history or to determine whether a DOC employee has violated conditions of employment. The bills would delete those provisions.

House Bill 5048

Section 430 of the Penal Code prohibits a licensed health care professional from engaging in the practice of his or her health profession while he or she has a bodily alcohol content of .05 or more gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or while visibly impaired under the influence of a controlled substance. A violation is a misdemeanor punishable by up to 180 days' imprisonment and/or a maximum fine of \$1,000, for a first offense; and up to one year's imprisonment and/or a maximum fine of \$2,500, for a second or subsequent offense.

If the health care professional's conduct did not result in physical harm or injury to a patient, and the health care professional has not been convicted for a previous violation, the court may defer further proceedings and place him or her on probation without entering a judgment of guilt. Upon fulfillment of the terms and conditions of probation, the court must discharge the health care professional from probation and dismiss the proceedings against him or her.

The Department of State Police must retain a nonpublic record of an arrest and discharge or dismissal. The nonpublic record may be furnished only to either of the following:

- A court or police agency, upon request, for the purpose of showing whether the individual has already once used this discharge and dismissal provision.
- A court, police agency, or prosecutor, upon request, for the purpose of determining whether a defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under Chapter 10A of the RJA.

Under the bill, the State Police would have to retain a nonpublic record of the arrest, court proceedings, and disposition. The nonpublic record could be furnished to any of the following:

- Michigan courts, law enforcement personnel, and prosecuting attorneys, upon request, for the purpose of showing whether the individual had already once used this discharge and dismissal provision.
- Michigan courts, law enforcement personnel, and prosecuting attorneys, upon request, for the purpose of determining whether a defendant in a criminal action was eligible for discharge and dismissal of proceedings by a drug treatment court under Chapter 10A of the RJA.
- Michigan courts, law enforcement personnel, the DOC, and prosecuting attorneys for use in the performance of their duties.

House Bill 5049

Chapter 12 of the RJA established and regulates veterans treatment courts. Generally, a veterans court participant pleads guilty to a criminal charge and remains under the court's jurisdiction until final disposition of the case. With the agreement of the prosecutor and in conformity with a memorandum of understanding entered into under Chapter 12, the veterans court may discharge and dismiss the proceedings against a participant who meets certain criteria. An individual may receive only one discharge and dismissal under Chapter 12.

All records of the proceedings regarding the participation of an individual in the veterans treatment court are closed to public inspection. Those records, however, are open to courts of this State, another state, or the United States, the DOC, law enforcement personnel, and prosecutors for use in the performance of their duties or to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

Under the bill, the records would be closed to public inspection, subject to the exceptions described above, unless the court entered a judgment of guilt.

MCL 750.350a (H.B. 4966)
600.1076 (H.B. 4967)
769.4a (H.B. 4968)
333.7411 (H.B. 4969)
750.430 (H.B. 5048)
600.1209 (H.B. 5049)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.