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BILL ANALYSIS



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House Bill 6389 (Substitute H-1 as passed by the House)
House Bill 6390 (as passed by the House)
Sponsor: Representative Ellen Cogen Lipton
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-23-10

CONTENT

House Bill 6389 (H-1) would amend 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 were not represented by an attorney, would have the right to retain a copy of the presentence investigation report.**

House Bill 6390 would amend 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.

The bills are tie-barred.

House Bill 6389 (H-1)

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 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.

House Bill 6390

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.

MCL 771.14 (H.B. 6389)
791.229 (H.B. 6390)

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' requirement 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.

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.