



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 630 through 633 (as enacted)  
Sponsor: Senator Rick Jones (S.B. 630)  
Senator Tonya Schuitmaker (S.B. 631)  
Senator Steven Bieda (S.B. 632)  
Senator Virgil Smith (S.B. 633)

Senate Committee: Judiciary  
House Committee: Judiciary

Date Completed: 7-12-13

**PUBLIC ACTS 547 - 550 of 2012**

**CONTENT**

**Senate Bills 630 through 633 amended separate statutes to do the following:**

- **Specify that all court proceedings under various criminal diversion provisions are open to the public, but that a record of proceedings during a deferral period is closed to the public.**
- **Require the Michigan Department of State Police (MSP) to retain a nonpublic record of arrests, court proceedings, and dispositions of criminal charges under the diversion provisions.**
- **Identify individuals and entities to whom the nonpublic record must be open for specific purposes, including eligibility for discharge and dismissal under the diversion provisions or for certain public employment.**
- **Delete previous requirements regarding the MSP's retention of nonpublic records under the diversion provisions and the records' limited availability for specific purposes.**

Senate Bill 630 amended the Revised Judicature Act (RJA). Senate Bill 631 amended the Michigan Penal Code; Senate Bill 632 amended the Public Health Code; and Senate Bill 633 amended the Code of Criminal Procedure.

The bills took effect on April 1, 2013. Below is a detailed description of the bills.

Chapter 10A of the RJA established and regulates drug treatment courts. Generally, a drug court participant pleads guilty to a criminal charge or responsible for a juvenile offense and remains under the court's jurisdiction until final disposition of the case, but not longer than the appropriate probationary period. With the agreement of the prosecutor and in conformity with a memorandum of understanding entered into under Section 1076 of Chapter 10A, the drug court may discharge and dismiss the proceedings against a participant who meets certain criteria. An individual may receive only one discharge and dismissal under Section 1076. All records of the proceedings regarding an individual's discharge and dismissal are closed to public inspection, and are exempt from public disclosure under the Freedom of Information Act (FOIA).

Under Section 350a of the Penal Code, when a parent who has not previously been convicted of a kidnapping offense pleads guilty to or is found guilty of parental kidnapping, the court may defer further proceedings and place the parent on probation without entering a judgment of guilt. Upon fulfillment of the terms and conditions of probation, the court must discharge the parent from probation and dismiss the proceedings against him or her.

Under Section 7411 of the Public Health Code, when an individual who has not previously been convicted of a drug-related offense pleads guilty to or is found guilty of

certain controlled substance offenses, the court may defer further proceedings and place the person on probation and, upon fulfillment of the terms and conditions of probation, discharge the person and dismiss the proceedings without adjudication of guilt. An individual may receive only one discharge and dismissal under Section 7411.

Under Section 4a of Chapter IX of the Code of Criminal Procedure, a court may defer the proceedings against a first-time domestic assault offender, and dismiss the charges after he or she serves a probationary period. An individual may receive only one discharge and dismissal under Section 4a. Discharge and dismissal under Section 4a is without adjudication of guilt and is not a conviction for purposes of Section 4a or for disqualifications or disabilities imposed by law upon conviction of a crime.

Senate Bills 630, 631, 632, and 633 specify that all court proceedings under Section 1076 of the RJA, Section 350a of the Penal Code, Section 7411 of the Public Health Code, and Section 4a of Chapter IX of the Code of Criminal Procedure, respectively, are open to the public.

Under each bill, except as otherwise provided, if the record of proceedings as to the defendant is deferred, the record during the period of deferral must be closed to public inspection. Unless the court enters a judgment of guilt (or an adjudication of responsibility, under Section 1076 of the RJA), the MSP must retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge.

The nonpublic record must be open to the following individuals and entities for the purposes noted:

- Michigan courts, law enforcement personnel, and prosecuting attorneys for use in the performance of their duties.
- Michigan courts, law enforcement personnel, and prosecuting attorneys for the purpose of showing that the defendant has already once availed himself or herself of deferral and dismissal under the applicable section.
- The Department of Corrections (DOC) for ascertaining pre-employment criminal history or determining whether 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 pre-employment criminal history of any person who will be engaged in the enforcement of child or vulnerable adult protection laws.

Previously, under Section 1076 of the RJA, records of drug court deferral and dismissal proceedings, although exempt from disclosure under FOIA, were open to courts of this State, another state, or the United States, the DOC, law enforcement personnel, and prosecutors for use in the performance of their duties or to determine whether an employee had violated his or her conditions of employment or whether an applicant met criteria for employment. The MSP's Records and Identification Division was required to retain a nonpublic record of an arrest and a discharge and dismissal under Section 1076. Senate Bill 630 deleted those provisions.

Previously, Section 350a of the Penal Code required the MSP to retain a nonpublic record of an arrest and discharge or dismissal under that section. The record had to be furnished to either or both of the following:

- A court or police agency, upon request, for the purpose of showing that a defendant in a criminal action had already availed himself or herself of Section 350a.
- A court, police agency, or prosecutor, upon request, for the purpose of determining if the defendant was eligible for discharge and dismissal by a drug treatment court under Chapter 10A of the RJA.

Senate Bill 631 deleted those provisions. The bill also specifies that an individual may receive only one discharge and dismissal under Section 350a.

Section 7411 of the Public Health Code previously required the MSP's Records and Identifications Division to retain a nonpublic record of an arrest and discharge or dismissal under that section. The record had to be furnished to any or all of the following:

- A court, police agency, or office of a prosecuting attorney, upon request, for

the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance or imitation controlled substance had already once used Section 7411.

- A court, police agency, or prosecutor, upon request, for the purpose of determining whether the defendant was eligible for discharge and dismissal by a drug court under Chapter 10A of the RJA.
- The DOC, or a law enforcement agency, court, or prosecutor's office, upon request, if the individual was an employee or job applicant, the court placed the individual on probation after March 25, 2002, and the record was used only to determine whether an employee had violated terms of employment or an applicant met employment criteria.

Senate Bill 632 deleted those provisions.

Previously, the MSP was required to retain a nonpublic record of an arrest and discharge and dismissal under Section 4a of Chapter IX of the Code of Criminal Procedure. The record had to be furnished to a court or police agency, upon request, or to an office of prosecuting attorney for the purpose of showing that a defendant in a criminal action for assault or aggravated assault had already once availed himself or herself of Section 4a, or for the purpose of determining whether the defendant was eligible for discharge and dismissal by a drug treatment court under Chapter 10A of the RJA. Senate Bill 633 deleted those provisions.

The bill also specifies that discharge and dismissal under Section 4a is a prior conviction in a prosecution for domestic assault or aggravated domestic assault when the defendant has prior offenses for those crimes.

MCL 600.1076 (S.B. 630)  
750.350a (S.B. 631)  
333.7411 (S.B. 632)  
769.4a (S.B. 633)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bills will have a minimal fiscal impact on the Department of State Police. The bills require the Department to make minor programing changes by using existing resources. Any costs to do so will be minimal.

The bills will have no fiscal impact on the Department of Corrections or the judicial branch of government.

Fiscal Analyst: Bruce Baker  
Dan O'Connor

### S1112\s630es

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.