

Legislative Analysis



DISCLOSURE OF LIBRARY RECORDS

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Senate Bill 611 (H-1) as reported from House committee

Sponsor: Sen. Peter MacGregor

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety

Complete to 12-8-20

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

(Enacted as Public Act 315 of 2020)

BRIEF SUMMARY: Senate Bill 611 would amend the Library Privacy Act to do all of the following:

- Exclude security video recordings from being considered library records under the act.
- Provide exceptions to the confidentiality of certain library records, which would allow the release or disclosure of library records under certain circumstances.
- Provide remedies for violations of confidentiality.

FISCAL IMPACT: Senate Bill 611 would have no fiscal impact on the state and would have an indeterminate fiscal impact on local court funding units. The impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

THE APPARENT PROBLEM:

Michigan's Library Privacy Act guarantees the confidentiality of certain library records. There has been debate as to whether library surveillance videos are considered part of a library's record and are thus required to be kept confidential unless there is express permission by the individual on the tape or a court order for the tape to be released.¹ Under the strictest interpretation of the act, if a crime is committed in a library, only very limited information can be released to help law enforcement apprehend the perpetrator; this would not include the ability to access video surveillance. Legislation has been proposed that would specifically exclude security recordings from the definition of "library record."

THE CONTENT OF THE BILL:

Currently under the act, "library record" means a document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library. The term does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

Definition of "library records"

The bill would amend the definition of "library record," above, to further provide that it does not include recorded video surveillance images made solely for security purposes that do not include images of any activity or any other document or record that identifies a person having requested or lawfully obtained specific services, materials, or information resources from a library.

¹ https://www.michigan.gov/libraryofmichigan/0,9327,7-381-88855_89735_89755-184661--,00.html.

Disclosure of library records

Currently under the act, a library or an employee or agent of a library is prohibited from releasing or disclosing all or part of a library record without the written consent of the relevant patron unless the release or disclosure is ordered by a court after a hearing on the matter.

Under the bill, a library or its *employee or agent* could additionally disclose a library record without written consent in either of the following circumstances:

- To report information about the delinquent account of a patron to a collection agency under contract with the library. The records provided would have to be limited to those necessary to seek the return of overdue or stolen materials or to collect fines from the patron.
- To disclose library records to another library or library cooperative for the purpose of conducting interlibrary loans. The records provided would have to be limited to those required for providing interlibrary loans.

Employee or agent would include an employee of a library, a member of the governing body of a library, an individual who is specifically designated as a volunteer and is acting solely on behalf of a library, and any other person who is lawfully performing services on behalf of a library under a written contract, including a collection agency.

The bill would also provide that the above restrictions do not prohibit an employee or agent of a library from providing a sworn statement or testimony to a *law enforcement officer* that is based solely on the personal knowledge of the employee or agent regarding a crime that is alleged to have occurred at the library.

Law enforcement officer would mean an individual licensed under the Michigan Commission on Law Enforcement Standards Act.

Violations and remedies

Currently, a library or its employee or agent that improperly releases or discloses a library record is liable to the person identified in the record, who can bring a civil action for \$250 or actual damages, whichever is greater; reasonable attorney fees; and costs.

The bill would stipulate that the library (i.e., not the employee or agent) is liable under the above circumstances. It would also allow a court to grant equitable relief in such a case.

However, if an employee or agent of a library *knowingly* improperly released or disclosed a library record, the employee or agent would be liable to the person identified in the record, and the person could bring a civil action against the employee or agent for actual damages or \$250, whichever is greater; reasonable attorney fees; and costs. A court could grant equitable relief to the person.

The bill would require either civil action described above to be brought within 180 days after the date the person first knew or had reason to know of the release or disclosure of the record.

The bill would take effect 90 days after its enactment.

MCL 397.602, 397.603, and 397.604

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported an H-1 substitute for the bill, which specifically includes collection agencies in the definition of “employee or agent.”

ARGUMENTS:

For:

Supporters argue that the bill finds a balance between keeping true library records confidential while enabling law enforcement to apprehend perpetrators who commit a crime in a library. Expressly excluding security recordings from the definition of “library records” to help law enforcement keep the public safe from harm, while also tightening personal responsibility to keep library records confidential, ensures both public and private safety.

Against:

No arguments against the bill were presented in House committee testimony.

POSITIONS:

A representative of the Michigan Libraries Association testified in support of the bill. (12-1-20)

The following entities indicated support for the bill (12-1-20):

- Kent District Library
- University of Detroit Mercy Libraries
- Ferndale Area District Library
- Willard Library in Battle Creek
- White Pine Library Cooperative
- Caro Area District Library
- East Lansing Public Library
- Muskegon Area District Library
- West Bloomfield Township Public Library
- Grosse Pointe Public Library
- Clinton-Macomb Public Library
- Oxford Public Library
- Brighton District Library
- Presque Isle District Library
- Ionia Community Library
- Taylor Community Library
- Northern Michigan University’s Lydia M. Olson Library
- Kalamazoo Public Library
- Orion Township Public Library

The American Civil Liberties Union indicated a neutral position on the bill. (12-1-20)

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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.