



Michigan Coalition to End Domestic & Sexual Violence

### Comments Regarding HB 5368

HB 5368 would require that every record filed in any court in Michigan be open and available to the public, unless otherwise prohibited by law. The bill also provides that an individual's name or birthdate may not be redacted from any court records. The H-1 version would apply the prohibition against redacting to defendants only. Unfortunately, the H-1 modification is insufficient to protect the privacy interests of litigants, including victims of domestic violence. The bill raises two main concerns, although we are committed to working with the sponsor to improve the bill.

First, making all court records open to the public means that anyone can access sensitive and private information kept in a litigant's court action. In divorce and custody cases, it could mean that a party's psychological report or a child's records would be open to the public. For victims of domestic violence, their residential and work addresses would be open to the public, including the individual who caused them harm. This provision conflicts with existing court rules intended to protect sensitive records, such as MCR 3.229, which makes certain family law records confidential, and MCR 8.119, which allows for court records to be sealed.

Although the H-1 version amends the original bill to limit the individuals whose name and birthdate may not be redacted to defendants only, this is not sufficient because it would be arbitrary in its application. It would mean that in

every divorce or civil case, the plaintiff's information may be redacted, but not the defendants, and it would include actions in which a victim of domestic violence is the defendant.

In order to prevent these unintended consequences, the following amendments are suggested:

First, on line 2, strike "must be open to the public" to protect records that are already deemed confidential or a sealed due to their sensitive nature. Alternatively, but less protective, on line 1 add "or by court order" after "as otherwise provided by law."

Second, on line 3, add "criminal" before "defendant" to clarify that only the records of criminal defendants may not be redacted.

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