

Legislative Analysis



JUVENILES: DESTROY FINGERPRINTS IF CHARGES DISMISSED AFTER PROBATION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5995 as introduced
Sponsor: Rep. Joel Sheltrown
Committee: Judiciary

First Analysis (5-6-10)

BRIEF SUMMARY: The bill would require the destruction of the fingerprints and arrest card of a juvenile who successfully completed a period of probation that resulted in the dismissal of the alleged juvenile offense.

FISCAL IMPACT: The bill would have no fiscal impact on state or local units of government.

THE APPARENT PROBLEM:

If a juvenile is arrested and charged with a crime, but is later found not to be guilty, the fingerprints and arrest card are automatically destroyed by the official who holds those items. Rather than go to trial, many juveniles participate in various “diversion” programs; if the juvenile successfully completes a period of probation, the charges are dismissed. Many of these individuals and their families assume that their fingerprint and arrest cards are also automatically destroyed. However, this is not the case. The juvenile must petition the court for destruction of those items. As a result, the records remain in the data base maintained by the State Police and can resurface if criminal background checks are run for employment, housing, or military service, to name a few circumstances. It has been recommended that the law be amended to have the fingerprints and arrest card of a juvenile whose charges were dismissed after successfully completing a period of probation likewise be automatically destroyed.

THE CONTENT OF THE BILL:

Public Act 289 of 1925 places the responsibility for criminal and juvenile identification and records with the Department of State Police. Under Section 3(8), the fingerprints and arrest card of a juvenile adjudicated but found not to be within the provisions of Section 712A of the Probate Code (delinquency provisions) or found not guilty must be destroyed by the official holding those items. In addition, the clerk of the court entering the disposition must notify the department of the dismissal.

House Bill 5995 would amend Section 3 of Public Act 289 (MCL 28.243) to also apply the provisions of subsection (8) to a juvenile who successfully completes a period of probation that results in a dismissal of the alleged juvenile offense.

[Note: Under Section 3(12)(i), the requirement to destroy the fingerprints and arrest card under subsection (8) does not apply to a juvenile charged with an offense or attempted offense that would constitute the commission or attempted commission of the following crimes if committed by an adult: rape, criminal sexual conduct, sodomy, gross indecency,

indecent liberties, child abusive commercial activities, or the commission or attempted commission of a crime with or against a child under 16 years of age. In addition, subsection (8) does not apply to a person who has a prior conviction, unless a judge (other than a probate judge) ordered on the record that the fingerprints and arrest card be destroyed or returned.]

ARGUMENTS:

For:

Many juveniles who had criminal charges dismissed after successfully completing a period of probation, usually as part of a diversion program, are shocked to find that their fingerprints and arrest cards remain in the state's criminal databases. Under state law, these items are only destroyed under a court order, which can present a financial hardship for low-income youth and their families who must pay additional lawyer and court fees to file the petition. The greater hardship, however, is that years after turning their lives around, these youth can find that they are denied certain employment, military service, financial aid for college, and housing if background checks are conducted.

Entry into a diversion program, which defers further prosecution during the probation period, is usually made only to first time offenders charged with nonviolent crimes who show a low risk of reoffending. It gives a youthful offender a chance to take control of his or her life and make better decisions going forward. Since the charges are then dropped, it makes sense that the fingerprint and arrest card be automatically destroyed like they are when a juvenile is found not guilty or found not to be delinquent.

Against:

Some concerns have been raised about the wording of the amendment proposed by the bill. For instance, the language is not clear if it applies only to "pre-adjudication" dismissals (meaning before a verdict was rendered) or if could also be interpreted to include "post-adjudication" dismissals. The confusion could be easily resolved by clarifying in which situations the automatic destruction of the fingerprint and arrest card would occur.

POSITIONS:

A representative of the Michigan Council on Crime and Delinquency testified in support of the bill. (3-31-10)

The Criminal Defense Attorneys of Michigan submitted testimony in support of the bill. (3-30-10)

The ACLU of Michigan indicated support for the bill. (3-31-10)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Jan Wisniewski

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.