

LAW ENFORCEMENT OFFICER SEPARATION OF SERVICE RECORD ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

**Senate Bill 223 (S-1) as reported from House committee with
recommendation**

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Rick Jones
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 6-16-17

(Enacted as Public Act 128 of 2017)

BRIEF SUMMARY: Senate Bill 223 would create the Law Enforcement Officer Separation of Service Record Act to mandate that law enforcement agencies maintain a record of the reasons for separation of service for each law enforcement officer.

FISCAL IMPACT: Senate Bill 223 would have no fiscal impact on the Michigan Commission on Law Enforcement Standards, and could have a minor fiscal impact on local law enforcement agencies resulting from administrative costs, depending on the extent to which local law enforcement agencies do not already maintain records of previous employees' separation or share those records with other law enforcement agencies.

THE APPARENT PROBLEM:

Currently, if a police officer conducts any wrongdoing during employment, they are able to resign from their position rather than face dismissal. When this happens, the wrongdoing is not made part of the officer's work history, because background checks typically only involve the dates of employment. In addition, such records are not available under the Freedom of Information Act (FOIA). This enables the officer to find another law enforcement position easily. Apparently, some officers face multiple pending lawsuits stemming from misconduct while employed at various police stations in their working history. The legislation introduced seeks to require that misconduct be a permanent part of a law enforcement officer's employment history.

THE CONTENT OF THE BILL:

Employment record

In addition to the employment history record a law enforcement agency is already required to maintain under the Michigan Commission on Law Enforcement Standards Act (MCOLES Act), the bill would require an agency to also maintain a record regarding the reason(s) for, and circumstance(s) surrounding, a separation of service for each law enforcement officer. An agency must also allow a separating law enforcement officer to review the record, upon request of the separating officer. A separating officer who disagrees with the accuracy of the report may request correction or removal of the portion he or she believes is incorrect. If the agency and officer cannot reach an agreement on the accuracy of the report, then the officer may submit a written statement explaining his or

her position and beliefs, which must be kept with the record and provided to any subsequent law enforcement employer.

Waiver to release employment record

A law enforcement officer who seeks subsequent employment at another law enforcement agency in this state must provide a signed waiver to the prospective agency that expressly allows the prospective agency to contact a former employing law enforcement agency and gain a copy of the record regarding the reason(s) for, and circumstance(s) surrounding, the separation of service. The waiver must be on a form created by the MCOLES, and the prospective employing law enforcement agency would be responsible for providing the waiver.

When the former employing law enforcement agency receives the waiver, it would have to provide a copy of the record to the prospective agency. A prospective agency would not be able to hire the officer without receipt of the record.

A former employing law enforcement agency that discloses information, upon receipt of the waiver, under this provision is presumed to be acting in good faith and would thus be immune from civil liability. To rebut the presumption, a plaintiff would have to show, by a preponderance of the evidence, one or more of the following:

- That the former employing law enforcement agency knew that the information disclosed was false or misleading.
- That the former employing law enforcement agency disclosed the information with a reckless disregard for the truth.
- That disclosure was specifically prohibited by a state or federal statute.

In the new act, "former employing law enforcement agency" would mean a law enforcement agency in this state that was the employer of, or that issued an oath of office to, a law enforcement officer licensed under the MCOLES Act, and that was required to maintain an employment history record for that officer under the same act.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee did not introduce or adopt amendments or substitutes for the Senate bill.

ARGUMENTS:

For:

Law enforcement, at all levels within the state, are supposed to hold the public's trust and keep the public safe. Supporters of the bill argue that law enforcement officers with severe misconduct allegations against them do not hold the public's trust, and that it only takes one incident to lose public trust.

Proponents of the bill also believe that this bill is necessary for law enforcement employers to adequately screen applicants for law enforcement positions. Because hiring background

checks do not include misconduct reports, and because misconduct reports are not available under FOIA, employers need an avenue to view certain misconduct reports and information prior to hiring a prospective law enforcement officer.

Against:

Concerns were raised during committee meetings that the bill does not address what is made publicly available through the Freedom of Information Act. Those concerned would like to include an avenue for the public to view certain misconduct reports and information.

Response:

Making this information available to the public is outside the scope of the intent of the bill. Supporters of the bill explained that this bill attempts to halt law enforcement officers with a history of misconduct from obtaining another law enforcement position and does not attempt to make it easier for individual lawsuits.

POSITIONS:

A representative from the Michigan State Police indicated support for the bill. (5-30-17)

A representative from the Oakland County Sheriff's Office indicated support for the bill. (6-6-17)

A representative from the Police Officers Association of Michigan indicated opposition to the bill. (6-6-17)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Kent Dell

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