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BILL ANALYSIS

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House Bill 5275 (Substitute H-1 as passed by the House)  
House Bill 5276 (Substitute H-1 as passed by the House)  
House Bill 5277 (Substitute H-1 as passed by the House)

Sponsor: Representative Gary A. Newell (H.B. 5275)  
Representative Michael Nofs (H.B. 5276)  
Representative Paul Condino (H.B. 5277)

House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 11-28-05

### **CONTENT**

**House Bills 5275 (H-1) and 5277 (H-1) would amend the L.E.I.N. Policy Council Act, and House Bill 5276 (H-1) would amend the fingerprinting law, to do all of the following:**

- Replace the Law Enforcement Information Network (LEIN) Policy Council with the Criminal Justice Information System (CJIS) Policy Council, which would have an expanded membership.**
- Require the council to establish policy and promulgate rules governing information in criminal justice information systems.**
- Require the council to advise the Governor on issues concerning criminal justice information systems.**
- Prohibit a person from gaining access to, using, or disclosing nonpublic information governed under the Act for personal use or gain (which would replace the current prohibition against disclosing LEIN information to a private entity for any purpose); and apply the criminal penalties only to intentional violations.**
- Prohibit the disclosure of Automated Fingerprint Identification System (AFIS) and other criminal justice system information (as well as LEIN information) in an unauthorized manner.**
- Allow the Attorney General, a prosecuting attorney, or the court to disclose to a defendant or defense counsel information pertaining to that defendant that was obtained from LEIN.**
- Require criminal history information associated with a State identification number and supported by fingerprints to be disseminated in response to a search of the criminal history record database, unless it was nonpublic information or its dissemination was prohibited by law.**

House Bill 5275 (H-1) also would change the official title of the L.E.I.N Policy Council Act to the "C.J.I.S. Policy Council Act".

The bills would take effect February 1, 2006. House Bill 5275 (H-1) is tie-barred to Senate Bill 648, which also would amend the L.E.I.N. Policy Council Act.

## **House Bills 5275 (H-1)**

### Council Composition

According to the L.E.I.N Policy Council Act, the LEIN Policy Council consists of the following members:

- The Attorney General, or his or her designee.
- The Secretary of State, or his or her designee.
- The Director of the Department of Corrections, or his or her designee.
- The Commissioner of the Detroit Police Department, or his or her designee.
- Three representatives of the Department of State Police, appointed by the Director of that Department.
- Three representatives of the Michigan Association of Chiefs of Police, appointed annually by that association.
- Three representatives of the Michigan Sheriffs' Association, appointed annually by that association.
- Three representatives of the Prosecuting Attorneys Association of Michigan, appointed annually by that association.

The bill would include those members as well as the following in the CJIS Policy Council:

- The Director of the Department of State Police, or his or her designee.
- A fourth representative of the Michigan Sheriffs' Association.
- A representative of the Michigan District Judges Association, appointed by that association.
- A representative of the Michigan Judges Association, appointed by that association.
- The State Court Administrator, or his or her designee.
- An individual who was employed in or engaged in the private security business, appointed by and serving at the pleasure of the Governor.
- An individual who represented human services concerns in Michigan, appointed by and serving at the pleasure of the Governor.
- The Director of the Department of Information Technology, or his or her designee.

The bill also would refer to the "chief", rather than the "commissioner", of the Detroit Police Department.

The bill would delete the requirement that the representatives of the police chiefs', sheriffs', and prosecutors' associations be appointed annually. Under the bill, appointed members would serve two-year terms and could be reappointed.

The bill specifies that a majority of the council members would constitute a quorum for conducting the business of the council.

### State Police

The bill would require the council to exercise its prescribed powers, duties, functions, and responsibilities independently of the Director of the Department of State Police. The council's budgeting, procurement, and related management functions, however, would have to be performed under the Director's direction and supervision. In addition, the executive secretary of the council would have to be appointed by the Director, subject to the council's approval.

## **House Bill 5277 (H-1)**

### Policy & Rules

The L.E.I.N. Policy Council Act requires that the council establish policy and promulgate rules regarding the operational procedures to be followed by agencies using LEIN. The bill would require, instead, that the council establish policies and promulgate rules governing access, use, and disclosure of information in criminal justice information systems including LEIN, AFIS, and other information systems related to administering criminal justice or law enforcement.

Among other matters, the Act requires that the policy and rules ensure access to locator information obtained through LEIN by State and Federal agencies and the Friend of the Court for enforcement of child support programs as provided under State and Federal law, and ensure access to information of an individual being investigated by a State or county employee who is engaged in the enforcement of Michigan's child protection laws or rules. The bill, instead, would require that the policy and rules do the following:

- Ensure access to information by a Federal, State, or local government agency to administer criminal justice or enforce any law.
- Ensure access to information provided by LEIN or AFIS by a government agency engaged in the enforcement of child support laws, child protection laws, or vulnerable adult protection laws.

The council's policy and rules also would have to establish fees for access, use, or dissemination of information from criminal justice information systems.

### Prohibitions & Penalties

The Act prohibits a person from disclosing information from LEIN to a private entity for any purpose, including the enforcement of child support programs. A first offense is a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both. A second or subsequent offense is a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

The bill, instead, would prohibit the access, use, or disclosure of "nonpublic information" governed under the Act for personal use or gain. Under the bill, the criminal penalties would apply to a person who intentionally violated the prohibition and the maximum penalty for a first conviction would be increased from 90 days' imprisonment to 93 days. ("Nonpublic information" would mean information to which access, use, or dissemination is restricted by any law or rule of this State or the United States.)

In addition, the Act prohibits disclosing information from LEIN in a manner that is not authorized by law or rule. The bill would refer to information governed by the Act.

### Other Provisions

The Act requires the council to establish minimum standards for terminal sites and information. The bill instead would require that the council establish minimum standards for equipment and software and its installation.

Under the bill, a person who had direct access to nonpublic information in criminal justice information systems would have to submit a set of fingerprints for comparison with State and Federal criminal history records to be approved for access pursuant to the council's security policy. A report of the comparison would have to be provided to the person's employer.

Also, under the bill, in a criminal case, the Attorney General or his or her designee, a prosecuting attorney, or the court could disclose to the defendant or the defendant's attorney of record information pertaining to that defendant that was obtained from LEIN.

### **House Bill 5276 (H-1)**

The bill would amend the fingerprinting law to specify that all criminal history information that was associated with a State identification number and was 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. This provision, however, would not require the dissemination of criminal history information that was nonpublic or was prohibited by law from being disseminated.

MCL 28.211 et al. (H.B. 5275)  
Proposed MCL 28.242a (H.B. 5276)  
MCL 28.214 (H.B. 5277)

### **BACKGROUND**

Executive Reorganization Order No. 1998-1 created the CJIS Policy Council within the Department of State Police. The executive order transferred all the statutory authority, functions, and responsibilities of the AFIS Policy Council and the LEIN Policy Council to the CJIS Policy Council. The executive order also mandates that the CJIS Policy Council advise the Department Director on issues related to information management systems that facilitate the rapid exchange of information between components of the criminal justice system.

The LEIN Policy Council was established by Public Act 163 of 1974 to create policy and promulgate rules regarding the operational procedures to be followed by agencies using LEIN, to review applications for network terminals and approve or disapprove the applications and the sites for terminal installations, and to establish minimum standards for terminal sites and installations.

The AFIS Policy Council was established by Public Act 307 of 1988 to create policy and promulgate rules regarding the operation and audit procedures to be followed by agencies using AFIS, to design and provide for statewide identification of individuals using an AFIS, to establish minimum standards for AFIS sites and installations, to review proposed applications for AFIS and approve or disapprove the applications and the sites for system installations, and to establish policy and promulgate rules restricting the dissemination of identification information to individuals and agencies.

Before the 1998 executive order was issued, the membership of the LEIN Policy Council was entirely represented on the AFIS Policy Council.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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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.