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BILL ANALYSIS

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Senate Bills 1491 and 1492 (as introduced 9-14-10)
Sponsor: Senator Wayne Kuipers
Committee: Judiciary

Date Completed: 9-20-10

CONTENT

Senate Bills 1491 and 1492 would amend the Corrections Code and the Code of Criminal Procedure, respectively, to require a copy of a presentence investigation report to be given to the prosecutor, the defendant, and the defense attorney.

The bills are tie-barred.

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 would apply except as otherwise provided by law.

Senate Bill 1492

Under the Code of Criminal Procedure, before a court sentences a person for a felony or certain other violations, 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 court must permit the prosecutor, the defendant's attorney, and the defendant to review the presentence investigation report before sentencing. Under the bill, the court also would have to permit those parties to receive a copy of the report.

The bill would require a copy of the presentence report to be given to the prosecutor, the defendant, and the defendant's attorney at least two days before sentencing, unless the defendant waived the two-day period. The prosecutor, the defendant, and the defendant's attorney would have the right to retain the copy of the report.

MCL 791.229 (S.B. 1491)
771.14 (S.B. 1492)

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 are conflicts between this practice and the confidentiality provisions of MCL 791.229. On February 5, 2010, the Supreme Court adopted an order that prohibited courts from providing copies of the presentence reports. The bills would make the statutory changes that would authorize the provision of copies of presentence reports to prosecutors and defendants' attorneys.

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 receive and retain presentence reports. Therefore, the bills would have no fiscal impact.

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.