

# Legislative Analysis



## **DIVERSION: CLOSE RECORDS TO PUBLIC INSPECTION**

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**Senate Bill 630 (Substitute H-2)**  
**Sponsor: Sen. Rick Jones**

**Senate Bill 632 (Substitute H-1)**  
**Sponsor: Sen. Steven Bieda**

**Senate Bill 631 (Substitute H-1)**  
**Sponsor: Sen. Tonya Schuitmaker**

**Senate Bill 633 (Substitute H-1)**  
**Sponsor: Sen. Virgil Smith**

**House Committee: Judiciary**  
**Senate Committee: Judiciary**

**Complete to 12-5-12**

## **A SUMMARY OF SENATE BILLS 630-633 AS REPORTED BY HOUSE COMMITTEE**

The bills would amend various acts that provide for a diversion program and the discharge and dismissal of criminal charges for certain offenses to do the following:

- State that court proceedings related to a discharge and dismissal would be open to the public.
- Unless a court entered a judgment of guilt (or adjudication of responsibility, in the case of minors), require the Department of State Police to retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge.
- Provide for the nonpublic record to be open to certain individuals and entities as follows:
  - State courts, law enforcement personnel, and prosecuting attorneys for use only in the performance of their duties or showing that a defendant has already once availed himself or herself of a discharge and dismissal.
  - The Department of Corrections for ascertaining preemployment criminal history or to determine if a DOC employee has violated conditions of employment.
  - The Department of Human Services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaging in the enforcement of child protection laws or vulnerable adult protection laws.
  - For determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under Section 1076(5) of the Revised Judicature Act (Senate Bills 631-633).

The bills would take effect April 1, 2013.

Senate Bill 630 would amend Chapter 10A, entitled "Drug Treatment Courts," of the Revised Judicature Act (MCL 600.1076). The act allows a court to not enter a judgment

of guilt (or adjudication of responsibility if a juvenile) if a person who is eligible for discharge and dismissal successfully completes a drug treatment court program.

Senate Bill 631 would amend the Michigan Penal Code (MCL 750.350a). Under the code, it is a criminal offense for a parent to take or retain a child for more than 24 hours from any other parent or legal guardian who has custody or parenting time rights. A first time offender may be eligible for discharge and dismissal of the charges. The bill would delete a provision requiring the Department of State Police to maintain a nonpublic record of the proceedings but requiring disclosure of the record to a court, police agency, or prosecutor for the purpose of determining if the defendant had already availed himself or herself of a discharge and dismissal and replace it with the language described above. The bill would also specify that there could be only one discharge and dismissal under this provision per individual.

Senate Bill 632 would amend the Public Health Code (MCL 333.7411), which provides a discharge and dismissal for certain first-time controlled substances offenses, to delete current provisions requiring the Michigan State Police to retain a nonpublic record but requiring the disclosure of the record to certain law enforcement officials and the Department of Corrections and replace it with the language described above.

Senate Bill 633 would amend the Code of Criminal Procedure (MCL 769.4a), which allows a discharge and dismissal for a first offense of domestic violence, to delete a provision requiring a nonpublic record of the proceedings to be retained by the Michigan State Police but requiring disclosure of the record to a court, police agency, or prosecutor and replace it with the language described above. The bill would also add a provision stating that access to the nonpublic record by an approved individual or entity would be allowed to determine that a defendant in a criminal action under Section 81 or 81A of the Michigan Penal Code, or a substantially similar local ordinance has already once availed himself or herself of a discharge and dismissal.

#### **FISCAL IMPACT:**

The bills would have a minimal fiscal impact on the Department of State Police. The bills would require the department to make minor programming changes. Since those changes could be accomplished by using existing resources, any costs to do so would be minimal.

#### **POSITIONS:**

The Michigan Association of Drug Court Professionals indicated support for the bills. (11-28-12)

The Michigan State Police indicated support for the bills. (11-28-12)

The Michigan Domestic Violence and Sexual Assault Prevention and Treatment Board indicated support for the bills. (11-28-12)

The Michigan Judges Association indicated support for the bills. (11-28-12)

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