



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4666 (Substitute H-3 as passed by the House)
House Bill 4670 (Substitute H-2 as passed by the House)
Sponsor: Representative Jim Runestad (H.B. 4666)
Representative Joseph N. Bellino, Jr. (H.B. 4670)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 3-12-18

CONTENT

House Bill 4666 (H-3) would amend the Revised Judicature Act to do the following:

- Allow a proof of service of process to be made by a written statement of the facts, under penalty of perjury, instead of an affidavit.
- Prescribe a felony penalty for an individual who intentionally made a false declaration for a proof of service of process.

House Bill 4670 (H-2) would amend the sentencing guidelines in the Code of Criminal Procedure to establish a designation for false declaration of personal service in a proof of service of process.

House Bill 4670 (H-2) is tie-barred to House Bill 4666. Each bill would take effect 180 days after its enactment.

House Bill 4666 (H-3)

Under the Revised Judicature Act, proof of service of process must be made by one of the following methods:

- Written acknowledgment of the receipt of a summons and a copy of the complaint, dated and signed by the person authorized under the Act to receive them.
- A certificate, stating the facts of service if service is made in Michigan by a sheriff, or by a deputy sheriff, medical examiner, bailiff, or a constable, or a deputy of any these officers, if the officers held office in a county in which the court issuing the process is held.

If service is made by any other person, the proof of service must be made by an affidavit stating the facts of service and indicating the person's official capacity, if any.

Under the bill, proof of service of process could be made by written acknowledgement of receiving the summons and complaint, or by a certificate, as described above. If service were made by any other individual, proof of service could be made by a written statement of the facts of the service, verified by the following statement: "I declare under the felony penalty of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief."

An individual who intentionally made a false declaration of proof of service would be guilty of a felony punishable by up to 15 years' imprisonment or a maximum fine of \$2,000, or both.

House Bill 4670 (H-2)

Under the Code of Criminal Procedure, a false statement by an authorized local official is a Class G felony against the public trust, with a statutory maximum of 15 years. The bill would refer to local official knowingly making a false statement in a citation.

Under the bill, a false declaration of personal service in a proof of service of process would be a Class C felony against the public trust, with a statutory maximum of 15 years' imprisonment.

MCL 600.1910 (H.B. 4666)
777.15d (H.B. 4670)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4666 (H-3)

The bill would have an indeterminate impact on the State and local courts. The bill would replace the requirement for an affidavit stating the facts of proof of service with a requirement for a written statement with specified language. The bill also would impose a penalty of up to 15 years' imprisonment for the falsification of this statement. Affidavits commonly require a notarization, so replacing an affidavit with a simple written statement would simplify the job of a process server, which would have the potential to reduce administrative costs; however, the proposed penalty potentially could increase administrative costs, if the falsification of proof of service documents were actually a widespread problem throughout the Michigan court system. Additionally, it is not clear that Michigan courts would acknowledge the statutory change, as the process for proof of service is already specified in the Michigan Court Rules (MCR 2.104). As provided by the Constitution, Article VI, Section 5, the Michigan Supreme Court uses the court rules to "establish, modify, amend and simplify the practice and procedure in all courts of this state". At present, the court rules and the statute are consistent.

In addition, the proposed felony could have a negative fiscal impact on State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to the State is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

House Bill 4670 (H-2)

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State. According to the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law), the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Ryan Bergan
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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.