

Legislative Analysis



ALLOW RESTRICTED ACCESS TO FOIA BY INMATES

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House Bill 4617 (H-2) as reported from committee

Sponsor: Rep. Stephanie A. Young

Committee: Oversight

Complete to 1-19-23

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

BRIEF SUMMARY: House Bill 4617 would amend the Freedom of Information Act (FOIA) to allow access by an inmate to certain public documents pertaining to the inmate's own case or to an arrest or prosecution of the inmate's minor child for whom the inmate has not been denied parenting time under the Child Custody Act.

FISCAL IMPACT: House Bill 4617 would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

After the state enacted the Freedom of Information Act in 1976, the Department of Corrections (DOC) saw a steady increase in the number of requests for copies of DOC records. Reportedly, requests filed by or on behalf of inmates rose from about 3,500 in 1982 to over 56,000 in 1992. Apparently, in an attempt to reduce what were, at least in part, seen as frivolous requests by inmates and to keep DOC from being overburdened with requests, several legislative changes to restrict access to any public records by inmates were subsequently offered. In 1994, the Freedom of Information Act was amended to totally exclude those incarcerated in any local, state, or federal correctional facility from being eligible to request and receive public documents under the act.

Some feel that this change has had unintended consequences, such as making it difficult, and in some cases impossible, for inmates to obtain information even on their own cases—information that, among other things, may confirm that no errors of law occurred in the prosecution or may reveal grounds for an appeal or new trial based on legal errors, jury bias, ineffective assistance of counsel, or prosecutorial misconduct. Many believe that allowing inmates to access public documents relevant to their own case, or that relate to an arrest or prosecution of their minor child for whom they retain parenting time rights, would improve fairness in the criminal justice system and provide other benefits to inmates and their families in strengthening parental bonds, improving institutional conduct, and reducing public spending related to incarcerating the innocent or errors that result in sentences longer than the sentencing guidelines provide.

THE CONTENT OF THE BILL:

Currently, FOIA establishes that it is the state's public policy that all persons, *except those persons incarcerated in state or local correctional facilities*, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the act. The bill would delete the italicized text.

The act also currently defines “person” as an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. However, the term specifically excludes an individual serving a sentence of imprisonment in a state or county correctional facility in this or any other state or in a federal correctional facility. The bill would eliminate this exclusion. It would instead add a provision providing that the right to inspect, copy, or receive a copy of a public record under FOIA is not available to an individual incarcerated in a state or county correctional facility in this or any other state or in a federal correctional facility **except** for a public record properly requested by the incarcerated individual that meets all of the following:

- The record is not exempt under section 13 of the act.
- The record contains one or more specific references to the incarcerated individual or the individual’s minor child for whom the individual has not been denied parenting time under the Child Custody Act and the record is otherwise accessible to the individual by law.
- The record is related to an arrest or prosecution of the incarcerated individual or the individual’s minor child as described above.

The bill states that the right of incarcerated individuals as described above is not intended to interfere with any properly adopted rules that a correctional agency may have regarding the content of mail that may be delivered to an incarcerated individual.

In general, a public body is required to respond to a request for a public record within five business days after receiving the request by granting the request, issuing a written notice denying the request, granting the request in part and issuing a written notice denying the request in part, or *issuing a notice extending for not more than 10 days the period during which the public body must respond to the request*. Under the bill, if the public body receiving the request was a correctional facility, the italicized provision would not apply and the correctional facility would instead have to respond within 30 days after the request was received.

MCL 15.231 et seq.

ARGUMENTS:

For:

Reportedly, Michigan is one of a handful of states that expressly denies incarcerated individuals the right to access public documents under freedom of information laws. Prior to the 1994 law that banned inmate requests, prisoners in Michigan could make FOIA requests. Not having the right to obtain public records is particularly burdensome to individuals who are wrongfully convicted or who may have grounds to appeal the length of their sentences. The total ban means that they cannot request or receive police reports, court records, and other public information related to their own cases. If they cannot afford to hire an attorney post-conviction or do not have a family member or friend who can file a request on their behalf, they cannot access information to support an appeal, petition for a new trial, or challenge the length of a sentence.

House Bill 4617 would not give inmates full access to public documents. The bill would restore only the right to access public information (information that is not exempt from disclosure under FOIA) that pertains to an inmate’s own case or to a case involving a minor child for

whom the inmate retains parenting time privileges. An inmate who had had their parental rights terminated or parenting time suspended could not access the child's case information. In addition, a correctional institution receiving a request for information would have up to 30 days, instead of five, to respond. The narrow scope of the bill should therefore alleviate concerns that public agencies, including jails and prisons, would be overburdened by requests.

Moreover, many who have been exonerated in recent years were able to prove their innocence when errors, bias, and even exculpatory evidence that had not been turned over to the defense as legally required were discovered in documents obtained through FOIA requests. Incarceration is expensive, and taxpayers deserve to not pay to house innocent people or for longer periods of detention than appropriate or what the law or the elements of a crime require. In addition, there is evidence that consistent parental involvement with a child during incarceration provides benefits to the child (less trauma related to separation, greater sense of stability, improvement in academic performance) as well as for the incarcerated parent (decreases parental stress that can increase levels of anxiety and depression and that can impact conduct while incarcerated, and aids in family reunification and decreases recidivism after release). Allowing an inmate to access public records related to an arrest or prosecution of their minor child would enable an incarcerated parent to stay involved in the child's life and thereby strengthen family connections.

Against:

No arguments in opposition to the bill were offered during the committee process.

POSITIONS:

A representative of the Mueller Law Firm submitted written testimony in support of the bill. (4-15-21)

The following entities indicated support for the bill (6-9-22):

- Mackinac Center for Public Policy
- ACLU of Michigan

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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.