

# Legislative Analysis



## PROHIBIT USE OF PUBLIC RECORD TO COMMIT CRIME

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**House Bill 4680 (Substitute H-1)**  
**Sponsor: Rep. Lisa Wojno**

**House Bill 4681 (Substitute H-1)**  
**Sponsor: Rep. Mike Nofs**  
**Committee: Judiciary**

### First Analysis (12-6-06)

**BRIEF SUMMARY:** House Bill 4680 would establish criminal penalties for use of a public record to commit or attempt to commit a crime, and House Bill 4681 would place the maximum term of imprisonment for a crime prohibited by 4680 within the sentencing guidelines.

**FISCAL IMPACT:** The bill would have an indeterminate impact on state and local governments. See more detailed fiscal implications later in the analysis.

### THE APPARENT PROBLEM:

Many new laws have been enacted in recent years and many policy changes adopted by public agencies and private businesses to curtail access to sensitive information by unauthorized persons. Yet, identity theft continues to increase and personal information used to commit various crimes. Public records often contain personal information that can be used in the commission of a crime. For that reason, some feel that it using information gleaned from public records should be a separate crime category.

### THE CONTENT OF THE BILLS:

The bills would establish criminal penalties for use of a public record (as defined in the Freedom of Information Act) to commit or attempt to commit a crime.

House Bill 4680 would amend the Michigan Penal Code (MCL 750.492b) to make the use of a public record in the commission or attempt of a crime a misdemeanor, if the underlying crime was a misdemeanor, or a felony, if the underlying crime was a felony. The misdemeanor created by the bill would be punishable by imprisonment for up to 93 days (thereby triggering fingerprinting requirements), a fine of up to \$500, or both. The felony created by the bill would be punishable by imprisonment for up to five years, a fine of up to \$10,000, or both. The bill would not prohibit a person from being charged with, convicted of, or sentence for any other violation of law arising out of the same transaction (or event) as the violation of this provision.

House Bill 4681 would amend the Code of Criminal Procedure (MCL 777.16x) to provide for sentencing guidelines for the felony to be created by House Bill 4680. The crime would be a Class E offense against the public trust. Recommended minimum sentence ranges for Class E offenses vary from 0 – 3 months, for which local sanctions are mandated, to 24 – 38 months, for which a prison sentence is required.

### ***BACKGROUND INFORMATION:***

The bill is nearly identical to legislation introduced in the 2001-2002 Legislative Session. The bill was reported from committee but failed to pass the House. (For more information, see the HFA-Legislative Analysis Section's analysis on House Bills 5143-5144 dated 5-8-02.)

### ***FISCAL INFORMATION:***

The bills' fiscal impact would depend on how they affected convictions and sentences for misdemeanors and felonies; there are no data to indicate how many convictions might be obtained under the bills. Misdemeanors are a local responsibility, and thus an increase in the number of misdemeanor convictions could increase local costs of incarceration or misdemeanor probation supervision, both of which vary with jurisdiction. Additional felony convictions could increase state costs of prison incarceration, which currently average about \$30,000 per prisoner annually, or felony probation supervision (state costs of parole and probation supervision average about \$2,000 per supervised offender annually). To the extent that more felons received jail sentences, the bills could increase local costs of incarceration. Any increase in collections of penal fines could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

### ***ARGUMENTS:***

#### ***For:***

House Bill 4680 would create a new misdemeanor crime if a person used information from a public record to commit a crime that was a misdemeanor and create a new felony crime if the information was used in the commission of a felony. The bill could act as an enhancement to current law and give prosecutors another option when prosecuting an offender for various crimes involving the use of public records to commit a crime. In addition, the bill's penalties would not be limited to identify theft crimes, but to any criminal activity for which use of information taken from public records was an element.

#### ***Against:***

Since the time that this legislation was first introduced in 2001, the legislature has enacted comprehensive identity theft, domestic violence, and anti-terrorism legislation, and created other new crime categories, that effectively address the concerns these bills appear to target.

### ***POSITIONS:***

The Department of State Police supports House Bill 4680 and the Department of Corrections supports House Bill 4681. (12-6-06)

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