

FINGERPRINTING REQUIREMENTS

Senate Bill 855 (Substitute H-2) First Analysis (12-7-99)

Sponsor: Sen. Mike Rogers
**House Committee: Criminal Law and
Corrections**
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Public Act 77 of 1999, which took effect on October 1, 1999, amended the Bureau of Criminal Identification Act to permit, rather than to require, an arresting law enforcement agency to take the fingerprints of a person arrested for a misdemeanor violation of a local ordinance for which the maximum penalty exceeds 92 days' imprisonment, and that substantially corresponds to a misdemeanor violation of state law whose maximum term of imprisonment exceeds 92 days. (See *BACKGROUND INFORMATION*, below.)

Under Public Act 77, then, the law enforcement agency is not required to make a fingerprint record. Nor, under Public Act 77, is the law enforcement agency required to forward the fingerprints to the Department of State Police before conviction. However, if the person is convicted, Public Act 77 requires that the law enforcement agency must take the person's fingerprints (if not previously taken), and then forward the fingerprints to the Department of State Police within 72 hours.

Some have argued that because fingerprinting is now permitted, but not required, legislation is needed that would amend the Bureau of Criminal Identification Act. They propose a law that sets forth a process in which the responsibilities of the arresting agencies, the courts, and the Office of the State Police are clarified so that fingerprints records would be created for violations of particular state statutes and local ordinances, so that upon conviction, a violator's record would be entered in the Law Enforcement Information Network (LEIN).

THE CONTENT OF THE BILL:

Senate Bill 855 (H-2) would amend Public Act 289 of 1925, which creates a bureau in the Department of State Police for criminal identification and records, to clarify the procedures that arresting agencies, courts, and the state police would use to establish fingerprint

records when certain state laws or local ordinances are violated.

Specifically and with regard to certain state laws, Senate Bill 855 would require that immediately upon the arrest of a person for a felony or for a misdemeanor violation of state law for which the maximum possible penalty exceeds 92 days' imprisonment or a fine of \$1,000, or both, or for a juvenile offense, the arresting law enforcement agency take the person's fingerprints in duplicate and forward the fingerprints to the Department of State Police within 72 hours of arrest. (Under the law, one set of prints is retained by the state police, and the second is furnished to the director of the Federal Bureau of Investigation.) However, under the bill, a person's fingerprints would not be required to be taken and forwarded to the department solely because he or she had been arrested for violation of section 904(3)(a) of the Michigan Vehicle Code (which concerns a first conviction for driving while one's license is suspended).

Further and with regard to certain local ordinances, Senate Bill 855 would require a local enforcement agency to take a person's fingerprints if the person is arrested for a misdemeanor violation of state law for which the maximum penalty is 93 days if the fingerprints have not previously been taken and forwarded to the department. A law enforcement agency would be required to take a person's fingerprints under this section if the person is arrested for a violation of a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible term of imprisonment is 93 days. Under the bill, if the person is convicted of any violation, the law enforcement agency would be required to take the person's fingerprints before sentencing (if not previously taken). Further, under the bill the court would be required to forward to the law enforcement

agency a copy of the disposition of conviction, and the law enforcement agency would be required to forward the person's fingerprints and the copy of the disposition of conviction to the department within 72 hours after receiving the disposition. If the person is convicted of violating a local ordinance, the law enforcement agency would be required to indicate the statutory citation for the state law to which the local ordinance substantially corresponds. However, a person's fingerprints would not be required to be taken and forwarded to the Department of State Police in this manner, solely because he or she had been convicted of violating section 904(3)(a) of the vehicle code (which concerns a first conviction for driving while one's license is suspended), or a local ordinance substantially corresponding to this section.

Senate Bill 588 is tie-barred to Senate Bills 831 and its companion House Bill 5009, Senate Bill 832 and its companion House Bill 5008, Senate Bill 833 and its companion House Bill 5010, and Senate Bill 834 and its companion House Bill 5016. Senate Bill 855 (H-2) also is tie-barred to Senate Bill 856, which has no House companion bill as its counterpart.

MCL 28.243

HOUSE COMMITTEE ACTION:

The House Criminal Law and Corrections Committee substituted Senate Bill 855. Generally, the substitute bill was drafted in order better to accommodate the current practices and procedures of law enforcement agencies and the district courts. Under the substitute, fingerprinting would not be required for a first offense when driving while one's license is suspended (sometimes referred to as DWLS/first). According to committee testimony, the process of fingerprinting requires the officer to take the driver to a county jail or a state police post for fingerprinting. (The technology for roadside fingerprinting exists but the equipment is not widely available, is expensive, and may not be practical in all circumstances.) Representatives from some rural areas of the state, where few patrol vehicles are on the roads at night, report that time cannot be spared from patrol duties to comply with the fingerprinting requirement under DWLS/first.

BACKGROUND INFORMATION:

Michigan's drunk driving and driving without a license laws, which are contained in the Michigan Vehicle Code, have been amended repeatedly in the past decade

in an attempt to keep drunk drivers and persons without licenses off the roads. Extensive revisions in 1991, among other things, expanded the application of drunk driving laws, stiffened penalties for repeat offenders, created special penalties for drunk driving that caused death or serious injury, required attempted offenses to be treated as if completed, and required speedy disposition of drunk driving cases. The drunk driving laws were further amended in 1994, and yet again in 1996, to correct a number of problems that came to light after enactment of the 1991 revisions (that took effect in 1992).

In the 1997-98 session of the legislature further changes were enacted. These changes took effect October 1, 1999 and revised the criminal penalties, license sanctions, and vehicle sanctions for drunk driving and driving without a license offenses, in a further attempt to deter repeat offenders.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have a minimal fiscal impact on state and local government. (11-2-99)

ARGUMENTS:

For:

The changes in this bill are among those intended to correct errors and inconsistencies contained in the 20-bill package that was enacted last session to increase penalties for drivers who repeatedly drive under the influence of alcohol, and those who drive while their driver's license is suspended. The intent of the original legislation was to create a criminal record for repeat offenders who drive drunk, in order to withdraw their driving privileges and keep them off the roadways. This bill is tie-barred to a package of bills--Senate Bills 831-834 and their House counterparts, House Bills 5008-5010 and House Bill 5016, as well as to Senate Bill 856. Those bills will, together with this bill, clarify the intent of the original legislation and help to make the roadways safer.

POSITIONS:

The Michigan Association of Chiefs of Police supports the bill. (12-7-99)

The Department of State Police supports the bill. (12-7-99)

The Michigan Municipal League supports the bill. (12-7-99)

The Department of State supports the bill. (12-7-99)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.