

Legislative Analysis



REQUIRE COURT RECORDS TO INCLUDE DEFENDANT'S NAME AND DATE OF BIRTH

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House Bill 5368 (H-1) as reported from committee
Sponsor: Rep. Graham Filler
Committee: Judiciary
Complete to 12-14-21

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5368 would amend the Revised Judicature Act to provide that a record in any Michigan court must not be redacted of a defendant's name or date of birth except as otherwise provided by law.

FISCAL IMPACT: The bill would not have a fiscal impact on any unit of state or local government.

THE APPARENT PROBLEM:

In 2019 the Michigan Supreme Court adopted court rule changes that will prohibit personal identifying information from being included in public court documents.¹ This includes date of birth, Social Security number (including four-digit representations) or national identification number, driver's license number or state personal identification number, passport number, and financial account numbers. The amended court rules were set to go into effect July 1, 2021, but are now expected to take effect April 1, 2022, to allow for the reprogramming of computer systems and accommodate other changes required by trial courts and court users to implement the changes made by the rules.

Some believe that these rule changes will unintentionally result in an undue burden on organizations, such as businesses and volunteer centers, that frequently conduct background checks regarding criminal history when hiring a new employee or volunteer. It is important to these organizations to determine whether an individual has a criminal background, yet the new court rules would prohibit them from viewing information in the court documents, such as name and date of birth, that is essential to being able to discern if a potential employee or volunteer has a criminal background. To address this concern, legislation has been offered to prohibit Michigan courts from redacting a defendant's name or date of birth from their records.

THE CONTENT OF THE BILL:

House Bill 5368 would amend the Revised Judicature Act to provide that a *record* in any Michigan court must not be redacted of a defendant's name or date of birth except as otherwise provided by law.

Record would mean information of any kind that is recorded in any manner and has been created by the court or filed with a court in accordance with Michigan Supreme Court rules.

Proposed MCL 600.1429

¹ March 24, 2021 State Court Administrative Office memorandum regarding the amendments:
<https://www.courts.michigan.gov/4a8308/siteassets/court-administration/scao-communications/2021-02.pdf>

ARGUMENTS:

For:

Supporters of the bill argue that, while privacy is important to Americans for safety and identity theft protections, a balance must be found between these privacy issues and the ability employers and volunteer centers to continue performing criminal background checks on potential employees or volunteers. Retaining defendants' names and dates of birth in court documents is important for these organizations to be able to properly match a new hire's or volunteer's name and date of birth and determine whether the individual has a criminal history.

Against:

Opponents of the bill argue that, in a time when identity theft is on the rise, privacy for all individuals is more important than ever. Some also expressed concern that, under the bill, personal information in domestic violence or divorce and custody cases could lose protection that they would have under the court rule. According to committee testimony, the court rule would allow applicants to waive their privacy rights when applying for a job or completing other forms that would lead to a criminal history check. This would then enable employers to view personal identifying information in the court documents.

Against:

Some critics argue that the proposed court rule would not prohibit employers or volunteer centers from continuing to conduct criminal history checks, as these organizations could use other avenues, such as the Internet Criminal History Access Tool (ICHAT), to determine a potential employee's or volunteer's criminal background.

Response:

Supporters of the bill note that ICHAT is not free for most users; fees are waived only for nonprofit charitable organizations and government agencies registered in ICHAT with an agency code. For all other employers and volunteer centers, using ICHAT could be too costly. Additionally, the information provided by an ICHAT search may not be complete or up-to-date. Users report that results recommend that users consult with court documents to ensure that the information is correct.

POSITIONS:

Representatives of the following entities testified in support of the bill (10-13-21):

- Michigan Chamber of Commerce
- Michigan Association of Health Plans
- Care.com
- Sue Weaver CAUSE
- Professional Background Screening Association

The following entities indicated support for the bill:

- Potawatomi Gaming Commission (10-13-21)
- Rocket Mortgage (10-13-21)
- CVS Health (10-13-21)
- AT&T (10-13-21)
- McLaren Health Care (10-13-21)
- Equifax Workforce Solutions (10-13-21)

- Michigan Chemistry Council (10-13-21)
- Stellantis (10-13-21)
- Michigan Restaurant and Lodging Association (10-13-21)
- Michigan State University (10-13-21)
- Comcast (10-13-21)
- RELX Inc. (10-13-21)
- Michigan Health and Hospital Association (10-13-21)
- TechNet (10-13-21)
- Michigan Association of State Universities (10-13-21)
- Michigan Cable Telecommunications Association (10-13-21)
- Property Management Association of Michigan (10-19-21)
- Homecare Association of America – Michigan Chapter (10-19-21)
- Michigan Credit Union League (10-19-21)
- NFIB (10-19-21)
- Michigan Retailers Association (10-19-21)
- Michigan Catholic Conference (10-19-21)
- Appriss Insights, an Equifax Company (10-19-21)
- Uber (10-13-21)
- Consumer Data Industry Association (10-13-21)
- Insurance Alliance of Michigan (10-13-21)
- Grand Rapids Chamber of Commerce (10-13-21)
- Michigan Bankers Association
- Coalition for Sensible Public Records Access (10-13-21)

Representatives of the State Court Administrative Office testified in opposition to the bill. (10-13-21)

The following entities indicated opposition to the bill:

- Michigan Supreme Court (10-19-20)
- Michigan Domestic and Sexual Violence Prevention and Treatment Board (10-13-21)
- Michigan Poverty Law Program (10-19-20)
- Michigan Coalition to End Domestic and Sexual Violence (10-19-20)

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