

Legislative Analysis



LAW ENFORCEMENT OFFICER SERVICE RECORDS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6115 as introduced
Sponsor: Rep. Jason Hoskins

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

House Bill 6116 as introduced
Sponsor: Rep. Donovan McKinney

Committee: Criminal Justice
Complete to 12-10-24

SUMMARY:

House Bill 6115 would amend the Law Enforcement Officer Separation of Service Record Act to change requirements related to the contents and release of law enforcement officer service records. Current law requires that, in addition to an employment history record, all law enforcement agencies maintain a record detailing the reasons and circumstances of an officer's separation from the agency. As now written, the act does not differentiate between requests for these records made by officers who have already separated from a law enforcement agency and those who intend to separate from their current employing agency. The bill would newly distinguish between *separated law enforcement officers* and *separating law enforcement officers*, as well as create additional requirements for the contents of those records.¹

Separated law enforcement officer would mean a law enforcement officer who meets both of the following requirements:

- The officer has left employment with a former employing law enforcement agency.
- The officer requests and received a separation of service record.

Separating law enforcement officer would mean a law enforcement officer who meets all of the following requirements:

- The officer is currently employed with a law enforcement agency at the time of requesting a provisional service record.
- The officer intends to leave their current employing law enforcement agency to take a position with a prospective employing law enforcement agency.
- The officer requests and receives a provisional service record.

¹ The bill would change the title of the act from the "Law Enforcement Officer Separation of Service Record Act" to the "Law Enforcement Officer Service Records Act." The bill also would divide the act into four articles, respectively addressing defined terms, separation of service records, provisional service records, and general provisions.

Separation of service records

The bill would keep the requirement that all law enforcement agencies produce and maintain, for each separated law enforcement officer formerly employed by the agency, a *separation of service record* that details the reasons and circumstances of the officer's separation from the agency. The bill would newly require these separation of service records to contain information required by the Michigan Commission on Law Enforcement Standards (MCOLES), to be in a form prescribed by MCOLES, and to include, at a minimum, information related to any disciplinary process or investigation against the separated law enforcement officer that was active within one year before their date of separation. The bill would also create the following requirements related to the creation and maintenance of a separation of service record by a former employing law enforcement agency:

- A separation of service record would have to be finalized within five business days after the date of a law enforcement officer's separation from the agency.
- Within three days after finalizing the separation of service record, the agency would have to send a written notice to the separated law enforcement officer containing all of the following statements:
 - That the separation of service record has been finalized.
 - That the separated law enforcement officer has the right to review the separation of service record upon written request by the officer.
 - That the separated law enforcement officer has a right to disagree with the accuracy of the contents of the separation of service record.
 - That, if the separated law enforcement officer disagrees with the accuracy of the contents of the separation of service record, the officer may request that the former employing agency supplement the record to correct or disclaim the portion the officer believes is incorrect.
- A former employing law enforcement agency would have to provide a separated law enforcement officer with the officer's separation of service record within three days after receiving a written request by the officer to review that record.
- A separated law enforcement officer who disagrees with the accuracy of a requested separation of service record could request the correction or disclaimer of the portion of the record the officer believes is incorrect within seven calendar days after receiving the record. Within seven calendar days after the agency receives this request, the agency and officer could agree on the contents of the supplement to the record. If the parties are unable to reach an agreement on the supplement within that seven-day period, the officer would have another seven days to submit a written statement explaining their position and the basis for disagreement, which would have to be kept with the rest of the record by the agency and provided to prospective employing law enforcement agencies as provided by the act.

The act requires a separated law enforcement officer seeking reemployment as a licensed law enforcement officer to submit a signed waiver to the prospective employing law enforcement agency allowing that agency to contact the officer's former employing agency (or agencies) to obtain the officer's separation of service record. Currently, this waiver must be submitted when the former officer receives a conditional offer of employment.

The bill would instead require it to be submitted when the former officer applies for employment.

Provisional service records

The bill would allow (but not require)² a current employing law enforcement agency to create and maintain a *provisional service record* for a separating law enforcement officer upon receiving a signed waiver as described below. The provisional service record would have to contain information required by MCOLES, be in a form prescribed by MCOLES, and include, at a minimum, information related to any disciplinary process, performance plan, or investigation against the officer by any law enforcement agency that was active within one year before the date of the officer's request for the provisional service record. A separating law enforcement officer requesting a provisional service record would, upon receiving a conditional offer of application for employment, have to submit a signed waiver expressly allowing the prospective employing law enforcement agency to contact the current employing agency to obtain a copy of the provisional service record.³

The bill would require a current employing law enforcement agency to finalize the provisional service record within five business days after receiving the waiver provided to the prospective law enforcement agency by the separating law enforcement officer. Under the bill, all other requirements and procedures related to the creation, maintenance, and review of a provisional service record would be the same as those for separation of service records, as described in the bulleted list in the previous section.⁴

The bill would extend general provisions that now apply to separation of service records under the act to also apply to provisional service records. These include indemnity for a law enforcement agency that discloses information under the act in good faith, a presumption that an agency is acting in good faith and grounds for overcoming that presumption, and a requirement that records must be provided by an agency to MCOLES upon request. The bill also would provide that the creation and maintenance of one kind of record does not relieve an agency of any obligation under the act to create the other kind of record.

The bill would take effect 90 days after being enacted.

MCL 28.561 et seq.

² The bill says that a current employing law enforcement agency “may” create a provisional service record under the conditions described in the bill; that is, it could, but it would not have to. However, the bill also refers to a law enforcement agency’s being “required to create and maintain” such a record, and to its “*obligation* to create a provisional service record” if requested by the officer (see footnote 3). As currently written, this seems unclear.

³ As currently written, the bill appears to allow a separating law enforcement officer to request their provisional service record, but it does not allow the current employer to create the record until after receiving a request from the prospective employer (with the officer’s waiver). However, the bill also requires the record to include information dated from the officer’s (not the prospective employer’s) request, and requires *an officer who requests a record* to submit a waiver to the prospective employer (which suggests that the officer’s request comes first). Given this, the timing of different requests for provisional records seem potentially unclear.

⁴ The act now allows separating law enforcement officers to review their service record and request the correction *or removal* of a portion of the record they believe to be inaccurate. The bill instead would allow the officer to request a correction *or disclaimer*. The bill also would add specific time frames for this process as described above.

House Bill 6116 would amend the Bullard-Plawecki Employee Right to Know Act, which requires employers to allow former and active employees to review and obtain a copy of their personnel records. The bill would newly exempt provisional service records of law enforcement officers from release under the act to account for changes made by House Bill 6115, as well as update references to corresponding sections of the Law Enforcement Officer Service Records Act.

The bill cannot take effect unless House Bill 6115 is also enacted.

MCL 423.507 and 423.509

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local units of government.

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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.