

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bills 478 and 479 (as enrolled)
Sponsor: Senator Shirley Johnson
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACTS 187 and 188 of 2001

Date Completed: 4-2-02

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, was not reflected in Public Act 289.

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

The Department also 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 could not send the prints to the State Police unless the

person was convicted. Apparently, however, the actual practice of forwarding prints upon conviction has been inconsistent, which means that the Department has not received criminal history information on many people who have been convicted. It was suggested that these concerns be addressed by statutory amendments.

CONTENT**Senate Bill 478 amended Public Act 289 of 1925 to do the following:**

- **Redefine "juvenile offense" to include any felony or misdemeanor, or a criminal contempt conviction for violating a personal protection order.**
- **Delete a 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 may 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 amended 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 were tie-barred to each other, and took effect on April 1, 2002.

Senate Bill 478

State Police Requirements; Reported Information

Public Act 289 of 1925 provided that the Central Records Division of the Department of State Police was responsible for criminal and juvenile identification and records. The bill retains the responsibilities of the Department, but deleted references to the Central Records Division. The bill also defines "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; or, under the bill, must prescribe the format specifying the information required.

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

The bill also requires 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 includes 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 includes 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 already required). The bill deleted physical measurements from both definitions.

The bill defines "juvenile offense" as an offense committed by a juvenile that, if committed by an adult, would be a felony, a misdemeanor, a criminal contempt conviction under Section 2950 or 2950a of the Revised Judicature Act (for a violation of a domestic violence or stalking personal protection order), or a criminal contempt conviction for a violation of a foreign protection order that satisfies the conditions for validity provided in Section 2950i of the Revised Judicature Act. (Previously, the term meant 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 definition of "misdemeanor" includes a violation of a local ordinance that substantially corresponds to State law. The bill added "that is not a civil infraction".

Required Fingerprinting & Reporting

Under Public Act 289, 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 and forward them to the State Police within 72 hours after the arrest. The bill refers 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 deleted a requirement that the fingerprints be taken in duplicate.

Under the Act, an arresting law enforcement agency is permitted to take a person's fingerprints upon an arrest for a misdemeanor (other than one for which fingerprinting is required). Under the bill, the fingerprints also may be sent to the State Police (which was previously prohibited unless the person was convicted).

The bill requires a law enforcement agency to forward the fingerprints and arrest card to the State Police if a court orders 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. Under the bill, upon the Department's completion of the identification process, the prints must be destroyed (instead of returned to the arresting law enforcement agency).

Also, 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 bill requires the official taking or holding the person's fingerprints and arrest card to destroy them. (Previously, the official immediately had to return this information to the person. If the information was not returned, the person had the right to demand and receive it at any time after his or her release, without petitioning the court.)

In addition, 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 bill requires the arrest card and fingerprints to be destroyed (instead of returned) by the official holding the information. If the official does not destroy the fingerprints and arrest card within 60 days, the juvenile or accused has the right to obtain a court order for their return. (Previously, if the official did not return the information within 60 days of the adjudication or finding of not guilty, the juvenile or accused had the right to obtain a court order for the return of the information.)

The bill's requirements for the destruction of fingerprints and arrest cards do not apply to a person who was arraigned in circuit court or family court for any of the following:

- The commission or attempted commission of a crime with or against a child under 16 years old.
- Criminal sexual conduct in any degree.
- Rape.
- Sodomy.
- Gross indecency.
- Indecent liberties.
- Child abusive commercial activities.

The requirements for destruction of fingerprints and arrest cards also do not apply to a person arrested who is a juvenile charged with an offense that would constitute the commission or attempted commission of any of the crimes described above if committed by an adult. In addition, the destruction requirements do not apply to a person who has a prior conviction, other than a misdemeanor traffic offense, unless a judge of a court of record, except the probate court, by express order on the record, orders the destruction or return of the prints and arrest card.

(Previously, the Act made similar exceptions to its requirements for the return of fingerprints and arrest cards. The Act, however, referred to a person who was arrested, rather than arraigned, and referred to child sexually abusive activity or material, rather than child abuse commercial activities.)

Refusal to be Fingerprinted

The bill prohibits a person from refusing to allow or resisting the taking of his or her fingerprints if authorized or required under the Act. A violation is a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500.

(Previously, a person who was required to have his or her fingerprints taken and refused to allow or resisted the taking of the fingerprints, was guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$100. The person had to be advised that his or her refusal constituted a misdemeanor.)

Criminal Identification

The bill provides that fingerprint impressions obtained under a law or rule for noncriminal identification purposes may be used for criminal identification purposes unless prohibited by law or rule. (The bill defines "fingerprint impressions" as 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 an original charge against a person 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 requires a court clerk to report the final disposition of a misdemeanor charge in a case in which the appropriate court was notified that fingerprints were forwarded to the Department of State Police.

Previously, a court clerk was not required, unless ordered by the court, to report a

misdemeanor conviction if either of the following applied: 1) The conviction was for driving without a license, or 2) a sentence of imprisonment was not imposed, except as an alternative sentence, and any fines and costs ordered totaled less than \$100. The bill deleted this provision.

Under the bill (except as provided below), a court clerk is prohibited from reporting a misdemeanor conviction under the Michigan Vehicle Code unless one or more of the following apply:

- The offense is 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 orders the clerk to report the conviction.

The bill provides that, unless ordered by the court, the clerk is not required to report a conviction of a misdemeanor offense for a violation of Section 904(3)(a) of the Michigan Vehicle Code or a substantially corresponding local ordinance. (Section 903 prohibits a person from operating a vehicle if his or her driver's license or registration certificate has been suspended or revoked, if his or her application for a license has been denied, or if he or she never applied for a license. The section also prohibits a person from knowingly permitting his or her vehicle to be operated by someone without a license. Subsection (3)(a) sets the penalty for a first violation.)

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. Senate Bill 478 recognizes this practice in statute, and allows arrest cards to be in either paper form or electronic format, to accommodate the capabilities of police agencies statewide.

The bill also requires the destruction of fingerprints in situations in which the Act had previously required them to be returned. Because there is nothing tangible to return when prints are taken electronically, they simply will be deleted. Since paper prints will be physically destroyed, law enforcement agencies will 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 will 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), or a criminal contempt conviction for violating a personal protection order, Senate Bill 478 will expand the State Police database on juvenile offenders. Until now, only those juveniles arrested for the specified offenses were subject to fingerprinting (unless jurisdiction was waived and a juvenile was tried as an adult). This did 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 will not have to wait until a person is convicted before sending fingerprints to the State Police, when someone is 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 agencies previously could send these prints to the State Police if the person was convicted, many agencies evidently did not forward them. Senate Bill 478 will broaden the Department's database by permitting the prints to be submitted before conviction. Under Senate Bill 479, if fingerprints have been sent to the State Police, the court then will 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. Until now, the Department of State Police has not kept a record of these prints, even if a fingerprint comparison indicated that the person committed an offense in the past. Under Senate Bill 478, fingerprints taken for noncriminal identification purposes may be used for the purpose of criminal identification, unless otherwise prohibited. This will enable the State Police to keep the prints in its database.

Supporting Argument

By deleting references to the Central Records Division, Senate Bill 478 reflects 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: Suzanne Lowe

FISCAL IMPACT

Senate Bill 478

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

Senate Bill 479

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

Fiscal Analyst: Bruce Baker
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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.