



**House
Legislative
Analysis
Section**

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House Bills 4598 and 4599 as passed by the
House
Second Analysis (7-28-87) **RECEIVED**

Sponsor: Rep. James Docherty **AUG 19 1987**
Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

Juvenile records may be used in later sentencing decisions, but Michigan law makes no clear provision for the development of a juvenile delinquency history. Some law enforcement agencies report juvenile arrest and fingerprint information to the state police, which maintains separate files for juveniles, but others do not. The arrest information lacks consistency, and information on dispositions is unavailable through the state police. Lack of consistency in records used in sentencing makes for unequal justice. Further, there is widespread opinion that there is a clear public interest in ensuring that courts and law enforcement agencies may identify individuals, including juveniles, who commit serious crimes. It has been proposed that certain juvenile records be compiled in a consistent manner and maintained by the state police as done for adult criminal histories.

THE CONTENT OF THE BILL:

House Bill 4598 would amend Public Act 289 of 1925 to require the state police to procure and maintain records on adjudicated juveniles who committed various offenses listed by the bill including murder, attempted murder, kidnaping, criminal sexual conduct, armed robbery, burning a dwelling, breaking and entering, and car theft. The juvenile history record would include name, date of birth, fingerprints, photographs if available, personal descriptions, social security and driver's license numbers, and information on juvenile arrests and adjudications. Local law enforcement agencies would have to fingerprint juveniles for the offenses listed by the bill, and forward prints to the state police. The bill would extend to juveniles provisions for returning fingerprints and arrest records to the accused upon charges being dropped or being found not guilty. Court clerks would have to transmit information on adjudications for the listed offenses to the state police.

MCL 28.241 et al.

House Bill 4599 would amend the juvenile code to require the juvenile court to see to it that an accused juvenile's fingerprints are taken as required by House Bill 4598. Fingerprinting would have to be done before an order of disposition for an offense listed by House Bill 4598 could be entered. Upon disposition or dismissal, the court clerk would have to report to the state police on forms provided by the state court administrator. The report would have to include information as to the finding of the judge or jury and a summary of the disposition imposed.

Adjudications could be set aside and records expunged under provisions paralleling those for criminal record expunction. However, a person could not apply to have an adjudication set aside prior to turning age 24. Although the setting aside would generally be a privilege and not a right, the court, upon receiving a proper application, would have to set aside an adjudication for breaking and entering or car theft.

MCL 712A.11 et al.

BACKGROUND INFORMATION:

On July 1, 1987, the Supreme Court released new juvenile court rules taking effect January 1, 1988. Under those rules, the legal files of the juvenile court are to be open to public inspection when the juvenile court proceedings were open to the public unless the file was expunged or there appeared good cause not to permit inspection. Only people the court found to have a legitimate interest could view other juvenile court files or records. In determining whether a person had a legitimate interest, the court would consider the welfare and safety of the public and the interest of the minor.

The court could at any time for good cause order the expungement of its own files and records pertaining to a minor, including fingerprints and photographs. Except to avoid a manifest injustice, the court could not expunge the delinquency records of a juvenile before age 30 unless two years had elapsed since the later of the date of trial or discharge from a juvenile facility and no juvenile court or criminal proceeding was pending against the person. The court would have to expunge the delinquency records of a person when he or she reached age 30. A juvenile's motor vehicle violation citation and summons would have to be expunged at age 19.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bills would present state and local costs in amounts unknown at this time. (7-17-87)

ARGUMENTS:

For:

The rising numbers of hardened juvenile offenders are causing increasing concern, as juveniles seem to be turning to repeated acts of violence at younger ages. With such offenders, the public must protect itself by law in much the same way it does with adult criminals. One relatively simple way to do that is by maintaining what in essence are criminal histories on juveniles who commit serious offenses. That way, law enforcement agencies and courts will have the information they need for investigations and sentencing decisions. Further, specific provisions for fingerprinting and for juvenile courts to report information on forms provided by the state court administrative office will ensure that consistent records will be maintained on juveniles adjudicated for certain offenses, thereby promoting equal administration of justice in later sentencing. Finally, if juvenile delinquency records are to be compiled and kept by the state police, then the law should also provide for the destruction of the records of former juveniles who have stayed out of trouble for a number of years. The bill would do this with provisions paralleling those for criminal record expunction, which would also ensure that permanent nonpublic records are maintained for law enforcement and sentencing purposes.

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Against:

While maintaining files on dangerous juvenile offenders is not necessarily bad public policy, there are considerations against which the benefits of police recordkeeping must be weighed. Conviction records are public records that anyone may obtain, which means the bills could breach the confidentiality that has traditionally attached to juvenile records, a tradition that is rooted in the belief that youthful mistakes should not be held against responsible adults. If the law is to maintain certain juvenile records as criminal records, then the due process aspects of criminal law should be adopted for juveniles, as well: the law should be amended to eliminate nonattorney referees from the adjudication process, to require the participation of the prosecuting attorney so that the referee/judge acts as an impartial third party, and to require the court to appoint counsel for juveniles who cannot afford it (these protections are provided in part by court rules, but not statute).

Response: The bills may be viewed as a narrowing of the recordkeeping maintained on juvenile arrests, not a broadening. Public Act 289 of 1925 does not at present distinguish between juvenile and adult arrest information in its requirements that law enforcement agencies report arrest and fingerprint information to the state police. The state police construe the act to apply to all juvenile arrests; the bills would confine recordkeeping on juvenile arrests to adjudications for the listed offenses.

Against:

The subject of the bills should be the violent juvenile offender who turns to assaultive crime at an early age. There is a qualitative difference between violent offenses such as murder, armed robbery and rape, and property offenses such as burglary and car theft. The public's interest in maintaining records on comparatively minor offenses is not sufficient to outweigh the enduring stigma that would attach to a juvenile record or to justify the costs of maintaining such records.

Response: If the bills were limited to adjudications for certain assaultive offenses, they would ignore important components of the juvenile crime problem, especially breaking and entering. Juveniles commit a large number of burglaries, and it is often a matter of chance whether a burglary ends in violence. To remain adequate, the bills should include car theft and breaking and entering among the offenses for which juvenile records are to be kept.

Against:

To be sufficient, the bills should extend to adjudications for all felonies.

Response: If the bills applied to all felony adjudications, they would be overbroad, applying to a wide variety of offenses, regardless of circumstances. The bills are better as they are, specifically aiming at the most troublesome aspects of the juvenile crime problem.

Against:

Much of the bills is inconsistent, if not in direct conflict with, new juvenile court rules on court records. It is uncertain how these conflicts may be resolved.

POSITIONS:

The Department of State Police supports the reporting requirements for juvenile courts, but would prefer expanding the scope of the bills to apply to all felonies. (7-23-87)

The Michigan Council on Crime and Delinquency could not support the bills without enactment of legislation such as House Bill 4595, which would provide certain due process protections in juvenile court. (7-22-87)