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House Bill 4532 (Substitute H-3 as passed by the House)  
Sponsor: Representative Amanda Price  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 5-14-13

### **CONTENT**

**The bill would amend the Revised Judicature Act to do the following:**

- **Authorize courts to provide enhanced (electronic) access to court records, and to charge a reasonable fee (except to another court or public agency) for enhanced access.**
- **Authorize courts to charge a reasonable fee associated with record creation, reproduction, retrieval, and retention, except on-site retrieval and inspections.**
- **Require all writs, process, proceedings, and records in any court to be made out in the manner and on any medium authorized by Supreme Court rules.**
- **Allow an electronic signature on any document filed with or created by a court, subject to Supreme Court rules.**
- **Require the State Court Administrative Office to establish and maintain record management policies and procedures for the courts, subject to Supreme Court rules, and other conditions.**
- **Require courts to follow State Court Administrative Office policies and procedures with regard to document disposal.**
- **Place responsibility with a probate court clerk for probate court record retention.**
- **Require probate court clerks to keep testimony index and notes as prescribed by Supreme Court rules.**

#### **Enhanced Access & Fees**

The bill would permit a court to offer enhanced access to court records. Before providing enhanced access, a court would have to adopt an enhanced access policy under the requirements prescribed by the Supreme Court. "Enhanced access" would mean access to a court through electronic means for pleadings, practice, and procedure, including access to case records as prescribed by Supreme Court rules.

A court could provide enhanced access to another court or a public agency in accordance with a written agreement, but could not charge a fee to another court or public agency. The written agreement would have to contain the following:

- A statement prohibiting the other court or the public agency from selling or providing access to the system's output to a third party, except as permitted by the written agreement.

- A statement specifying the public purpose for the court's provision of access to or output from the system.
- Provisions regarding the return of output from the system.
- The duration of the agreement.
- The method by which either party could rescind or terminate the agreement.

A court could charge a reasonable fee, as established by the Supreme Court, for providing enhanced access. If the Supreme Court amended or adjusted the enhanced access fee, the State Court Administrative Office (SCAO) would have to notify the chairpersons of the Senate and House of Representatives Appropriations Subcommittees on the Judiciary within 30 days after the new fee was effective.

("Reasonable fee" would mean a charge calculated to enable a court to recover over time those operating expenses directly related to the court's provision of enhanced access. "Operating expense" would include a court's direct cost of creating, maintaining, processing, and upgrading access to the court through electronic means, including the cost of computer hardware and software, system development, employee time, and the actual cost of providing access.)

### Court Documents & Electronic Signatures

The Act requires that all writs, process, proceedings and records in any court within this State be made out on paper, and conform to certain formal requirements.

The bill instead provides that these documents would have to be made out in the manner and on any medium authorized by Supreme Court rules. If a signature were required on any document filed with or created by a court, that requirement would be satisfied by an electronic signature as prescribed by Supreme Court rules.

### SCAO Record Management Policy

The bill would require the State Court Administrative Office to establish and maintain records management policies and procedures for the courts, including a records retention and disposal schedule. The policies, procedures, record retention schedules, and disposal schedules would have to conform to Supreme Court rules. The record retention and disposal schedules also would have to be developed and maintained according to the Michigan Historical Commission law.

Subject to the Records Reproduction Act, a court could dispose of a record if that court followed SCAO policies and procedures, and had custody of that record for the retention period established by the SCAO.

A court could assess a reasonable fee associated with the creation, reproduction, retrieval, and retention of its records only as prescribed by the Supreme Court. However, a court could not charge a fee to retrieve and inspect a record on site.

If the Supreme Court amended or adjusted the rules for the records retention and disposal schedule, the State Court Administrative Office would have to notify the chairpersons of the Senate and House of Representatives Appropriations Subcommittees on the Judiciary within 30 days after the change was effective.

("Record" would mean information of any kind that is recorded in any manner and that has been created by a court or filed with a court in accordance with Supreme Court rules.)

## Probate Court Records

The Act provides that the probate judge or chief probate judge must have possession of a probate court's seal, records, books, files, and papers. Further, each judge must keep a record of the following court documents: each order, sentence, and decree of the court; all other official acts of that judge; all wills proved in that court with the respective probate; all letters of authority; and all other things that are proper for the court to record. The Act provides that these records may be inspected without charge unless the law provides otherwise. The Act also requires the probate court to maintain an alphabetical index to the records of each county's probate court proceedings. The bill would delete all of these provisions.

The bill, instead, would require the clerk of the probate court to have possession of the court's seal, records, books, files, and papers, and maintain every record created by or filed with the probate court according to Supreme Court rules.

Under the Act, a court reporter is not required to transcribe testimony unless a party or the court orders a transcript. Notes for testimony that has not been transcribed and that relate to a hearing for the admission of a mentally ill person, a developmentally disabled person, or a person with a contagious disease, to a hospital or other place of detention must not be destroyed until after that person is discharged from that facility.

A probate court must keep an index, and original notes, for testimony for at least 10 years. If the notes relate to a person's admission to a hospital or other place of detention as described above, the notes may not be destroyed until 10 years after the date of the hearing, or until the admitted person is discharged from the facility, whichever is longer.

The bill would delete all of these provisions. The bill would require a probate court to keep sufficient index of testimony (as currently provided), and to keep the index and original notes as prescribed by Supreme Court rules.

MCL 600.832 et al.

Legislative Analyst: Glenn Steffens

## **FISCAL IMPACT**

Local courts could incur expenses associated with implementation of electronic record-keeping as authorized under the bill. However, the information technology investments enabling these practices would not be solely attributable to the bill. Some of the costs of these investments could be partially recouped through "reasonable fees" that could be charged in some cases (to nonpublic entities) for "enhanced access".

Fiscal Analyst: Dan O'Connor

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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.