



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 630 through 633 (as introduced 9-8-11)

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)

Committee: Judiciary

Date Completed: 10-4-11

CONTENT

Senate Bill 630 would amend the Revised Judicature Act (RJA) to do the following:

- **Require the Michigan Department of State Police (MSP) to retain a nonpublic record of an arrest, diversion, and discharge or dismissal under Chapter 10A (Drug Treatment Courts).**
- **Allow the MSP nonpublic record to be furnished to a court, law enforcement agency, or prosecuting attorney's office, or the Department of Corrections (DOC) for certain purposes.**

Senate Bills 631, 632, and 633 would amend separate statutes to include nonpublic records of diversion in various requirements that the MSP retain a nonpublic record of an arrest, discharge, and dismissal under certain programs for the deferral of proceedings and the dismissal of charges.

Senate Bill 631 would amend the Michigan Penal Code; Senate Bill 632 would amend the Public Health Code; and Senate Bill 633 would amend the Code of Criminal Procedure.

Senate Bill 630

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 Chapter 10A, the drug court may discharge and dismiss the proceedings against a participant who meets certain criteria.

The bill would amend Chapter 10A to require the MSP to retain a nonpublic record of an arrest, diversion, and discharge of dismissal under this chapter. The nonpublic record would have to be furnished to a court, law enforcement agency, or prosecuting attorney's office upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance had already once used diversion under Section 7411 of the Public Health Code (the section Senate Bill 632 would amend). The nonpublic record also would have to be furnished to the DOC or a law enforcement agency, upon the request of the Department or agency, if the following conditions were met, as applicable:

- At the time of the request, the individual was an employee of the DOC or the law enforcement agency, or was an applicant for employment with the DOC or the agency.
- The individual was a DOC employee or an employee of the law enforcement agency and court placed the individual on probation after December 31, 2002, the date on which the court placed the individual on probation.

The DOC or law enforcement agency could use the nonpublic record only to determine whether an employee had violated his or her conditions of employment or whether an applicant met criteria for employment, as applicable.

Senate Bill 631

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. The MSP must retain a nonpublic record of an arrest, and discharge and dismissal, and furnish the record to either of the following upon request:

- A court or police agency for the purpose of showing that a criminal defendant has already had a charge deferred and dismissed under Section 350a.
- A court, police agency, or prosecutor for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court.

Under the bill, the MSP nonpublic record would have to include diversion, as well as arrest and discharge and dismissal.

Senate Bill 632

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.

The Code requires the Records and Identifications Division of the MSP to retain a nonpublic record of an arrest and discharge or dismissal under Section 7411. The record must be furnished to a court, police agency, or prosecutor upon request for either of the following purposes:

- Showing that a defendant in a criminal action involving the possession or use of a controlled substance has already once used the diversion provision.
- Determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court.

The MSP nonpublic record also must be furnished to the DOC, a law enforcement agency, a court, or a prosecuting attorney's office, upon request, subject to all of the following conditions:

- At the time of the request, the individual was an employee of the DOC, agency, court, or prosecuting attorney's office or an applicant for employment with one of those entities.

- If the individual is an employee of the DOC, agency, court, or prosecuting attorney, the date on which the court placed the individual on probation occurred after March 25, 2002.
- The record will be used only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

Under the bill, the MSP nonpublic record would have to include diversion, as well as arrest and discharge or dismissal.

Senate Bill 633

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.

The Code requires the MSP to retain a nonpublic record of an arrest and discharge and dismissal under Section 4a. The record must be furnished to a court or police agency upon request or to a prosecuting attorney's office for the purpose of showing that a defendant in a criminal action for assault has already once used diversion under Section 4a or for the purpose of determining whether the defendant is eligible for discharge and dismissal of proceedings by a drug treatment court.

Under the bill, the MSP nonpublic record would have to include diversion, as well as arrest and discharge and dismissal.

MCL 600.1070 (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 would have a minimal fiscal impact on the Department of State Police. The bills would require the Department to maintain additional nonpublic criminal history records for certain offenses, something that is already being performed for certain existing offenses. The Department has stated that it could comply with the bills by using existing resources and any additional costs to do so would be minimal.

The bills would have no fiscal impact on the Department of Corrections.

Fiscal Analyst: Bruce Baker
Matthew Grabowski

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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.