

ARREST RECORD/BIOMETRIC DATA

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House Bills 4536-4538 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Law and Justice
Complete to 9-16-17

Analysis available at
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SUMMARY:

House Bills 4536 and 4538 would amend various acts to require the expunction or destruction of an individual's arrest card and biometric data if the complaining witness recanted his or her testimony and the charge were dismissed prior to a trial. House Bill 4537 would amend a different act to establish policy and rules regarding the expunction or destruction of data in criminal justice information systems. The bills are tie-barred to each other, meaning unless all of the bills were enacted, none will take effect. All of the bills would take effect 90 days after enactment.

A more detailed description of the bills follows.

House Bill 4536 would add a new section to Chapter IV of the Code of Criminal Procedure (MCL 764.26a, proposed) and House Bill 4538 would amend Public Act 289 of 1925, which requires the Department of State Police to establish and maintain a fingerprint identification and criminal history records division (MCL 28.243). The new provisions would specify that *if* an individual were arrested for any crime, *and* the complaining witness—before a trial is held—recanted his or her statement, affidavit, or testimony alleging that the individual had committed 1 or more offenses against him or her, *and* the charge were dismissed before trial, both of the following would apply:

- The arrest record, all biometric data, fingerprints, and DNA sample or profile, and statements obtained from the individual must be expunged, destroyed, or both, as appropriate. (HB 4538 does not contain a reference to a DNA sample or profile.)
- Any entry concerning the charge and the individual must be removed from the Law Enforcement Information Network (LEIN).

Under House Bill 4536, the requirements described above would be satisfied upon the issuance of an appropriate order of the district or circuit court. Under House Bill 4538, the Department of State Police would be required to comply with the requirements described above upon receipt of an appropriate order issued by the district or circuit court.

("Biometric data" is defined under Public Act 289 of 1925 to mean all of the following:

- Fingerprint images recorded in a manner prescribed by the department.
- Palm print images, if the arresting law enforcement agency has the electronic capability to record palm print images in a manner prescribed by the department.
- Digital images recorded during the arrest or booking process, including a full-face capture, left and right profile, and scars, marks, and tattoos, if the arresting law

enforcement agency has the electronic capability to record the images in a manner prescribed by the department.

- All descriptive data associated with identifying marks, scars, amputations, and tattoos.)

House Bill 4537 would amend the C.J.I.S. Policy Council Act (MCL 28.214). Under the bill, the Criminal Justice Information Policy Council would be required to establish policy and promulgate rules concerning the expunction or destruction, or both, of information and data in criminal justice information systems as required under the provision proposed by House Bill 4536. Information systems included would be the Law Enforcement Information Network (LEIN), the Automated Fingerprint Information System (AFIS), and other information systems related to criminal justice or law enforcement.

FISCAL IMPACT:

HBs 4536 and 4538 would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

House Bills 4536-4538 would create minor administrative costs for the Department of State Police and local law enforcement agencies, which would be dependent upon the extent to which the recantation of official, pre-trial statements to law enforcement occurs. These costs would include the processing of expungement requests and the removal of the records from various state and local law enforcement systems, such as the Law Enforcement Information Network and the Automated Fingerprint Identification System. While these bills do not outline a method of recouping these administrative costs, the Department would have the authority to require a fee for the service through the promulgation of administrative rules, though it is not certain that the Department will choose to do so.

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