

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 560 (as enrolled)
House Bills 4580 through 4584 (Substitutes H-1 as reported without amendment)
Sponsor: Senator Art Miller, Jr. (Senate Bill 560)
Representative Jennifer Faunce (House Bill 4580)
Representative William O'Neil (House Bill 4581)
Representative Valde Garcia (House Bill 4582)
Representative Larry Julian (House Bill 4583)
Representative Jim Howell (House Bill 4584)
House Committee: Criminal Law and Corrections (House Bills 4580-4584)
Senate Committee: Judiciary

Date Completed: 5-25-99

RATIONALE

In recent years, the maximum term of imprisonment that may be imposed for various misdemeanors under State law has been increased from 90 to 93 days. While many statutes prescribe a different jail term for misdemeanors, a 90-day maximum is common under the law (and is the maximum term for a misdemeanor if no other jail time is specified by statute). Often, however, 90-day maximums are raised to 93 days, and 93-day maximums are established for new or revised offenses. In 1998, for example, a package of drunk driving legislation that will take effect on October 1, 1999, includes this three-day increase for a first-time offense of operating a vehicle while impaired or under the influence. Another 1998 law set a 93-day maximum for third-degree retail fraud (shoplifting). These enhanced penalties apparently were adopted, at least in part, because a 93-day penalty triggers statutory fingerprinting requirements.

The bureau of criminal identification Act provides that, upon the arrest of a person for a misdemeanor punishable by a maximum penalty over 92 days' imprisonment, the arresting law enforcement agency must take the person's fingerprints in duplicate and forward them to the Department of State Police. One set of the prints must be sent to the Department's criminal records division and the other must be forwarded to the Federal Bureau of Investigation (FBI). If an offense is punishable by imprisonment for less than 93 days, however, fingerprinting is permissive. Prints taken upon arrest may be sent to the State Police only if an individual does not produce satisfactory evidence of identification; otherwise, the prints may not be forwarded until conviction.

It has been noted that local units of government can

and sometimes do adopt ordinances based on State statutes, which enables the local units to prosecute offenders for a violation of local law. Jail penalties for ordinance violations, however, currently are limited by statute to 90 days. Some people believe that, in order to make ordinances consistent with State law, local units should be authorized to establish the maximum penalty for a violation at 93 days' imprisonment, if the corresponding State statute also carries that maximum penalty.

CONTENT

Senate Bill 560 would amend the bureau of criminal identification Act to make an exception to the requirement that a law enforcement agency immediately fingerprint a person who is arrested for a misdemeanor punishable by more than 92 days' imprisonment.

House Bills 4580 (H-1) through 4584 (H-1) would amend various acts to allow

local units of government, unless otherwise provided by law, to provide for penalties of up to 93 days' imprisonment, a maximum fine of \$500, or both for a violation of a local ordinance, if the violation substantially corresponded to a violation of State law that was a misdemeanor for which the maximum period of imprisonment was 93 days. (Currently, local units are authorized to provide for the punishment of persons who violate local ordinances, but the penalty may not exceed 90 days' imprisonment, a \$500 fine, or both.)

House Bill 4580 (H-1) would amend the Home Rule City Act; House Bill 4581 (H-1) would amend the Home Rule Village Act; House Bill 4582 (H-1) would amend the General Law Village Act; House Bill 4583 (H-1) would amend the Charter Township Act; and House Bill 4584 (H-1) would amend Public Act 246 of 1945, which authorizes township boards to adopt ordinances and regulations to secure the public health, safety, and general welfare.

The Senate and House bills would take effect on October 1, 1999, and are tie-barred to each other. Senate Bill 560 also is tie-barred to Senate Bills 556-559, which would revise drunk driving legislation enacted in 1998.

A more detailed description of Senate Bill 560 follows.

The bureau of criminal identification Act provides that, immediately upon a person's arrest for a felony or for a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment and/or a maximum fine of \$1,000, or for a juvenile offense, the arresting law enforcement agency must take the person's fingerprints and forward them to the Department of State Police within 72 hours.

The bill would permit (rather than require) an arresting law enforcement agency to take the fingerprints of a person arrested for a misdemeanor that was a violation of a local ordinance for which the maximum penalty exceeded 92 days' imprisonment and that substantially corresponded to a violation of State law that was a misdemeanor whose maximum term of imprisonment exceeded 92 days. The law enforcement agency could not forward the fingerprints to the Department of State Police before conviction. If the person were convicted, the law enforcement agency would have to take the person's fingerprints, if not previously taken, and forward them within 72 hours after the conviction in the same manner as required for the fingerprints of a person arrested for a felony or a misdemeanor for which the maximum penalty exceeded 92 days' imprisonment. The law enforcement agency would have to indicate the statutory citation for the State law to which the local ordinance substantially corresponded.

MCL 28.243 (S.B. 560)
117.4i (H.B. 4580)
78.24 (H.B. 4581)
66.2 (H.B. 4582)
42.21 (H.B. 4583)
41.183 (H.B. 4584)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By authorizing local units of government to increase the maximum jail term from 90 to 93 days for a local ordinance that substantially corresponded to a State law with a 93-day maximum, the House bills would allow local units to fingerprint people upon arrest, thereby making it easier to track an offender's criminal history. This could become significant when a person was charged with an offense that carried enhanced penalties for second or subsequent violations. The existence of a fingerprint record with the State Police and the FBI would make it easier to establish a person's prior offenses, whether they were violations of State or local law. Also, the bills would provide for the enactment of local penalties that were consistent with State law. The bills, then, would improve the efficiency and fairness of the criminal justice system and its record-keeping practices.

Response: A local law enforcement agency already is permitted to fingerprint people upon arrest, and may use the prints for investigatory purposes if the local unit has its own identification system. Also, agencies that have access to Live Scan, a computerized identification system, may submit the prints to that system. Otherwise, local law enforcement agencies may not send the prints to the State Police until conviction and, under Senate Bill 560, they still would not be able to do so.

Furthermore, for most misdemeanors, fingerprints *must* be forwarded to the State Police upon conviction, which means that fingerprinting upon arrest is not necessary for criminal history purposes.

Supporting Argument

Senate Bill 560 would avoid crime-tracking complications for the State Police by providing that fingerprints could not be forwarded to the State Police until conviction, and requiring a law enforcement agency to indicate the corresponding State statutory citation. When crimes are prosecuted under State law, the county prosecutors use a uniform system of identifying the offenses, but local ordinances are not coded in the same manner. The bill would ensure that, for the purpose of tracking

local violations punishable by up to 93 days, the local ordinances would be cited consistently with State law. Also, if fingerprints were taken at the time a person was arrested for a local violation, the bill would ensure that they were not sent to the State Police until conviction, would conform to current practice.

Opposing Argument

Implementing 93-day maximum sentences for some violations could involve practical difficulties of both a logistical and financial nature. At times, police officers simply issue a citation when arresting a person for a misdemeanor or ordinance violation, rather than taking him or her into custody; to fingerprint an individual, however, he or she must be physically present in a police station. Also, the cost of taking fingerprints is borne by the police or sheriff's department making an arrest. In addition, the Michigan Rules of Court provide that an indigent defendant has a right to an appointed attorney whenever the offense charged is punishable by more than 92 days in jail (MRC 6.610(D)(2)). In Michigan, at the trial court level, all funding for appointed attorneys is provided by the counties. When an attorney is assigned for an indigent defendant, some counties also pay certain expenses, such as witness fees, filing fees, service of process fees, and mileage. Finally, if a defendant were given a longer sentence than he or she otherwise would receive, due to the maximum penalty being increased to 93 days' imprisonment, the local unit would incur additional jail operating costs.

Response: In and of themselves, the bills would not increase local ordinance penalties or require local units to do so. They merely would authorize local units to increase the penalties for certain ordinance violations, if the governing bodies of those local units chose to do so.

Legislative Analyst: P. Affholter
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FISCAL IMPACT

The bills would have a minimal fiscal impact on State and local law enforcement agencies.

Fiscal Analyst: B. 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.