

LAW ENFORCEMENT DISCIPLINARY RECORDS

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House Bill 5749 (H-1) as reported from committee

Sponsor: Rep. Tyrone Carter

Committee: Criminal Justice

Complete to 12-13-24

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

SUMMARY:

House Bill 5749 would amend the Freedom of Information Act (FOIA) to provide that the release of *law enforcement disciplinary records* is not an unwarranted invasion of an individual's privacy such as would make those records exempt from disclosure as a public record under the act.

Law enforcement disciplinary records would mean all records created in furtherance of a *disciplinary proceeding* conducted by the Michigan Commission on Law Enforcement Standards or any state or local law enforcement agency, department, independent review board, or other entity tasked with evaluating any complaint, allegation, or charge against a *law enforcement officer or agent*, other than a complaint, allegation, or charge of a *technical infraction*, including, at a minimum, all of the following records and information:

- Records of any complaint, allegation, or charge against a law enforcement officer or agent.
- The name of any law enforcement officer or agent against whom a complaint, allegation, or charge has been made.
- All records, documents, and files, in whatever form, related to the investigation, adjudication, or disposition of any complaint, allegation, or charge against a law enforcement officer or agent.
- The transcript of any disciplinary proceeding, including any exhibits introduced at the proceeding, regarding any complaint, allegation, or charge against a law enforcement officer or agent.
- Any finding by the Michigan Commission on Law Enforcement Standards or any state or local law enforcement agency, department, independent review board, or other entity tasked with evaluating any complaint, allegation, or charge against a law enforcement officer or agent during a disciplinary proceeding.
- Any final written opinion or memorandum supporting the disposition and disciplinary action imposed, or the decision not to impose disciplinary action, on a law enforcement officer or agent against whom a complaint, allegation, or charge has been made, including all of the following:
 - All factual findings.
 - Any analysis of alleged misconduct.
 - A description of the disciplinary action imposed on the law enforcement officer or agent, if any, and the data supporting the disciplinary action taken or the decision not to take disciplinary action.

Disciplinary proceeding would mean the commencement of any investigation and any subsequent hearing or other proceeding conducted by the Michigan Commission on Law Enforcement Standards or any state or local law enforcement agency, department, independent review board, or other entity tasked with evaluating any complaint, allegation, or charge against a law enforcement officer or agent.

Law enforcement officer or agent would include a police officer employed by a municipality, county, or this state, an employee of a sheriff's office who performs law enforcement duties, a correctional officer, or any employee who provides public safety or investigative services for the department of corrections, a state correctional facility, a county jail, or a juvenile detention facility.

Technical infraction would mean a minor rule violation by a law enforcement officer or agent, solely related to the enforcement of administrative departmental rules, that meets all of the following:

- Did not involve interaction with members of the public.
- Was unrelated to the investigative, enforcement, training, supervision, or reporting responsibilities of the law enforcement officer or agent.
- Did not involve deception, misrepresentation, dishonesty, or intemperate behavior by the law enforcement officer or agent.

In addition, *unless the public interest in disclosure outweighs the public interest in nondisclosure*, the act now exempts public records of a law enforcement agency if their release would identify or disclose certain kinds of information. Among these records exempted from disclosure are personnel records of law enforcement agencies. The bill would remove this exemption and instead exempt law enforcement agency records of either of the following:

- The medical history of a law enforcement officer or agent.
- The use of an employee assistance program, mental health service, or substance abuse assistance service by a law enforcement officer or agent, unless the use of the program or service is mandated by a disciplinary proceeding whose records are not exempt.

Finally, the bill would change the italicized phrase above to *only if the public interest in nondisclosure outweighs the public interest in disclosure*.

MCL 15.243

FISCAL IMPACT:

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

POSITIONS:

Representatives of the following entities testified in support of the bill (12-10-24):

- Cooley Innocence Project
- Reason Foundation

The following entities indicated support for the bill (12-10-24):

- Citizens for Prison Reform

- ACLU of Michigan
- Mackinac Center for Public Policy

A representative of the Michigan Association of Chiefs of Police testified in opposition to the bill. (12-10-24)

The Michigan Sheriffs' Association indicated opposition to the bill. (12-10-24)

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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.