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FINGERPRINTING: CRIMINAL CONTEMPT

Senate Bill 721 as passed by the Senate
Sponsor: Sen. Valde Garcia

Senate Bill 722 (Substitute H-1)
Sponsor: Sen. Mike Goschka

House Committee: Criminal Justice
Senate Committee: Judiciary

First Analysis (12-5-01)

THE APPARENT PROBLEM:

The governor's task force on Domestic Violence Homicide Prevention has identified numerous areas of state law that need to be tightened in order to provide increased protection to individuals touched by domestic violence and nonrelational stalking. One area of concern that has been identified by the task force pertains to violations of personal protection orders (PPOs). Currently, a criminal contempt conviction for a violation of a PPO is not reported to the Michigan Department of State Police (DSP) and so does not appear on a person's criminal history record. Such information is necessary to track, as courts, prosecutors, and law enforcement agencies need such information about a person's propensity to violate a court order, such as a PPO, in order to make appropriate decisions regarding dangerousness, PPO conditions, bond conditions, sentencing, custody, and parenting time orders. Legislation, therefore, has been introduced to require that criminal contempt convictions of PPO violations be reported to the DSP Central Records Division for inclusion in a person's criminal history record.

THE CONTENT OF THE BILLS:

The bills are part of a larger package of bills addressing recommendations of the Domestic Violence Homicide Prevention Task Force. Senate Bill 721 would add a conviction for criminal contempt for a violation of a personal protection order (PPO) to the information required to be filed in a criminal history record and would require fingerprinting for criminal contempt arrests. Senate Bill 722 would require the final disposition of a charge of criminal contempt to be reported to the Department of State Police. The bills would take effect April 1, 2002. Specifically, the bills would do the following:

Senate Bill 721 would amend Public Act 289 of 1925 (MCL 28.242 and 28.243), which created a bureau for criminal identification and records within the Department of State Police (DSP). The bill would make the following changes:

- Require the Central Records Division of the DSP to procure and file for purposes of criminal identification criminal history record information on all persons convicted within the state of criminal contempt for a violation of a PPO issued under Sections 2950 or 2950a of the Revised Judicature Act (MCL 600.2950 and 600.2950a). ("Criminal history record information" includes name; date of birth; fingerprints; photographs; personal descriptions; identifying marks such as scars and tattoos; aliases; Social Security and driver's license numbers; and information on misdemeanor convictions and felony arrests and convictions. Sections 2950 and 2950a of the Revised Judicature Act (RJA) pertain to nonrelational and relational PPOs, respectively, that restrain another from engaging in stalking or aggravated stalking.)
- Require an arresting law enforcement agency to take the fingerprints, in duplicate, of a person arrested for criminal contempt for a violation of a PPO issued under Sections 2950 or 2950a of the RJA and forward the prints to the DSP within 72 hours of the arrest. (One print would be sent to the FBI).
- If not previously taken under the above provision, require a law enforcement agency to take a person's fingerprints upon an arrest for criminal contempt for a violation of a PPO issued under Sections 2950 or 2950a of the RJA under a provision pertaining to an arrest for a violation of a local ordinance for which the maximum penalty is 93 days imprisonment and that substantially corresponds to a violation of state

Senate Bills 721 and 722 (12-5-01)

law that is also a misdemeanor with a maximum penalty of 93 days imprisonment.

- Clarify that if a law enforcement agency took the fingerprints of a person arrested for a misdemeanor not specified previously in Section 3 of the act, that the agency could not forward the fingerprints to the DSP unless the person was convicted of a misdemeanor.

The bill is tie-barred to House Bill 5282 or to Senate Bill 722.

Senate Bill 722 would amend the Code of Criminal Procedure (MCL 769.16a) to require the clerk of a court to advise the DSP of a final disposition of a charge of criminal contempt for a violation of a PPO issued under Section 2950 and 2950a of the Revised Judicature Act (MCL 600.2950 and 600.2950a). (Currently, the clerk advises the DSP of a final disposition of a felony or misdemeanor charge for which the maximum penalty exceeds 92 days imprisonment or of a local ordinance that corresponds to a state law and that is a misdemeanor with a maximum penalty of 93 days imprisonment.)

Additionally, the bill would incorporate provisions of Senate Bill 479, which would amend the same section of the code to require a court clerk to report to the state police the final disposition of a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the state police. Further, the bill would restore a provision that would be eliminated by enactment of Senate Bill 479. (Currently, a court clerk is not required, unless ordered by the court, to report a misdemeanor conviction if either of the following applies: 1) the conviction is for driving without a license; or 2) a sentence of imprisonment is not imposed, except as an alternative sentence, and any fines and costs ordered total less than \$100. Senate Bill 479 would delete this provision.)

The bill is tie-barred to Senate Bill 721.

(*Black's Law Dictionary* distinguishes between civil and criminal contempt as follows. *Civil contempt* is the "failure to do something which the party is ordered by the court to do" and is "against the party in whose behalf the mandate of the court was issued" with a fine imposed as a penalty. However, *criminal contempt* is an act "done in disrespect of the court or its process or which obstruct[s] the administration of justice or tend[s] to bring the court into disrespect," and is punished by a fine or imprisonment.)

HOUSE COMMITTEE ACTION:

The House substitute for Senate Bill 722 would incorporate the new provisions of Senate Bill 479, restore a provision of current law deleted by Senate Bill 479, and tie-bar the bill only to Senate Bill 721.

BACKGROUND INFORMATION:

The bills are identical to the House-passed versions of House Bills 5277 and 5282. Further, Senate Bill 722 would incorporate the proposed changes contained in Senate Bill 479, which has passed the Senate and is currently pending before the House.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, Senate Bill 721 could result in significant costs related to taking and forwarding fingerprints for all law enforcement agencies, and processing and maintaining additional criminal history record information for the Department of State Police. No data exists on the number of individuals arrested annually for criminal contempt under the relevant sections of the Revised Judicature Act, however, so the potential increase in costs is indeterminate. Senate Bill 722 could increase administrative burdens for court clerks, but any fiscal impact would be limited. (12-3-01)

ARGUMENTS:

For:

Senate Bill 721 would include a conviction for criminal contempt of a violation of a personal protection order in a person's criminal history record kept by the state police. The bill refers specifically to PPOs issued under provisions of the Revised Judicature Act that pertain to stalking and aggravated stalking and include both domestic violence related stalking and nonrelational stalking. Senate Bill 722 would require court clerks to advise the state police of final dispositions of criminal contempt charges for PPO-related violations.

Both bills are important because a person who violates a PPO may be at higher risk for violating a PPO issued at a later date or of violating other court orders such as probation conditions, custody and parenting orders, and so on. Stalking, like domestic violence, is a repetitive behavior, and so it is important for judges, prosecutors, and law enforcement officers to know if a person already has a history of violating court orders when they are making decisions regarding a current issue before

them. For example, a judge may not grant probation to a person before the court on a criminal charge if that person has a past history of violating a PPO. Because there could be a greater likelihood that the person would violate probation conditions, a judge may instead choose incarceration or an alternative incarceration program such as a boot camp.

POSITIONS:

The Office of the Governor supports the bills. (11-19-01)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the concept of the bills. (12-4-01)

The Michigan Coalition Against Domestic and Sexual Violence is in strong support of the concept of the bills. (11-19-01)

The National Organization for Women/Michigan strongly supports the bills in concept. (11-20-01)

The Michigan Advocacy Project supports the bills. (12-3-01)

Analyst: S. Stutzky

■ 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.