

CORRECTIONS OFFICERS EMPLOYMENT RECORDS

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House Bill 4118 as reported from committee
Sponsor: Rep. Ben Frederick

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

House Bill 4119 as reported from committee
Sponsor: Rep. Sarah Anthony

Committee: Judiciary
Complete to 4-27-21

BRIEF SUMMARY: House Bills 4118 and 4119 would respectively amend the Law Enforcement Officer Separation of Service Record Act and the Bullard-Plawecki Employee Right to Know Act to include corrections agencies and corrections officers in their provisions regarding employment records.

FISCAL IMPACT: House Bill 4118 would have an indeterminate fiscal impact, and House Bill 4119 no fiscal impact, on the state and local units of government. (See **Fiscal Information**, below, for more information.)

THE APPARENT PROBLEM:

Since the Law Enforcement Officer Separation of Service Record Act was passed,¹ the MCOLES-certified officers that fall under its purview have reported positive feedback while noting increased communication within and among law enforcement departments. While the act has been positively received, some believe it should be expanded to include corrections officers. Corrections officers are also currently charged with many responsibilities that entail a high level of public and institutional trust and should be subject to the same standards as law enforcement officers, including those that concern the disclosure of reasons for their separation of service from a previous employer. These bills would address those concerns.

THE CONTENT OF THE BILLS:

House Bill 4118 would amend the Law Enforcement Officer Separation of Service Record Act to include *corrections agencies* and *corrections officers* within its purview. The bill would also change the name of the act to the Officer Separation of Service Act.

Corrections agency would mean the Department of Corrections or a county sheriff that employs corrections officers.

Corrections officer would mean either of the following:

- A person employed by the Department of Corrections in a correctional facility as a correctional officer or a corrections medical aide, or that person's immediate supervisor.
- A person employed by a county sheriff in a local correctional facility as a corrections officer, or that person's supervisor or administrator.

¹ 2017 PA 128: <http://legislature.mi.gov/doc.aspx?2017-SB-0223>.

The act currently requires law enforcement agencies to maintain a record regarding the reasons for, and circumstances surrounding, the separation from service of each law enforcement officer who leaves their agency. Additionally, a law enforcement officer who seeks subsequent employment at another law enforcement agency in this state must provide a signed waiver to the prospective agency that expressly allows the prospective agency to contact a former employing law enforcement agency and get a copy of the record.

The bill would include corrections officers and corrections agencies in the act and apply to them the same requirements as now apply to law enforcement officers and law enforcement agencies. For instance, corrections agencies would also have to maintain a record regarding the reasons for, and circumstances surrounding, a separation of service from the corrections agency. Additionally, a corrections officer who seeks subsequent employment at another corrections agency also would have to provide a signed waiver to the prospective agency to contact a former employing corrections agency and get a copy of the record. Also, a prospective employing corrections agency could not hire a corrections officer unless the agency received the record.

The bill also would add that the act applies to public employers and employees, but only to the extent that it does not conflict with section 5 of Article XI of the state constitution.

MCL 28.561 et seq.

House Bill 4119 would amend the Bullard-Plawecki Employee Right to Know Act to allow an employer to release information to a prospective employing corrections agency if the information is part of a record regarding the reasons for, and circumstances surrounding, a separation of service. The bill would also update references to the Law Enforcement Officer Separation of Service Record Act.

The act currently requires an employer that is a criminal justice agency to maintain a separate, confidential file of information relating to investigations of alleged criminal activity or violations of an agency rule by an employee. The employer also may release information from the separate file to a prospective employing law enforcement agency, but only if the information is part of a record regarding the reasons for, and circumstances surrounding, a separation of service under the Law Enforcement Officer Separation of Service Record Act. The employer also must release the information to the Michigan Commission on Law Enforcement Standards (MCOLES) upon the request of MCOLES.

The bill would add “prospective employing corrections agency” to allow an employer to also release information from the separate file if the information is part of a record regarding the reasons for, and circumstances surrounding, a separation of service under the Officer Separation of Service Record Act. The bill would also provide that, if the employee is a law enforcement officer, an employer is required to release the information to MCOLES upon the request of MCOLES.

House Bill 4119 is tie-barred to HB 4118, which means it could not take effect unless HB 4118 were also enacted.

MCL 423.507 and 423.509

FISCAL INFORMATION:

House Bill 4118 could have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the extent to which the state Department of Corrections and local county sheriffs' offices do not currently maintain records regarding the reason or reasons for, and circumstances surrounding, separation of service for corrections officers and the extent to which they do not currently share those records with other law enforcement or corrections agencies.

House Bill 4119 is a companion bill to House Bill 4118 and would not have a fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Supporters of the bills argue that corrections officers deserve the same treatment and should be accorded the same level of professionalism as law enforcement officers. Corrections officers are entrusted with great responsibilities that are similar to law enforcement officers and should be held to similar standards. One such standard is to be adequately screened for corrections officer positions. Current practice allows a corrections officer's record to be wiped clean every two years, which would prohibit new potential employers from viewing any past misconduct reports. To keep the public's trust and ensure that the profession is viewed with respect, corrections officers should also be subject to the Law Enforcement Officer Separation of Service Record Act.

Against:

No arguments against the bills were presented during committee testimony.

POSITIONS:

A representative of the Shiawassee County Sheriff's Office testified in support of the bills. (3-23-21)

The Michigan Sheriff's Association indicated support for the bills. (3-23-21)

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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.