



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

BILL ANALYSIS



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

House Bill 4966 (Substitute S-1 as reported)
House Bill 4967 (Substitute S-1 as reported)
House Bill 4968 (Substitute S-1 as reported)
House Bill 4969 (Substitute S-1 as reported)
House Bill 5048 (Substitute S-3 as reported)
House Bill 5049 (Substitute S-1 as reported)
Sponsor: Representative Aric Nesbitt (H.B. 4966)
Representative Kevin Cotter (H.B. 4967)
Representative Kurt Heise (H.B. 4968)
Representative Margaret E. O'Brien (H.B. 4969)
Representative Charles M. Bruner (H.B. 5048)
Representative Sam Singh (H.B. 5049)

House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

House Bills 4966 (S-1), 4967 (S-1), 4968 (S-1), 4969 (S-1), and 5048 (S-3) would amend various statutes to allow a nonpublic record of an arrest, court proceedings, and disposition of a criminal charge that was discharged and dismissed to be open to the Department of Corrections (DOC). Generally, under current law, the nonpublic record is available to the DOC only for ascertaining pre-employment criminal history or determining whether a DOC employee has violated conditions of employment.

House Bill 5049 (S-1) would permit the public inspection of records of proceedings regarding an individual's participation in a veterans treatment court if the court entered a judgment of guilt.

The bills would take effect on January 1, 2014.

House Bills 4966 (S-1), 4967 (S-1), 4968 (S-1), and 4969 (S-1) would amend, respectively, Section 350a of the Penal Code, Chapter 10A (Drug Treatment Courts) of the RJA, Section 4a of Chapter IX of the Code of Criminal Procedure, and Section 7411 of the Public Health Code, which provide for people who commit certain crimes to be placed on probation without a judgment of guilt being entered. When the term and conditions of probation are fulfilled, the court must discharge the person from probation and dismiss the proceedings against him or her. Under all of those provisions, the record of proceedings during the period of deferral is closed to public inspection. Unless the court enters a judgment of guilt, the Department of State Police must retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge. That record is open, however, to Michigan courts, law enforcement personnel, and prosecuting attorneys for use only in the performance of their duties. The bills would add the DOC to that provision in each of the statutes that would be amended. The bills also specify that the nonpublic record would be open to the courts, law enforcement, the DOC, and prosecuting attorneys to determine whether an employee violated conditions of employment or whether a job applicant met criteria for employment.

House Bill 5048 (S-3) would amend Section 430 of the Penal Code, which provides for criminal proceedings against a health care profession who practiced his or her profession while he or she had a certain bodily alcohol content, or was visibly impaired under the influence of a controlled substance, to be similarly deferred, discharged, and dismissed without a judgment of guilt. The Department of State Police must retain a nonpublic record of an arrest and discharge or dismissal. That record may be furnished only to a court or police agency, upon request, for the purpose of showing whether the individual has already once used this discharge and dismissal provision, or to a court, police agency, or prosecutor, upon request, for the purpose of determining whether a criminal defendant is eligible for discharge and dismissal of proceedings by a drug treatment court. Under the bill, the State Police would have to retain a nonpublic record of the arrest, court proceedings, and disposition. The record could be furnished to any of the following:

- Michigan courts, law enforcement personnel, and prosecuting attorneys, upon request, for the purpose of showing whether the individual had already once used this discharge and dismissal provision.
- Michigan courts, law enforcement personnel, and prosecuting attorneys, upon request, for the purpose of determining whether a defendant in a criminal action was eligible for discharge and dismissal of proceedings by a drug treatment court under Chapter 10A of the RJA.
- Michigan courts, law enforcement personnel, the DOC, and prosecuting attorneys for use in the performance of their duties, or to determine whether a DOC employee violated conditions of employment or whether a job applicant met criteria for employment with the DOC.

House Bill 5049 (S-1) would amend Chapter 12 of the RJA, which established and regulates veterans treatment courts. Generally, a veterans court participant pleads guilty to a criminal charge and remains under the court's jurisdiction until final disposition of the case. With the agreement of the prosecutor, the veterans court may discharge and dismiss the proceedings against a participant who meets certain criteria.

All records of the proceedings regarding the participation of an individual in the veterans treatment court are closed to public inspection. Those records, however, are 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 has violated his or her conditions of employment or whether an applicant meets criteria for employment. Under the bill, the records would be closed to public inspection, subject to the those exceptions, unless the court entered a judgment of guilt.

MCL 750.350a (H.B. 4966)
600.1076 (H.B. 4967)
769.4a (H.B. 4968)
333.7411 (H.B. 4969)
750.430 (H.B. 5048)
600.1209 (H.B. 5049)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State and local government.

Date Completed: 11-13-13

Fiscal Analyst: Bruce Baker
Dan O'Connor

Floor/hb4966

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.