

REVISIONS TO LEIN ACCESS

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House Bill 5275 as enrolled
Public Act 309 of 2005
Sponsor: Rep. Gary A. Newell

House Bill 5277 as enrolled
Public Act 311 of 2005
Sponsor: Rep. Paul Condino

House Bill 5276 as enrolled
Public Act 310 of 2005
Sponsor: Rep. Michael Nofs
House Committee: Judiciary
Senate Committee: Judiciary

Senate Bill 648 as enrolled
Public Act 308 of 2005
Sponsor: Sen. Raymond E. Basham

Second Analysis (8-14-06)

BRIEF SUMMARY: Together the bills would, among other things, rename the L.E.I.N. act the Criminal Justice Information Systems Policy Council Act, repeal the A.F.I.S. Policy Council Act, codify Executive Reorganization Order No. 1998-1, prohibit the use of LEIN information for personal use, increase penalties for a violation of the act, and release arrest information for name- and fingerprint-based criminal history record checks.

FISCAL IMPACT: House Bill 5275 and Senate Bill 648 would have an indeterminate fiscal impact on state government; however, some small administrative costs could be incurred similar to those of the current LEIN Policy Council. House Bill 5276 would have an indeterminate fiscal impact on state government depending on the number of searches conducted. House Bill 5277 would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Executive Reorganization Order No. 1998-1 created the Criminal Justice Information Systems (CJIS) Policy Council; abolished the A.F.I.S. (Automated Fingerprint Identification System) Policy Council; and transferred all the statutory authority, powers, duties, functions, and responsibilities of the A.F.I.S. Policy Council to the CJIS Policy Council. Yet, seven years later, the A.F.I.S. Policy Council Act remains in the Michigan Compiled Laws. Legislation has been introduced to incorporate the provisions of the ERO into statute.

In a related matter, the media has reported for years that some members of law enforcement agencies have accessed information contained in the Law Enforcement Information Network (LEIN) database for their own or a friend's personal use. The LEIN is a statewide computerized information system used by criminal justice agencies. It contains personal information that includes addresses, driving records, and criminal history records. A series of articles in the *Detroit Free Press* in 2001 revealed incidents in which law enforcement officers used the LEIN to run checks on women they were interested in dating, ran checks on ex-spouses, and obtained information that was then

used to harass citizens. Though it is against the law to disseminate information obtained from the LEIN for non-criminal justice purposes, punishments for personal use has largely been left up to individual agencies. This has led to wide disparities in how abuses are treated; an offender in one agency may receive a day's suspension but in a different agency be fired.

In addition, some contend that access to the LEIN information should be expanded if so doing would increase public safety, that defendants in criminal cases should be able to obtain their own LEIN information from a prosecutor or the court without going through the formal discovery process, and that penalties for misusing LEIN information should be increased. Moreover, many jobs now require criminal history background checks to be performed on applicants and some require annual checks on current employees. Whether fingerprint-based or name-based, information from a criminal history record check is only released to the requestor if a disposition (i.e., a conviction) has been recorded. The current practice has led to situations in which people who would otherwise be disqualified for a position have been hired during the time period between the arrest and the trial. Some fear that potentially dangerous individuals may continue in those positions for months or years until another background check is performed or they reoffend. Legislation is also being offered to address these concerns.

THE CONTENT OF THE BILLS:

This package of bills would take effect February 1, 2006.

House Bill 5275 and Senate Bill 648, which are tie-barred to each other, would amend the L.E.I.N. Policy Council Act to codify Executive Reorganization Order No. 1998-1 (MCL 28.161). In addition, the bills would do the following:

House Bill 5275 would amend Sections 1, 2, and 3 of the act and add two new sections (MCL 28.211 et al). The bill would rename the act as the C.J.I.S. Policy Council Act and amend the title to reflect changes brought about by incorporating the provisions of the ERO and Senate Bill 648. It would define "nonpublic information" as information to which access, use, or dissemination was restricted by a state or federal law or rule and expand the council's membership to include the director of the Department of Information Technology or his or her designee. In addition, it would require the council's executive secretary to be appointed by the director of the Department of State Police subject to the council's approval.

Senate Bill 648 would amend Sections 4 and 5 of the act (MCL 28.214 and 28.215) to:

- Increase the maximum term of imprisonment for a violation of the act constituting a first offense from 90 to 93 days; and apply the criminal penalties only to intentional violations.
- Require that the policy and rules ensure access to information obtained by a federal, state, or local governmental agency to administer criminal justice or enforce any law; ensure access to information provided by LEIN or the

Automated Fingerprint Identification System (AFIS) by a governmental agency engaged in the enforcement of child support laws or vulnerable adult protection laws; and establish fees for access, use, or dissemination of information from criminal justice information systems.

- Prohibit accessing, using, or disclosing nonpublic information governed under the C.J.I.S. act for personal use or gain.
- Require the council to advise the governor on issues concerning the C.J.I.S.
- Require the council to require all persons having direct access to nonpublic information in the information systems governed by the C.J.I.S. Act to be approved for access under the C.J.I.S. security policy; this would include requiring each person to undergo a state and federal fingerprint check.
- Allow the council to authorize access to public record information to enhance public safety or criminal justice, and also to suspend or deny use of or access to information by an agency or individual who violated council policy or rules.
- Repeal Section 6 of the L.E.I.N. Policy Act (MCL 28.216), which pertains to the purchase of computer hardware or software.
- Repeal the A.F.I.S. Policy Council Act (MCL 28.151-28.158).

House Bill 5277 would also amend Section 4 of the L.E.I.N. Policy Council Act (MCL 28.214) to allow, in a criminal case, the attorney general or his or her designee, a prosecuting attorney, or the court to disclose to a defendant or his or her attorney of record information pertaining to the defendant that had been obtained from the law enforcement system. In addition, the bill would incorporate the same changes to Section 4 as Senate Bill 648.

House Bill 5276 would add a new section to Public Act 289 of 1925 (MCL 28.242a), which governs the fingerprint identification and criminal history records division within the Department of State Police. Under the bill, all criminal history information associated with a state identification number and supported by fingerprint impressions or images would have to be disseminated in response to a fingerprint-based or name-based search of the criminal history record database. The bill would not require the dissemination of nonpublic criminal history information or information prohibited by law from being disseminated.

ARGUMENTS:

For:

House Bill 5275 and Senate Bill 648 would incorporate provisions of a 1998 Executive Order into statute. In addition, Senate Bill 648 would require criminal history background checks on all persons that would have direct access to nonpublic information via the databases governed by the newly renamed C.J.I.S. Policy Council Act. It would be a violation under the bill to access or use nonpublic information for personal use or gain. Currently, it is only a violation to disclose L.E.I.N. information to a private entity. The penalty for a first violation would be increased from a 90-day misdemeanor to a 93-day misdemeanor, thus triggering fingerprint and recordkeeping requirements that will make it easier to track any subsequent violations.

The Criminal Justice Information System Policy Council could authorize access to public information if it would enhance public safety or criminal justice, and could charge a fee for access, use, or dissemination of information from the criminal justice information systems. For example, the Council could allow local governmental units to directly access public information in the L.E.I.N. for criminal history record checks on potential employees. The bill would still allow the C.J.I.S. Council to deny direct access to any agency who violates policies or rules of the Council, but it would also grant the Council the ability to suspend or deny direct access to information to an individual who violates the act, policies, or rules. This is an important provision because the Council has been reticent to withdraw access from an entire agency based on the wrongdoing of a single person.

The result of the changes should be a more streamlined system that better serves public safety and criminal justice interests.

For:

House Bill 5277 would add an important provision to the newly renamed C.J.I.S. Policy Council Act. The bill would allow the attorney general, a prosecutor, or the court to disclose to a criminal defendant or his or her attorney the defendant's record information obtained from the L.E.I.N., a practice not allowed under current law. Not all defendants remember their own record, and though defendants are able to obtain this information now, they must go through the lengthier formal discovery process. Quicker access to this information may allow some cases to be disposed of in a more timely fashion, thus reducing legal costs and easing burdens on court dockets.

For:

Direct access to the L.E.I.N. database is restricted, but people can access public information contained in criminal history records in the database by one of two means. An employer conducting a criminal history record check on applicants or employees can do a fingerprint-based check of the Michigan and national criminal history record databases. An employer or any individual can do a name-based search of the Michigan criminal history record database for \$10 per name using ICHAT (Internet Criminal History Tool) available on the Michigan State Police website. Only public information is released, and it is currently limited to felony or misdemeanor arrests where a person has been convicted in a court and the conviction has been added to that person's criminal history record. Whether fingerprint-based or name-based, it would not contain arrests without a conviction, outstanding warrants, or federal arrests. In addition, a name-based search on ICHAT would not include arrests and convictions from other states.

The problem is that there can be a lag of months to years from the time a person is arrested and charged with a crime until there is a final disposition in the case. A criminal history background check conducted on a job applicant or current employee during this "window" would return a statement of "no record meeting dissemination criteria." It is possible, therefore, that a person charged with a sex crime against a minor but not yet convicted could be hired to work in a day care center, a person arrested for assault or theft could be hired by a nursing home to work with vulnerable adults, or a person

arrested for embezzlement or identity theft could obtain employment with a financial institution or a doctor's office with access to personal identifying information such as social security numbers.

House Bill 5276 would close this "window" by requiring that all the public information contained in a person's criminal history record would be released in response to either a fingerprint- or name-based search request. This would mean that if the person had only an arrest recorded, the arrest information would be released. If the person had been arrested and charged, the criminal history record check would reveal both the arrest and the charge. And, if the case had been resolved, the record would show the disposition as well. Arrest and charge information is accessible to the public now, but entails a search of court records and public police records. The bill would merely make it easier and quicker for employers and concerned citizens to obtain this information. Nonpublic information would still be protected and would be available only to authorized persons for criminal justice purposes.

Against:

In its attempt to increase public safety, House Bill 5276 would undermine the most important tenet of American jurisprudence – the presumption of "innocent until proven guilty." The problem is that many arrests are not supported by enough evidence to charge an individual. Likewise, charges are dismissed in many cases. However, where an arrest can show up on ICHAT within an hour of the individual being taken into custody, and charges can be posted after the arraignment, it may be weeks, months, or years before a prosecutor's office or court updates the information regarding the status of an arrest to the state police and the record purged. In addition, if a person had any conviction, even if it were for a minor misdemeanor decades earlier, a subsequent arrest is never purged from the person's criminal history record – even if it never results in a charge or if the charge is dropped. This can lead to innocent people facing discrimination in employment, housing, and in their communities.

ICHAT, as a name-based search open to anybody, could be especially problematic as the general public is not educated sufficiently to understand the meaning of the results of a search. Victims of identify theft and people with common names would be most disadvantaged. Research supports the contention that the bill would have a disproportionate impact on minorities, many of whom are arrested due to mistaken identity. At the very least, courts and other agencies should be required to report charging information (or that a charge was never made) and dispositions within a timely manner. The bill would then still increase public safety but would minimize negative impacts on innocent persons.

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■ 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.