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BILL



ANALYSIS

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House Bill 4536 (Substitute H-2 as passed by the House)  
House Bill 4537 (Substitute H-1 as passed by the House)  
House Bill 4538 (Substitute H-2 as passed by the House)  
Sponsor: Representative Peter Lucido  
House Committee: Law and Justice  
Senate Committee: Judiciary

Date Completed: 1-23-18

### **CONTENT**

**House Bill 4536 (H-2)** would amend Chapter IV (Arrest) of the Code of Criminal Procedure to do the following:

- Require an individual's arrest record to be removed from the Internet Criminal History Access Tool (ICHAT) if the charge or charges were dismissed before trial.
- Require an arrest record, biometric data, fingerprints, and DNA samples to be expunged or destroyed, and an entry of a charge to be removed from the Law Enforcement Information Network (LEIN), if the prosecutor agreed, or if the prosecutor or judge did not object within 60 days after an order of dismissal was issued.
- Require the Michigan Department of State Police (MSP) to comply with the bill's requirements after receiving an order from the district or circuit court.

**House Bill 4537 (H-1)** would amend the C.J.I.S. Policy Council Act to require the Criminal Justice Information Systems (CJIS) Policy Council to establish policy and promulgate rules concerning expunction or destruction of information and data in criminal justice information systems.

**House Bill 4538 (H-2)** would amend the fingerprinting law to do the following:

- Require an individual's arrest record to be removed from ICHAT if the charge or charges were dismissed before trial.
- Require an arrest record, biometric data, and fingerprints to be expunged, and an entry of a charge to be removed from LEIN, if the prosecutor agreed, or the prosecutor or judge did not object within 60 days after an order of dismissal was issued.
- Require the MSP to comply with the bill's requirements after receiving an order from the district or circuit court.
- Specify that an existing exception that applies to the destruction of biometric data and an arrest card for certain individual would apply except as provided under the bill.

The bills are tie-barred to each other and to House Bill 5323. (House Bill 5323 would amend the DNA Identification Profiling System Act to require the State Police Forensics Laboratory to dispose of a DNA sample collected in certain situations if the MSP received a certified copy of

a court order entered under the section of the Code of Criminal Procedure that House Bill 4536 (H-2) would enact.)

Each bill would take effect 90 days after its enactment.

### **House Bill 4536 (H-2)**

The bill would add Section 26a to Chapter IV of the Code of Criminal Procedure to specify that if an individual were arrested for any crime and the charge or charges were dismissed before trial, the arrest record would have to be removed from ICHAT. Also, if the prosecutor of the case agreed at any time after the case was dismissed, or if the prosecutor or the judge of the court in which the case was filed did not object within 60 days after an order of dismissal was entered for cases in which the order was issued after the bill's effective date, all of the following would apply:

- The arrest record, all biometric data, and fingerprints would have to be expunged or destroyed, or both, as appropriate.
- Any entry concerning the charge would have to be removed from LEIN.
- Unless a DNA sample or profile, or both, was allowed or required to be retained by the MSP under Section 6 of the DNA Identification Profiling System Act, the sample or profile, or both, obtained from the individual would have to be expunged or destroyed.

(Section 6 of the DNA Identification Profiling System Act requires the MSP to retain an individual's DNA identification profile permanently if the individual is arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult, or he or she is convicted of or found responsible for a felony or attempted felony, or any of specified misdemeanors pertaining to various prostitution offenses, disorderly person by window peeping, or engaging in indecent or obscene conduct in public.)

The Department of State Police would have to comply with the bill's requirements after receiving an appropriate order from the district or circuit court.

### **House Bill 4537 (H-1)**

The C.J.I.S. Policy Council Act requires the Council to perform the following duties:

- Establish policy and promulgate rules governing access, use, and disclosure of information in criminal justice information systems.
- Review applications for CJIS access and approve or disapprove the applications and the sites.
- Establish minimum standards for equipment and software and its installation.
- Advise the Governor on issues concerning the criminal justice information systems.

The bill also would require the Council to establish policy and promulgate rules concerning expunction, destruction, or both, of information and data in criminal justice information systems, including LEIN, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement, as required under proposed Section 26a of Chapter IV of the Code of Criminal Procedure.

### **House Bill 4538 (H-2)**

Generally, the fingerprinting law specifies that after 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 or a fine of \$1,000, or both, or for certain other enumerated offenses,

the arresting law enforcement agency must collect the person's biometric data and forward it to the MSP within 72 hours after the arrest. ("Biometric data" means all of the following: a) fingerprint images recorded in a manner prescribed by the Department; b) 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; c) 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; and d) all descriptive data associated with identifying marks, scars, amputations, and tattoos.)

The bill specifies that if an individual were arrested for any crime and the charge or charges were dismissed before trial, the arrest record would have to be removed from ICHAT. Also, if the prosecutor of the case agreed at any time after the case was dismissed, or if the prosecutor or the judge of the court in which the case was filed did not object within 60 days after an order of dismissal was entered for cases in which the order was issued after the bill's effective date, both of the following would apply:

- The arrest record, all biometric data, and fingerprints would have to be expunged or destroyed, or both, as appropriate.
- Any entry concerning the charge would have to be removed from LEIN.

The Department of State Police would have to comply with the bill's requirements after receiving an appropriate order from the district or circuit court.

The law specifies that if a juvenile is adjudicated and found not to be within the provisions of Section 2(a)(1) of the juvenile code, or if an accused is found not guilty of an offense for which biometric data were collected, after final disposition of the charge against the accused or juvenile, the biometric data and arrest card must be destroyed by the official holding those items and the clerk of the court must notify the Department of any finding of not guilty or nolle prosequi (a motion to abandon a case against a defendant, generally without prejudice). ("Arrest card" means a paper form or an electronic format prescribed by the Department that facilitates the collection and compilation of criminal and juvenile arrest history record information and biometric data.

Section 2(a)(1) of the juvenile code provides for jurisdiction of the family division of circuit court in proceedings concerning a juvenile under 17 years of age who has violated a municipal ordinance, or State or Federal law.)

The requirement to destroy the biometric data and arrest card for those individuals does not apply to an individual arraigned for any of the following: a) the commission or attempted commission of a crime with or against a child under 16 years of age; b) rape; c) criminal sexual conduct in any degree; d) sodomy; e) gross indecency; f) indecent liberties; g) child abusive commercial activity; h) an individual who has a prior conviction, other than a misdemeanor; or i) a juvenile charged with an offense that would constitute the commission or attempted commission of any of the above crimes if committed by an adult. Under the bill, this exception would apply except as provided above for charges dismissed before trial.

Proposed MCL 760.26a (H.B. 4536)  
MCL 28.214 (H.B. 4537)  
MCL 28.243 (H.B. 4538)

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

The bills would likely have a minor fiscal impact on the judiciary, local courts, and the Michigan Department of State Police, depending on how frequently the bills' provisions would be exercised. Administrative costs could include the processing of expungement requests and removal of records from law enforcement record systems, including the Law Enforcement Information Network and the Automated Fingerprint Identification System. While the removal of such records is not an uncommon procedure by law enforcement entities, and current appropriations exist to cover those costs, it cannot be known at this time whether the provisions of these bills would stress these existing resources. In addition, under House Bill 4537 (H-1), the MSP's Criminal Justice Information Systems Policy Council would be required to establish policy and promulgate rules for the expunction and/or destruction of information and data, as the bills would require.

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.