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BILL ANALYSIS

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House Bill 6389 (Substitute H-1 as reported by the Committee of the Whole)

Sponsor: Representative Ellen Cogen Lipton

House Committee: Judiciary

Senate Committee: Judiciary

CONTENT

The bill would amend the Code of Criminal Procedure to prohibit a presentence investigation report from including a victim's or witness's address or telephone number, except under certain circumstances, and to require a copy of a presentence investigation report to be given to the prosecution and the defendant or defense attorney.

Under the Code, before a court sentences a person for a felony or certain other violations, the probation officer must inquire into the person's antecedents, character, and circumstances, and report in writing to the court. The bill specifies that a presentence investigation report could 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 were used to identify the place of the crime or to impose conditions of release from custody that were necessary for the protection of a named individual. Upon request, any other address or telephone number that would reveal the location of a victim or witness, or a family member of a victim or witness, would be 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 would require, 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 were not represented by an attorney, at least two business days before sentencing, unless the defendant waived that period. The prosecutor and the defendant's attorney, or the defendant if he or she were not represented by an attorney, would have the right to retain a copy of the report.

The bill is tie-barred to Senate Bill 1491, which would amend the Corrections Code to specify that a provision making probation officers' records and reports confidential would apply except as otherwise provided by law.

MCL 771.14

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 (the section House Bill 6390 would amend). 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 requirement in House Bill 6389 (H-1) that copies be given to prosecutors and defense attorneys would have no fiscal impact. However, requiring the redaction of certain information related to the victim would result in additional administrative costs to the State.

Date Completed: 12-1-10

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.