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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bills 4598 and 4599

Sponsor: Representative James Docherty

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 2-4-88

SUMMARY OF HOUSE BILLS 4598 and 4599 as passed by the House:

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.

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 breaking and entering, larceny of a dwelling, or 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.
- 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

Legislative Analyst: P. Affholter

H.B. 4598 & 4599 (2-4-88)

OVER

FISCAL IMPACT

House Bill 4598 would result in an expense to the State of approximately \$40,000 and would have no fiscal impact on local government.

Fiscal Analyst: D. Fortunate

House Bill 4599 would have an indeterminate impact on State and local government.

Fiscal Analyst: B. Bowerman

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.