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Senate Bill 1491 (as enacted)  
House Bill 6389 (as enacted)  
Sponsor: Senator Wayne Kuipers (S.B. 1491)  
Representative Ellen Cogen Lipton (H.B. 6389)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 248 of 2010**  
**PUBLIC ACT 247 of 2010**

Date Completed: 1-3-11

### **RATIONALE**

After a person is convicted of a crime, the court's probation department prepares a presentence investigation report to provide the court with information regarding the person's criminal record, character, and current circumstances, and a sentence recommendation. The report typically is provided to the court, the prosecution, and the defense before sentencing. Under the Corrections Code, however, records and reports made by a probation officer are privileged and confidential information. While the Code of Criminal Procedure requires the court to permit the prosecution and defense to review the presentence investigation report, until recently the Code did not authorize the court to give those parties a copy of the report or allow them to retain copies of it. As a result of this inconsistency, the Michigan Supreme Court adopted a court rule requiring courts to inform prosecutors and defense attorneys that they were prohibited from copying or keeping presentence reports. Later, after receiving feedback from prosecutors and defense attorneys, the Court amended the rule to delete that requirement and, if the Legislature failed to act on the issue, allow prosecutors and defendants or their attorneys to retain copies of presentence reports. Thus, it was suggested that the statute should require the court to give copies of a presentence report to the prosecution and defense and allow those parties to keep the copies, and that an exception to the confidentiality of probation reports should be enacted.

### **CONTENT**

**Senate Bill 1491 amended the Corrections Code to make an exception to a provision under which records and reports made by a probation officer, and case histories of probationers, are privileged or confidential.**

**House Bill 6389 amended the Code of Criminal Procedure to do the following:**

- **Prohibit a presentence investigation report from including a victim's or witness's address or telephone number, except under certain circumstances.**
- **Require a copy of a presentence investigation report to be given to the prosecution and the defense attorney or defendant.**
- **Specify that the prosecutor and the defendant's attorney, or the defendant if he or she is not represented by an attorney, have the right to retain a copy of the presentence investigation report.**

The bills were tie-barred and took effect on December 14, 2010.

### **Senate Bill 1491**

Under the Corrections Code, all records and reports of investigations made by a probation officer, and all case histories of probationers, are privileged or confidential communications not open to public inspection. Under the bill, that provision applies except as otherwise provided by law.

## **House Bill 6389**

Under the Code of Criminal Procedure, before a court sentences a person for a felony or another specified violation, the probation officer must inquire into the person's antecedents (such as personal history and criminal background, as well as mitigating factors), character, and circumstances, and report in writing to the court. The bill specifies that a presentence investigation report may not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual. Upon request, any other address or telephone number that reveals the location of a victim or witness, or a family member of a victim or witness, is exempt from disclosure, subject to the same exceptions.

Under the Code, the court must permit the prosecutor, the defendant's attorney, and the defendant to review the presentence investigation report before sentencing. The bill requires, in addition, that a copy of the presentence report be given to the prosecutor and the defendant's attorney, or the defendant if he or she is not represented by an attorney, at least two business days before sentencing, unless the defendant waives that period. The prosecutor and the defendant's attorney, or the defendant if he or she is not represented by an attorney, have the right to retain a copy of the report.

MCL 791.229 (S.B. 1491)  
771.14 (H.B. 6389)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

By requiring the court to give copies of presentence investigation reports to the prosecution and defense, and explicitly authorizing those parties to retain the copies, the bills will ensure that statutory law is consistent with the widespread practice of sharing copies of the reports. Although one statute already allowed the

prosecution and defense to review the reports, it did not authorize them to copy or keep the reports, while another statute made the reports confidential. Confusing the issue, the Supreme Court adopted rule changes that first prohibited prosecutors and defense counsel from making or keeping copies of the reports, and then deleted the prohibition, and would have explicitly allowed copies to be retained if the Legislature did not act on this matter by January 1, 2011.

The bills clarify that copies must be provided and may be retained, which is essential to both the prosecution and the defense to address future considerations such as appeals or probation or parole violations. As a result of these amendments, there is consistency both within the statutes and between the statutes and the court rules.

#### **Supporting Argument**

While providing an exception from the confidentiality and privileged status of probation reports, the bills also offer a degree of protection to victims and witnesses by excluding their and their family members' addresses, telephone numbers, and places of worship from a presentence investigation report, unless that information is necessary to identify the place of a crime or impose conditions upon the convicted person's release. This language is consistent with the Michigan Court Rules, which prohibit presentence reports from including a victim's or witness's home or work address or phone number, unless an address is used to identify the site of the crime.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

Before February 2010, most prosecutors and defendants' attorneys received and retained copies of presentence reports. The Michigan Supreme Court determined that there were conflicts between this practice and the confidentiality provisions of the Corrections Code (MCL 791.229). On February 5, 2010, the Supreme Court adopted an order that, in effect, prohibited prosecutors and defense attorneys from keeping copies of the presentence reports. The bills made the statutory changes authorizing the provision of copies of presentence reports to

prosecutors and defendants' attorneys and allowing them to retain copies.

Also, on July 5, 2010, the Supreme Court adopted an amendment to the Michigan Court Rules restoring the practice of allowing prosecutors and defendants' attorneys to retain presentence reports. Therefore, the bills' requirement that copies be given to prosecutors and defense attorneys will have no fiscal impact. However, requiring the redaction of certain information related to victims, witnesses, and their family members will result in additional administrative costs to the State to the extent this exceeds what is required by the court rules.

Fiscal Analyst: Bill Bowerman

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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.