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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4598 (Substitute S-1 as reported)
House Bill 4599 (Substitute S-2 as reported)
Sponsor: Representative James Docherty
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 2-9-88

RATIONALE

Although juvenile's previous records are permitted to be used in later sentencing decisions, Michigan law makes no clear provision for the development of a comprehensive 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. Consequently, the arrest information lacks consistency; and information on dispositions is unavailable through the State Police. Some contend that there is a clear public interest in ensuring that courts and law enforcement agencies have the capability to identify individuals, including juveniles, who commit serious crimes. Some feel that certain juvenile records should be compiled in a consistent manner and maintained by the State Police as is done for adult criminal histories.

CONTENT

The bills would amend Public Act 289 of 1925 and the juvenile code, respectively, to coordinate recordkeeping practices concerning juvenile arrests and adjudications.

The bills are tie-barred and would take effect on June 1, 1988.

House Bill 4598

The bill would amend Public Act 289 of 1925 to require the State Police to procure and maintain records on adjudicated juveniles who committed various specified offenses including murder, attempted murder, kidnapping, criminal sexual conduct, armed robbery, arson of a dwelling, breaking and entering, and auto theft. The juvenile history record would have to 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 in the bill, and forward the prints to the State Police. The bill would extend to juveniles provisions for the return of fingerprints and arrest records to the accused upon charges being dropped or the accused being acquitted. Court clerks would have to transmit information adjudications for the listed offenses to the State Police.

MCL 28.241 et al.

House Bill 4599

The bill would amend the juvenile code to require the juvenile court to ensure that an accused juvenile's fingerprints were taken as would be required by House Bill 4598 and to provide for the setting aside of records of juvenile offenses.

Fingerprinting

Fingerprinting would have to be done before an order of disposition for an offense specified in 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 regarding the finding of the judge or jury and a summary of the disposition.

Setting Aside

The bill would specify procedures for setting aside records of a person who had been adjudicated of not more than one juvenile offense. Only one adjudication could be set aside. Records of an adjudication for an offense that would be a felony if committed by an adult and for which the maximum punishment is life imprisonment could not be set aside. An application to set aside records could not be filed until the expiration of five years after the imposition of disposition for the adjudication, five years following the completion of any term of detention for the adjudication, or the applicant's 24th birthday, whichever occurred later.

The application would have to contain various specified personal information and consent for the set aside records to be used as a nonpublic record as authorized by the bill. A copy of the application would have to be submitted to State Police along with the applicant's fingerprints. A copy of the application would have to be served on the Attorney General and, if applicable, the prosecuting attorney who prosecuted the offense. Either of those offices would have to be given the opportunity to contest the application. If the court determined that the circumstances and behavior of the applicant warranted setting aside the adjudication and that setting it aside was consistent with the public welfare, the court could enter an order to set aside the adjudication. (Although setting aside records of a juvenile adjudication generally would be discretionary, the bill specifies that, upon receiving a proper application, the court would have to set aside an adjudication for auto theft.)

Upon the entry of an order to set aside, the applicant, for purposes of law, would be considered not to have been adjudicated. The following conditions, however, would apply:

- The applicant would not be entitled to the remission of a fine, costs, or other sums paid as a result of a set aside adjudication.
- The set aside would not affect the right of the applicant to rely on the adjudication to bar subsequent proceedings for the same offense.

H.B. 4598 & 4599 (2-9-88)

- The set aside would not affect the right of a victim to bring or defend against a civil action.
- The set aside could not be construed to create a right to commence an action for damages for detention under the disposition of the set aside adjudication.

The records of the set aside adjudication would be retained by the State Police as a nonpublic record that could be made available only for certain specified purposes. A copy of the nonpublic record would have to be provided to the applicant upon payment of a fee in the same manner provided for in the Freedom of Information Act, but would be exempt from disclosure under that Act. A person who divulged information set aside, except in a manner specifically permitted by the bill, would be guilty of a misdemeanor.

MCL 712A.11, 712A.18, and 712A.28

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-1) to House Bill 4598 that would provide for an effective date of June 1, 1988.

The Senate Judiciary Committee adopted a substitute (S-2) to House Bill 4599 that would allow an automatic set aside of a juvenile record only for auto theft and would provide for an effective date of June 1, 1988. (The House-passed version of the bill would have allowed an automatic set aside of a juvenile record for larceny and breaking and entering as well as for auto theft.)

FISCAL IMPACT

House Bill 4598 (S-1) would result in an expense to the State of approximately \$40,000 and would have an indeterminate impact on local government. Administrative costs to local courts would result from reporting requirements.

House Bill 4599 (S-2) would have an indeterminate impact on State and local government.

ARGUMENTS

Supporting Argument

The reportedly rising numbers of hardened juvenile offenders are causing increasing concern that juveniles may be turning to repeated acts of violence at younger ages. The public must be protected against juvenile offenders much the same way the law protects the public against adult criminals. One relatively simple way to do that is by maintaining "criminal" histories of juveniles who commit serious offenses. By maintaining such records, law enforcement agencies and courts could have better access to needed information for investigations and sentencing decisions. Further, specific provisions for fingerprinting and for juvenile courts to report information would ensure that consistent records were maintained on juveniles adjudicated for certain offenses, thereby enabling the courts to administer justice equally in later sentencing decisions. Finally, if juveniles' records are to be compiled and kept by the State Police, then the law also should provide for the setting aside of the records of former juveniles who have stayed out of trouble for a number of years. House Bill 4599 would do this with provisions paralleling those for criminal record expunction and also would ensure that permanent nonpublic records were maintained for law enforcement and sentencing purposes.

Opposing Argument

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. Since conviction records are public documents that anyone may obtain, the bills could breach confidentiality that traditionally has been attached to juvenile records, a tradition that is rooted in the belief that youthful mistakes should not be held against responsible adults.

Response: The bills may be viewed as a narrowing, rather than a broadening, of the recordkeeping maintained on juvenile arrests. Public Act 289 of 1925 does not 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, while the bills would confine recordkeeping on juvenile arrests to adjudication for the listed offenses.

Opposing Argument

The subject of the bills should be limited to 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 criminal sexual assault on the one hand, and property offenses such as breaking and entering, larceny, and auto theft on the other. The public's interest in maintaining records on comparatively minor offenses is not sufficient to outweigh the enduring stigma that a juvenile record would impose on youths or to justify the costs of maintaining such records.

Response: If the bills were limited to adjudication 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 breaking and entering among the offenses for which juvenile records would have to be kept.

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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.