

Legislative Analysis



PRETRIAL RISK ASSESSMENT TOOLS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5464 as introduced
Sponsor: Rep. Sarah L. Lightner
Committee: Judiciary
Complete to 9-15-20

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

SUMMARY:

House Bill 5464 would amend the Code of Criminal Procedure to provide that only a *pretrial risk assessment tool* that met specified criteria could be used by a court in a determination as to whether to release a defendant in custody on bail. The bill would not require a pretrial risk assessment tool to be used in making such a determination.

Pretrial risk assessment tool would mean a pretrial process that creates or scores particular factors to estimate a defendant's level of risk to fail to appear in court, risk to commit a new crime, or risk posed to the community in order to make recommendations as to bail or conditions of release based on that risk, whether made on an individualized basis or based on a grid or schedule.

The bill would add a new section to Chapter V (Bail) of the Code of Criminal Procedure. If a court, in making a determination regarding admission to bail and any necessary protective conditions for admission to bail, uses a pretrial risk assessment tool, the tool would have to be shown to be valid after peer testing and to be free of biases. In addition, after meeting those requirements, the tool still could not be used unless all of the following applied to its use:

Public inspection. All documents, data, records, and information used by the builder to build or validate the pretrial risk assessment tool, as well as ongoing documents, data, records, and written policies outlining the usage and validation of the tool, would have to be open to public inspection, auditing, and testing.

Review by parties. In a criminal case, if a court has considered or an expert witness has relied upon a pretrial risk assessment tool, a party to the case would have to be entitled to review all calculations and data used to calculate the defendant's own risk score.

Discovery protections. In a criminal case, a builder or user of a pretrial risk assessment tool would be prohibited from asserting trade secret or other intellectual property protections to quash discovery of the materials required to be open to public inspection as described above.

Proposed MCL 765.6e

FISCAL IMPACT:

House Bill 5464 would have no fiscal impact on the state but would have an indeterminate fiscal impact on local trial courts. Costs would be incurred by local courts that do not have a pretrial risk assessment tool that meets criteria established under the bill. Because the bill does not include definitions of certain terms, it is not possible to assess which local units currently meet requirements of the bill and which do not.

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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.