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BILL ANALYSIS

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Senate Bill 648 (as introduced 6-28-05)
Sponsor: Senator Raymond E. Basham
Committee: Judiciary

Date Completed: 8-29-05

CONTENT

The bill would amend the L.E.I.N. Policy Council Act to do all of the following:

- **Replace the Law Enforcement Information Network (LEIN) Policy Council with the Criminal Justice Information System (CJIS) Policy Council, which would have an expanded membership.**
- **Require the council to establish policy and promulgate rules governing information in criminal justice information systems.**
- **Require the council to advise the Governor on issues concerning criminal justice information systems.**
- **Prohibit a person from gaining access to, using, or disclosing nonpublic information governed under the Act for personal use or gain (which would replace the current prohibition against disclosing LEIN information to a private entity for any purpose); and apply the criminal penalties only to intentional violations.**
- **Prohibit the disclosure of Automated Fingerprint Identification System (AFIS) and other criminal justice system information (as well as LEIN information) in an unauthorized manner.**
- **Allow the policy council to authorize access to public record information in order to enhance public safety or criminal justice, and to suspend or deny use of or access to information by an agency or individual who violated the council's policies or rules.**
- **Repeal the A.F.I.S. Policy Council Act (MCL 28.151-28.158).**

The bill also would change the Act's official title to the "C.J.I.S. Policy Council Act".

Council Composition

According to the Act, the LEIN Policy Council consists of the following members:

- The Attorney General, or his or her designee.
- The Secretary of State, or his or her designee.
- The Director of the Department of Corrections, or his or her designee.
- The Commissioner of the Detroit Police Department, or his or her designee.
- Three representatives of the Department of State Police, appointed by the Director of that Department.
- Three representatives of the Michigan Association of Chiefs of Police, appointed annually by that association.

- Three representatives of the Michigan Sheriffs' Association, appointed annually by that association.
- Three representatives of the Prosecuting Attorneys Association of Michigan, appointed annually by that association.

The bill would include those members as well as the following in the CJIS Policy Council:

- The Director of the Department of State Police, or his or her designee.
- A fourth representative of the Michigan Sheriffs' Association.
- A representative of the Michigan District Judges Association, appointed by that association.
- A representative of the Michigan Judges Association, appointed by that association.
- The State Court Administrator, or his or her designee.
- An individual who was employed in or engaged in the private security business, appointed by and serving at the pleasure of the Governor.
- An individual who represented human services concerns in Michigan, appointed by and serving at the pleasure of the Governor.
- The Director of the Department of Information Technology, or his or her designee.

The bill also would refer to the "chief", rather than the "commissioner", of the Detroit Police Department.

The bill would delete the requirement that the representatives of the police chiefs', sheriffs', and prosecutors' associations be appointed annually. Under the bill, appointed members would serve two-year terms and could be reappointed.

The bill specifies that a majority of the council members would constitute a quorum for conducting the business of the council.

Policy & Rules

The Act requires that the council establish policy and promulgate rules regarding the operational procedures to be followed by agencies using LEIN. The bill would require instead that the council establish policies and promulgate rules governing access, use, and disclosure of information in criminal justice information systems including LEIN, AFIS, and other information systems related to administering criminal justice or law enforcement.

Among other matters, the Act requires that the policy and rules ensure access to locator information obtained through LEIN by State and Federal agencies and the Friend of the Court for enforcement of child support programs as provided under State and Federal law, and ensure access to information of an individual being investigated by a State or county employee who is engaged in the enforcement of Michigan's child protection laws or rules. The bill, instead, would require that the policy and rules do the following:

- Ensure access to information by a Federal, State, or local government agency to administer criminal justice or enforce any law.
- Ensure access to information provided by LEIN or AFIS by a government agency engaged in the enforcement of child support laws, child protection laws, or vulnerable adult protection laws.

The council's policy and rules also would have to 1) authorize the Attorney General or a prosecuting attorney to disclose to a defendant or defendant's attorney information pertaining to that defendant, and 2) establish fees for access, use, or dissemination of information from criminal justice information systems.

The Act requires the council to establish minimum standards for terminal sites and information. The bill instead would require that the council establish minimum standards for equipment and software and its installation. The Act allows the council to remove terminals if the agency or entity controlling a terminal fails to comply with the council's policies and rules. Under the bill, the council could suspend or deny the use of and access to information, or remove access from an agency, if that agency violated the council's policies and rules.

Also, under the bill, a person who had direct access to nonpublic information in criminal justice information systems would have to submit a set of fingerprints for comparison with State and Federal criminal history records to be approved for access pursuant to the council's security policy. A report of the comparison would have to be provided to the person's employer.

Prohibitions & Penalties

The Act prohibits a person from disclosing information from LEIN to a private entity for any purpose, including the enforcement of child support programs. A first offense is a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both. A second or subsequent offense is a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

The bill, instead, would prohibit the access, use, or disclosure of "nonpublic information" governed under the Act for personal use or gain. Under the bill, the criminal penalties would apply to a person who "intentionally" violated the prohibition and the maximum penalty for a first conviction would be increased from 90 days' imprisonment to 93 days. ("Nonpublic information" would mean information to which access, use, or dissemination is restricted by any law or rule of this State or the United States.)

In addition, the Act prohibits disclosing information from LEIN in a manner that is not authorized by law or rule. The bill would refer to information governed by the Act.

Use or Access Suspension or Denial

The Act allows the LEIN Policy Council to remove LEIN terminals if the agency or entity controlling them fails to comply with the council's policies or promulgated rules.

The bill, instead, would allow the CJIS Policy Council to do any of the following:

- Authorize access to public record information in order to enhance public safety or criminal justice, as permitted by law.
- Suspend or deny the use of and access to information or remove access from an agency if it violated the council's policies or rules.
- Suspend or deny direct access to information to an individual who violated the Act or the council's policies or rules.

State Police

The bill would require the council to exercise its prescribed powers, duties, functions, and responsibilities independently of the Director of the Department of State Police. The council's budgeting, procurement, and related management functions, however, would have to be performed under the Director's direction and supervision. In addition, the executive secretary of the council would have to be appointed by the Director, subject to the council's approval.

MCL 28.211 et al.

BACKGROUND

Executive Reorganization Order No. 1998-1 created the CJIS Policy Council within the Department of State Police. The executive order transferred all the statutory authority, functions, and responsibilities of the AFIS Policy Council and the LEIN Policy Council to the CJIS Policy Council. The executive order also mandates that the CJIS Policy Council advise the Department Director on issues related to information management systems that facilitate the rapid exchange of information between components of the criminal justice system.

The LEIN Policy Council was established by Public Act 163 of 1974 to create policy and promulgate rules regarding the operational procedures to be followed by agencies using LEIN, to review applications for network terminals and approve or disapprove the applications and the sites for terminal installations, and to establish minimum standards for terminal sites and installations.

The AFIS Policy Council was established by Public Act 307 of 1988 to create policy and promulgate rules regarding the operation and audit procedures to be followed by agencies using AFIS, to design and provide for statewide identification of individuals using an AFIS, to establish minimum standards for AFIS sites and installations, to review proposed applications for AFIS and approve or disapprove the applications and the sites for system installations, and to establish policy and promulgate rules restricting the dissemination of identification information to individuals and agencies.

Before the 1998 executive order was issued, the membership of the LEIN Policy Council was entirely represented on the AFIS Policy Council.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

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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.