



**House
Legislative
Analysis
Section**

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DESTRUCTION OF FINGERPRINTS

**House Bill 5277 as enrolled
Public Act 694 of 2002
Sponsor: Rep. Larry Julian**

**House Committee: Criminal Justice
Senate Committee: Judiciary
Third Analysis (1-22-03)**

THE APPARENT PROBLEM:

According to *Black's Law Dictionary*, criminal contempt is an act "done in disrespect of the court or its process or which obstruct[s] the administration of justice or tend[s] to bring the court into disrespect." Public Act 203 of 2001, which was part of the multi-bill package of legislation updating the state's domestic violence laws, amended the fingerprinting law to, among other things, require the fingerprinting of a person arrested for criminal contempt for a violation of a personal protection order (PPO) or foreign PPO (a PPO issued by a court outside of Michigan). The fingerprinting law also provides for the destruction of fingerprints of persons who, though arrested, were never charged or convicted of a misdemeanor or felony. However, an act constituting criminal contempt is neither a felony nor a misdemeanor; therefore, the current law mandating destruction of fingerprints of those acquitted or not charged does not speak directly to an act of criminal contempt. Legislation is needed to specifically include these acts.

THE CONTENT OF THE BILL:

Under Public Act 289 of 1925, if a juvenile accused of a juvenile offense or a person arrested for a felony or misdemeanor offense is released without being charged, the person's fingerprints and arrest card must be destroyed immediately and the Department of State Police must be notified in writing of this fact if the person's fingerprints had been forwarded to the department. The bill would eliminate the reference to a "felony or misdemeanor" in this and several other provisions and instead apply the provisions to an offense for which the person was fingerprinted. The bill would also require the destruction of fingerprints of a person who had been arrested for a violation of a PPO or valid foreign PPO, but for whom criminal contempt proceedings had not been brought or criminal charges made.

Currently, if a juvenile or adult is charged but then acquitted, the fingerprints and arrest card must also be destroyed. If for any reason this information is not destroyed within 60 days, the person can obtain a court order to have the information returned to him or her. If this order is not complied with, the person can petition the family division of circuit court for a preemptory writ of mandamus to require the return of the information. These provisions would be deleted. Instead, the bill would specify that if a juvenile or accused were acquitted of an offense for which he or she had been fingerprinted, upon final disposition of the charge against him or her, the fingerprints and arrest card would have to be destroyed by the official holding those items. As is currently required, the clerk of the court entering the disposition would have to notify the department of the finding. The clerk would also have to immediately notify the department of the final disposition of an arrest for which the person was fingerprinted.

MCL 28.243

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have a minimal fiscal impact on state and local law enforcement agencies. (12-5-02)

ARGUMENTS:

For:

Criminal contempt is neither a felony nor a misdemeanor; it is an act done in disrespect of the court or that obstructs the administration of justice. Legislation included in the recent revision of the domestic violence laws requires a person who is held in criminal contempt for a violation of a stalking or personal protection order to be fingerprinted. (This is the only situation in which fingerprints are taken for criminal contempt for the purpose of criminal identification and criminal history information.)

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However, the legislation inadvertently neglected to include a reference to criminal contempt for violating a PPO in existing provisions pertaining to the destruction of fingerprints when the accused is neither charged nor convicted. The bill therefore would fill a hole in the law. Under the bill, fingerprints taken for a criminal contempt violation of a PPO would be required to be destroyed according to the same procedures established in law for fingerprints of a person arrested for a misdemeanor or felony but who was never charged with that offense or was acquitted. Further, since the fingerprints must be destroyed in such cases (and according to a representative from the Department of State Police, they always are destroyed), the provision allowing a person to petition a court should the fingerprints not be destroyed is obsolete. Therefore, that provision would be deleted.

Analyst: S. Stutzky

■ 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.