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BILL ANALYSIS

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Senate Bills 478 and 479 (as passed by the Senate)  
Sponsor: Senator Shirley Johnson  
Committee: Judiciary

Date Completed: 5-30-01

### **RATIONALE**

Public Act 289 of 1925 requires law enforcement agencies to take the fingerprints of people arrested for a felony, a misdemeanor punishable by at least 93 days' imprisonment, a juvenile offense, or the violation of a local ordinance punishable by up to 93 days' imprisonment that substantially corresponds to a misdemeanor for which the maximum term is 93 days. Law enforcement agencies are required to forward the fingerprints to the Department of State Police, which then sends them to the Federal Bureau of Investigation. According to the Department, it is common for fingerprints to be forwarded electronically, rather than in paper form, both to the State Police and to the FBI. This practice, however, is not reflected in Public Act 289, which still requires the Department to supply fingerprint forms to law enforcement agencies, requires prints to be taken in duplicate, and requires fingerprints to be returned to a person under certain circumstances.

In addition, the Department has indicated that Federal funding under the juvenile accountability incentive block grant could be jeopardized if the State does not expand the juvenile history information that it maintains. Under Public Act 289, "juvenile offense" means one of the specific, serious offenses identified in the definition. Since fingerprinting is not required when juveniles are arrested for an offense that is not listed, the State typically does not have information on these juveniles. To address this situation, the Department has recommended that the requirements for fingerprinting juveniles be expanded.

The Department also has identified other ways in which the fingerprinting law could be modified. For example, law enforcement agencies are permitted to fingerprint someone

who is arrested for a misdemeanor for which fingerprinting is not required, but may not send the prints to the State Police unless the person is convicted. Apparently, however, the actual practice of forwarding prints upon conviction is inconsistent, which means that the Department does not have criminal history information on many people who are convicted. It has been suggested that this and other concerns be addressed by statutory amendments.

### **CONTENT**

**Senate Bill 478 would amend Public Act 289 of 1925 to do the following:**

- **Redefine "juvenile offense" to include any felony or misdemeanor.**
- **Delete the requirement that fingerprints be taken in duplicate.**
- **Allow the Department of State Police to prescribe the format of required information, instead of providing forms.**
- **Require the State Police to send an arrest card (which could be paper or electronic), rather than a set of fingerprints, to the FBI.**
- **Require fingerprints and arrest cards to be destroyed, instead of returned, under certain circumstances.**
- **Permit a law enforcement agency to forward to the State Police fingerprints taken of a person arrested for a misdemeanor (for which fingerprinting is not required), before conviction.**
- **Include misdemeanor arrests in criminal history record information.**
- **Allow fingerprints taken for noncriminal identification purposes to be used for criminal identification purposes.**

**Senate Bill 479 would amend the Code of Criminal Procedure 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.**

The bills are tie-barred to each other.

**Senate Bill 478**

**State Police Requirements; Reported Information**

Public Act 289 of 1925 provides that the Central Records Division of the Department of State Police is responsible for criminal and juvenile identification and records. The bill would retain the responsibilities of the Department, but delete references to the Central Records Division. The bill also would define "commanding officer" as the State Police employee in charge of the Criminal Justice Information Center or its successor administrative unit, instead of the employee in charge of the Central Records Division.

Under the Act, the commanding officer is required to procure and file for purposes of criminal identification, criminal history information on all people who have been convicted within this State of a felony or a misdemeanor. The commanding officer also must provide all reporting officials with forms, numerical identifiers, and instructions that specify the information required and other matters. Under the bill, the commanding officer would be required either to provide these forms or to prescribe the format specifying the information required.

The bill would require a copy of an arrest card (instead of a set of fingerprints) to be forwarded to the Federal Bureau of Investigation. "Arrest card" would mean a paper form or an electronic format prescribed by the Department that facilitated collecting and compiling criminal and juvenile arrest history record information, including fingerprint images.

The bill also would require the commanding officer to provide access to criminal history record information and juvenile history record information, as prescribed by the Department and as authorized by law. The bill would include in the definition of "criminal history record information" misdemeanor arrests (in

addition to misdemeanor convictions, felony arrests and convictions, and the other specified information). The bill would include in the definition of "juvenile history record information" information on juvenile offense convictions (as well as juvenile offense arrests and adjudications, and the other information currently required). The bill would delete physical measurements from both definitions.

The bill would define "juvenile offense" as an offense committed by a juvenile that, if committed by an adult, would be a felony or a misdemeanor. Currently, the term means an offense committed by a juvenile that, if committed by an adult, would be one of the following: burning a dwelling house; assault with intent to commit murder, do great bodily harm, maim, rob and steal, or commit criminal sexual conduct (CSC); attempted murder; first- or second-degree murder; breaking and entering; first-degree home invasion; escape from a juvenile facility; kidnapping; larceny in a building; unlawfully driving away a motor vehicle; first-, second-, third-, or fourth-degree CSC; armed or unarmed robbery; bank robbery; or the manufacture, delivery, possession with intent to manufacture or deliver, or possession of more than 650 grams of a Schedule 1 or 2 controlled substance that is a narcotic or cocaine.

The current definition of "misdemeanor" includes a violation of a local ordinance that substantially corresponds to State law. The bill would add "that is not a civil infraction".

**Required Fingerprinting & Reporting**

Under the Act, 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 and/or a fine of \$1,000, or for a juvenile offense, the arresting law enforcement agency in this State must take the person's fingerprints in duplicate and forward them to the State Police within 72 hours after the arrest. The bill would refer to a juvenile offense, other than one for which the maximum possible penalty does not exceed 92 days' imprisonment and/or a fine of \$1,000. The bill would delete the requirement that the fingerprints be taken in duplicate.

The Act also requires a law enforcement agency to take a person's fingerprints if he or she 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 term is 93 days. If the person is convicted of any violation, the law enforcement agency must take the person's fingerprints before sentencing if they have not been previously taken. The bill would retain these requirements but delete the statement that a law enforcement agency must take a person's fingerprints under these provisions 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 been previously taken and forwarded to the State Police (as described in the first paragraph above).

Currently, an arresting law enforcement agency may take a person's fingerprints upon an arrest for a misdemeanor (other than one for which fingerprinting is required) but may not forward the prints to the State Police unless the person is convicted. Under the bill, the fingerprints could be sent to the State Police.

The bill would require a law enforcement agency to forward the fingerprints and arrest card to the State Police if a court ordered fingerprinting of a person pursuant to Section 11 or 18 of the juvenile code, or Section 29 of Chapter 4 or Section 1 of Chapter 9 of the Code of Criminal Procedure. (Sections 11 and 18 of the juvenile code require a court to order the fingerprinting of a juvenile when a petition for jurisdiction over the juvenile is filed, or when the court enters an order of disposition for a specified juvenile offense or a judgment of sentence for a conviction, if the juvenile has not been fingerprinted as required in Public Act 289 of 1925 and the Sex Offenders Registration Act. Section 29 of Chapter 4 of the Code of Criminal Procedure requires a magistrate to order the fingerprinting of a person arraigned for a felony or a misdemeanor punishable by more than 92 days' imprisonment, if the person has not been printed as required in Public Act 289. Under Section 1 of Chapter 9 of the Code, a person convicted of a felony or of a misdemeanor punishable by more than 92 days' imprisonment may not be sentenced until the court has examined the court file and determined that the person's fingerprints have been taken.)

### Destruction of Fingerprints

The Act permits an arresting law enforcement agency to take one set of fingerprints of a person who is arrested for a misdemeanor punishable by imprisonment for up to 92 days and/or a fine of up to \$1,000, and who fails to produce satisfactory evidence of identification. The prints must be forwarded to the State Police and, upon the Department's completion of the identification process, they must be returned to the arresting law enforcement agency. Under the bill, the prints would have to be destroyed, rather than returned.

Under the Act, if a petition is not authorized for a juvenile accused of a juvenile offense or if a person arrested for a felony or a misdemeanor is released without a charge made against him or her, the official taking or holding the person's fingerprints, arrest card, and description immediately must return this information to the person. If the information is not returned, the person has the right to demand and receive it at any time after his or her release, without petitioning the court. The bill would delete these provisions for the return of the information, and would require the official taking or holding the prints and arrest card to destroy them.

Also, under the Act, if a juvenile is adjudicated and found not to be within the provisions of the juvenile code for violation of a law, or if an accused is found not guilty of the offense, the arrest card, fingerprints, and description must be returned to him or her by the official holding the information. If the official does not return the information within 60 days of the adjudication or finding of not guilty, the juvenile or accused has the right to obtain a court order for the return of the information. Under the bill, the fingerprints and arrest card would have to be destroyed, instead of returned. If the official did not destroy them within 60 days, the juvenile or accused would have the right to obtain a court order for their return.

The current requirements for the return of fingerprints, arrest cards, and descriptions do not apply in the following cases:

- The person arrested was charged with the commission or attempted commission (or a juvenile is alleged to have committed an offense that if committed by an adult would constitute the commission or attempted commission) of a crime with or against a

child under 16 years old, CSC in any degree, rape, sodomy, gross indecency, indecent liberties, or child sexually abusive activity or material.

- The person arrested has a prior conviction other than a misdemeanor traffic offense, unless a judge orders the return on the record.

The bill would delete these provisions, but specifies that the requirements for the destruction of fingerprints and arrest cards would not apply under generally the same circumstances. The bill would refer to a person who was arraigned in circuit court or family court, rather than arrested, for the offenses described above (although the bill would refer to child abusive commercial activities, instead of child sexually abusive activity or material).

#### Refusal to be Fingerprinted

Currently, a person who is required to have his or her fingerprints taken and refuses to allow or resists the taking of the fingerprints, is guilty of a misdemeanor. (Under the Michigan Penal Code, a misdemeanor for which no punishment is specified is punishable by imprisonment for up to 90 days and/or a maximum fine of \$100.) The person must be advised that his or her refusal constitutes a misdemeanor. The bill would delete these provisions.

The bill would prohibit a person from refusing to allow or resisting the taking of his or her fingerprints if authorized or required under the Act. A violation would be a misdemeanor punishable by imprisonment for up to 92 days and/or a fine of up to \$500.

#### Criminal Identification

The bill provides that fingerprint impressions obtained under a law or rule for noncriminal identification purposes could be used for criminal identification purposes unless prohibited by law or rule. ("Fingerprint impressions" would mean fingerprint images recorded in a manner prescribed by the Department.)

#### **Senate Bill 479**

Under the Code of Criminal Procedure, a court clerk is required to report to the Department of State Police the final disposition of a felony or a misdemeanor for which the maximum

possible penalty exceeds 92 days' imprisonment, or a local ordinance for which the maximum penalty is 93 days' imprisonment and that substantially corresponds to a violation of State law that is a misdemeanor punishable by up to 93 days. The bill also would require a court clerk to report the final disposition of a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the Department of State Police.

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. The bill would delete this provision.

The bill would prohibit a court clerk from reporting a misdemeanor conviction under the Michigan Vehicle Code unless one or more of the following applied:

- The offense was punishable by imprisonment for more than 92 days.
- The offense would be punishable by more than 92 days as a second conviction.
- A judge of the court ordered the clerk to report the conviction.

MCL 28.241 et al. (S.B. 478)  
769.16a (S.B. 479)

#### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Technological developments have made it possible to do away with paper fingerprint cards, forward prints electronically instead of through the mail, and rapidly make fingerprint comparisons. Many local law enforcement agencies already send prints electronically to the State Police, which forwards them to the FBI in the same way. Although many police departments do not yet have the technology to process fingerprints electronically, Federal grants are available for agencies to purchase "Live Scan" equipment, according to the State Police. Under Senate Bill 478, arrest cards could be either in paper form or electronic format, to accommodate the capabilities of police agencies statewide.

The bill also would require the destruction of fingerprints in situations in which the Act now requires them to be returned. Since there is nothing tangible to return when prints are taken electronically, they simply would be deleted. Since paper prints would be physically destroyed, law enforcement agencies would not have to take the time or spend the money to mail them to the person who was fingerprinted. In addition, the destruction of prints would avoid situations in which the fingerprinted person does not receive them (and perhaps someone else does) because they are mailed to an address that is no longer current.

#### **Supporting Argument**

By amending the definition of "juvenile offense" to include any felony or misdemeanor (except one punishable by less than 93 days' imprisonment), Senate Bill 478 would expand the State Police database on juvenile offenders. Currently, only those juveniles arrested for the specified offenses are subject to fingerprinting (unless jurisdiction is waived and a juvenile is tried as an adult). This does not satisfy Federal record-keeping requirements for the juvenile accountability incentive block grant, which is administered by the Family Independence Agency and dedicated to local juvenile justice agencies. In order to continue receiving this funding, the State needs to maintain complete records of juvenile adjudications.

#### **Supporting Argument**

Under Senate Bill 478, law enforcement agencies would not have to wait until a person was convicted before sending fingerprints to the State Police, when someone was arrested for a misdemeanor for which fingerprinting is not required (e.g., for an offense punishable by less than 93 days' imprisonment, or driving without a license). Although these prints may be sent to the State Police if the person is convicted, many agencies evidently do not forward them. Senate Bill 478 would broaden the Department's database by permitting the prints to be submitted before conviction. Under Senate Bill 479, if fingerprints had been sent to the State Police, the court then would have to notify the Department of the final disposition of the case.

#### **Supporting Argument**

In a number of situations, people are fingerprinted for noncriminal identification purposes. This commonly may occur, for example, when someone applies for

employment that requires a criminal history check to be performed. The Department of State Police does not keep a record of these prints, even if a fingerprint comparison indicates that the person committed an offense in the past. Under Senate Bill 478, fingerprints taken for noncriminal identification purposes could be used for the purpose of criminal identification, unless otherwise prohibited. This would enable the State Police to keep the prints in its database.

#### **Supporting Argument**

By deleting references to the Central Records Division, Senate Bill 478 would reflect a reorganization made by Executive Order 1998-1. That order combined the Law Enforcement Information Network (L.E.I.N.) Policy Council and the Automated Fingerprint Identification System (A.F.I.S.) Policy Council into a new Criminal Justice Information Systems (C.J.I.S.) Policy Council. In keeping with this consolidation, the Central Records Division is now part of the Criminal Justice Information Center.

Legislative Analyst: S. Lowe

#### **FISCAL IMPACT**

##### **Senate Bill 478**

The bill would require the Department of State Police and local law enforcement to follow new procedures which would most likely result in moderate cost savings to those organizations.

##### **Senate Bill 479**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Baker  
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#### **A0102\S478a**

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.