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House Bills 4598 and 4599 with committee
amendments
First Analysis (5-26-87)

Sponsor: Rep. James Docherty
Committee: Judiciary

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H.B. 4598 & 4599 (5-26-87)

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 serious assaultive offenses listed by the bill including murder, attempted murder, kidnaping, criminal sexual conduct, armed robbery, and burning a dwelling. 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.

MCL 712A.11 et al.

The bills are tie-barred.

FISCAL IMPLICATIONS:

Fiscal information is not available. (5-26-87)

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 assaultive 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.

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 the belief that youthful mistakes should not be held against responsible adults. 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. 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 (the latter is provided 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:

By limiting its effect to adjudications for certain assaultive offenses, the bills 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 be adequate, the bills should at least include breaking and entering among the offenses for which juvenile records are to be kept. To be thorough, the bills should include all felonies.

Response: The subject of the bills is 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 shoplifting and vandalism. The public's interest in maintaining records on comparatively minor offenses is not sufficient to outweigh the enduring stigma that would attach to a public juvenile record or to justify the costs of maintaining such records.

POSITIONS:

The Department of State Police supports the reporting requirements for juvenile courts, but oppose limiting fingerprinting to certain serious assaultive felonies. (5-22-87)

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. (5-21-87)