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BILL ANALYSIS

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Senate Bills 1097 and 1098 (as introduced 11-13-24)  
Sponsor: Senator Jeremy Moss (S.B. 1097)  
Senator Stephanie Chang (S.B. 1098)  
Committee: Civil Rights, Judiciary, and Public Safety

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### **INTRODUCTION**

The bills would modify the requirements of separation records of law enforcement officers kept by the officer's employing agency. Separation of service records would have to be created and maintained by a former employing agency and would have to include reasons for and circumstances surrounding a separation of service, including disciplinary processes or investigations against the officer. The Michigan Commission on Law Enforcement Standards (MCOLES) would have to prescribe the form for the record. The bills would require an officer seeking reemployment after a separation to provide the prospective agency with a waiver for release of information. Employing agencies could create provisional service records upon receipt of a waiver.

The bills also would require employing agencies to notify officers of the finalization of a record within three days of finalization. The notice would have to include information about the officer's right to review and request a correction of the record. An officer would have seven days to request to review the record and could request a correction or disclaimer. If the employing agency and officer could not agree on the correction or disclaimer, the bills would allow an officer to submit a written statement to the record that explained the officer's position.

### **FISCAL IMPACT**

Senate Bill 1097 would have a moderate fiscal impact on State and local law enforcement agencies, amending and adding certain law enforcement officer licensing requirements, employee record keeping, and powers established for law enforcement agencies and MCOLES, which should largely be supported by existing revenues.

Senate Bill 1098 would have no fiscal impact on State or local governments.

MCL 28.561 et al (S.B. 1097)  
423.507 & 423.509 (S.B. 1098)

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## **CONTENT**

**Senate Bill 1097 would amend the Law Enforcement Officer Separation of Service Record Act to do the following:**

- Rename the Act, the "Law Enforcement Officer Service Records Act".
- Create Article 2 (Law Enforcement of Service Records) to modify current requirements of law enforcement agencies to maintain separation of service records for law enforcement officers.
- Require a former employing agency to include in a separation record for a law enforcement officer who separated from employment any investigations or disciplinary records.
- Require a separated officer seeking reemployment as an officer to provide the prospective employing agency with a waiver for release of the officer's service record upon application for employment, instead of upon an offer of conditional employment.
- Create Article 3 (Law Enforcement Officer Provisional Service Record) to allow a current employing agency to create and maintain a provisional record upon receipt of a wavier for release of information.
- Prescribe the finalization process for service records and provisional records.
- Require an employing law enforcement agency to notify a separating law enforcement officer of the finalization of a record and the officer's right to disagree or request the record be corrected within three days of finalization.
- Prescribe the process for a law enforcement officer to request that a record be corrected and the process if the officer and agency could not reach an agreement on the requested correction.

**Senate Bill 1098 would amend the Employee Right to Know Act to do the following:**

- Specify that an employer's responsibility to review a personnel record and delete disciplinary reports, letters of reprimand, and other records of disciplinary action more than four years older before releasing any information to a third party would not apply to a provisional record proposed under Senate Bill 1097.
- Allow an employer to release criminal activity investigation information to a prospective employing law enforcement agency if it were included in an employee's provisional service record proposed under Senate Bill 1097.

Senate Bill 1098 is tie-barred to Senate Bill 1097.

### **Senate Bill 1097**

#### **Definitions**

"Law enforcement officer" would mean an individual who is licensed under the Michigan Commission on Law Enforcement Standards Act, (see **BACKGROUND**) or was previously employed as a licensed or certified law enforcement officer in the State.

"*Separated* law enforcement officer" would mean a law enforcement officer who has left employment with a former employing law enforcement agency and who requests and receives a separation of service record under Article 2 (Law Enforcement Officer Separation of Service Records) of the Act.

"*Separating* law enforcement officer" would mean a law enforcement officer who met all the following requirements:

- Is currently employed with a current law enforcement agency at the time of requesting a provisional service record under Article 3 (Law Enforcement Officer Provisional Service Record) of the Act.
- Intends to leave the employment with the current employing law enforcement agency to take a position with a prospective employing law enforcement agency.
- Requests and receives a provisional service record under Article 3 of the Act.

### Service Record

Generally, in addition to the employment history record maintained by a law enforcement agency for each officer it employs, or for each officer to whom the chief of police of a city, village, or township or a county sheriff has administered an oath of office, as required by the Michigan Commission on Law Enforcement Standards Act, a law enforcement agency must maintain a record regarding the reason or reasons for, and the circumstances surrounding, a separation of service for each officer the agency employs who subsequently separates from the agency or from his or her employment as a law enforcement officer requiring the administration of an oath under Section 9c or 9d of the Michigan Commission on Law Enforcement Standards Act.

(Section 9c of the Michigan Commission on Law Enforcement Standards Act applies to individuals who are employed as fire arson investigators from fire departments within cities, villages, townships, or counties, who are sworn and fully empowered by the chiefs of police of those local units. Section 9d applies to individuals who are employed as private college security officers, seek licensure under the Act, and are sworn and fully empowered by a chief of police of a city, village, or township law enforcement agency, or are deputized by a county sheriff. Each Section requires the chief of police or the sheriff, as applicable, to administer an oath of office authorizing the individual to enforce the laws of the State. The police chief or sheriff also must maintain an employment history record with respect to the individual.)

Instead, under the bill, in addition to the employment history record maintained under the Michigan Commission on Law Enforcement Standards Act a former employing law enforcement agency would have to create and maintain a separate record regarding the reason or reasons for, and all circumstances surrounding, a separation of service for each law enforcement officer who separated from employment as a licensed law enforcement officer under Sections 9, 9b, 9c, or 9d of the Michigan Commission on Law Enforcement Standards Act.

(Section 9 and 9b, of the Michigan Commission on Law Enforcement Standards Act applies to individuals who are licensed as law enforcement officers, except for sheriffs, and Tribal law enforcement officers, respectively. Each type of officer is subject to the licensing requirements and procedures of its respective Section, including certain training requirements.)

Under the bill, the separation of service record would have to contain information required by and be in a form prescribed by MCOLES and would have to include any disciplinary process or investigation against the separated law enforcement officer that was active within one year of the law enforcement officer's separation date.

### Separation Record Finalization

Under the bill, a former employing law enforcement agency would have to finalize a separation of service record within five business days of the law enforcement officer's separation date.

Within three days after finalizing the separation of service record, a former employing law enforcement agency would have to send to a separated law enforcement officer a written notice that included all the following statements:

- That the separation of service record had been finalized.
- That the separated law enforcement officer had the right to review the separation of service record upon written request by that separated law enforcement officer.
- That the separated law enforcement officer had a right to disagree with the accuracy of the contents of the separation of service record.
- That, if the separated law enforcement officer disagreed with the accuracy of the contents of the separation of service record, the officer could request that the former employing law enforcement agency supplement the separation of service record to correct or disclaim the portion the separated law enforcement officer believed was incorrect.

The Act allows a separating law enforcement officer to review a separation record prepared under the Act upon written request of the officer. The bill specifies that this provision would apply to a former employing agency allowing a separated officer to review a record. The bill would require a former law enforcement agency to provide the separation of service record within three days of receiving the review request.

A separation of service record could not be amended or altered after it had been finalized, except for in a case where the separated law enforcement officer disagreed with the accuracy of the report as described below.

Currently, if a separating law enforcement officer disagrees with the accuracy of the contents of the separation of service record, the officer may request the correction or removal of the portion of the record that the officer believes is incorrect. The bill specifies that this provision would apply to a separated officer who disagreed with the accuracy of the contents of a separation of service record. The officer would have to request a correction or disclaimer of the portion of the record the officer believed to be incorrect within seven days of receipt of the record. Additionally, upon receipt of a request to correct or disclaim the contents of a record the former employing law enforcement agency and the separating officer could agree on the contents of the supplement to the separation of service record within seven calendar days of receipt of the request.

The Act specifies that if the law enforcement agency and the separating law enforcement officer cannot reach an agreement on the contents of the record, the officer may submit a written statement explaining the officer's position and the basis for the disagreement. Requests must be kept with the separation of service record. The bill specifies that this provision instead would apply to a separated law enforcement officer and that the written request could not be filed until after the seven-day period to reach an agreement.

#### Waiver for Release of Information

A law enforcement officer who is licensed or was previously licensed or certified under the Michigan Commission on Law Enforcement Act, and was previously employed as a law enforcement officer in the State, who separates from an employing agency or from employment as a law enforcement officer to whom an oath has been administered under Section 9c or 9d of the Michigan Commission on Law Enforcement Standards Act who subsequently seeks to become reemployed must provide to the prospective employing law enforcement agency a signed waiver upon receipt of a conditional offer of employment.

Instead, under the bill, a law enforcement officer who separated from the officer's employing agency or from employment as a law enforcement officer would have to provide the prospective agency with a signed waiver upon application for employment.

(The Act specifies that a waiver must expressly allow the prospective employing law enforcement agency to contact the officer's former employing law enforcement agency or agencies and seek a copy of the record regarding the reason or reasons for, and circumstances surrounding, the officer's separation of service created by the former employing agency.)

#### Provisional Service Records

The bill would add Article 3 (Law Enforcement Officer Provisional Service Record). Under Article 3, in addition to the employment history record required to be maintained under the Michigan Commission on Law Enforcement Standards Act, and the separation of service record required to be created and maintained under Article 2, a current employing law enforcement agency could, on receipt of a waiver for release of information, create and maintain a provisional service record for a separating law enforcement officer.

The provisional service record would have to contain information required by and be in a form prescribed by MCOLES and include any disciplinary process, performance plan, or investigation against the separating law enforcement officer by any law enforcement agency that was active within one year before the date of the separating law enforcement officer's request for the provisional service record.

#### Finalization of Provisional Record

Under the bill's Article 3, a current employing law enforcement agency would have to finalize the provisional service record within five business days of receipt of the waiver for release of information.

Within three days of finalizing the provisional service record, a current employing law enforcement agency would have to send to a separating law enforcement officer a written notice that included all the following statements:

- That the provisional service record had been finalized
- That the separating law enforcement officer had the right to review the provisional service record upon written request by that separating law enforcement officer.
- That the separating law enforcement officer had a right to disagree with the accuracy of the contents of the provisional service record.
- That, if the separating law enforcement officer disagreed with the accuracy of the contents of the provisional service record, the separating law enforcement officer could request that the current employing law enforcement agency supplement the provisional service record to correct or disclaim the portion the separating law enforcement officer believed was incorrect.

The current employing law enforcement agency would have to allow a separating law enforcement officer to review the provisional service record upon the written request of the separating law enforcement officer. A current employing law enforcement agency would have to provide the provisional service record within three days after receiving the written request.

Within seven calendar days after receipt of the provisional service record, a separating law enforcement officer who disagreed with the accuracy of the contents of the provisional service record could request the correction or disclaimer of the portion of the provisional service record the separating law enforcement officer believed was incorrect. On receipt of the

request, the current employing law enforcement agency and the separating law enforcement officer could, within seven calendar days after receipt of the request, agree on the contents of the supplement to the provisional service record.

If the current employing law enforcement agency and the separating law enforcement officer could not reach an agreement on the contents of the supplement to the provisional service record, the separating law enforcement officer could, within seven calendar days after the date to reach an agreement on the contents of the supplement to the provisional service record had expired, submit a written statement explaining the separating law enforcement officer's position and the basis for the separating law enforcement officer's disagreement. If a separating law enforcement officer submitted a timely written statement, the request would have to be kept with the provisional service record and provided with the rest of the contents of the provisional service record.

Except for during a request upon disagreement with the accuracy of a record, a provisional service record could not be amended or altered after it had been finalized.

### General Provisions

The Act specifies that a former employing law enforcement agency that discloses information under the Act in good faith after receipt of a waiver for release of information is immune from civil liability for the disclosure and prescribes the conditions to determine good faith. The bill specifies that this provision would apply to the execution of a waiver under the bill's Article 2 and Article 3.

Additionally, a law enforcement agency that is required to maintain a record must, upon written request from MCOLES, provide a copy of the record requested to MCOLES for the purpose of determining compliance with licensing standards and procedures under the Michigan Commission on Law Enforcement Standards Act. The bill specifies that this provision also would apply to a provisional record.

The bill specifies that the creation and maintenance of a separation of service record under Article 2 would not relieve a law enforcement agency from its obligation to create a provisional service record if a separating law enforcement officer requested the creation of the provisional service record before the law enforcement officer separated from that agency. The creation and maintenance of a provisional service record under Article 3 also would not relieve a law enforcement agency from its obligation to create a separation of service record after a law enforcement officer separated from that law enforcement agency.

## **Senate Bill 1098**

### Access to Disciplinary Records

Under the Employee Right to Know Act, an employer must review a personnel record and delete disciplinary reports, letters of reprimand, and other records of disciplinary action more than four years old before releasing any information to a third party. This provision does not apply under certain circumstances, including in a release that is part of a record regarding the reason or reasons for, and circumstances surrounding, a separation of service under Section 5 of the Law Enforcement Officer Separation of Service Records Act.

(Section 5 of the Law Enforcement Officer Separation of Service Records Act requires a law enforcement officer seeking reemployment to provide prospective employers with a signed waiver allowing access to copies of the officer's separation of service records. Senate Bill 1097 would amend Section 5 and so the Section is described above.)

Additionally, under the bill, the provision would not apply to a release that was a provisional service record created under the Law Enforcement Officer Records Act as proposed by Senate Bill 1097.

#### Record of Investigation of Criminal Activity

Generally, employers may keep separate employee files of information pertaining to investigations of employees that the employer believes may be involved in criminal activity that might affect the business. Employers that are criminal justice agencies may release that information to a prospective employing law enforcement agency if the information is part of a record regarding the circumstances surrounding a separation of service under Section 5 of the Law Enforcement Officer Separation of Service Records Act. The bill also would allow the employer to release that investigation information to a prospective employing law enforcement agency if it were included in a provisional service record proposed under Senate Bill 1097.

#### **BACKGROUND**

Under the Michigan Commission on Law Enforcement Standards Act, the term "law enforcement officer" broadly refers to an individual employed by a law enforcement agency with the authority to prevent and detect crime and to enforce State laws. The term encompasses a range of positions, including the following:

- State, Tribal, and legislative officers.
- Specialized and local officers, such as conservation officers, township constables, marshals, park rangers, police officers, and officers appointed by certain local governments.
- University and educational officers, including public safety officers employed by community colleges, universities, and certain authorized institutions.
- Public transportation officers, such as transit and railroad police and airport security.
- Certain investigators, including Medicaid fraud investigators, highway reciprocity board officers, fire arson investigators, and prosecuting attorneys' investigators.

Under the Act, certain individuals, although involved with security or enforcement, are not considered law enforcement officers under the definition, including citation issuers, Michigan Department of Agricultural and Rural Development personnel with limited peace officer authority, certain non-licensed or volunteer officers, railroad conductors, and other inspectors and agents with limited authority.

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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.