



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 38 (as enrolled)
House Bill 4137 (as enrolled)
Sponsor: Senator Rick Jones (S.B. 38)
Representative Ben Frederick (H.B. 4137)
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 4-21-17

RATIONALE

The Child Identification and Protection Act was enacted in 1985 in response to concerns about identifying missing children. Nationwide, hundreds of children are kidnapped or run away every year and, as a precautionary measure, some parents had their children's fingerprints taken by local law enforcement agencies. If their child went missing, they reasoned, the fingerprints could help to locate or identify the child. At the time, however, there was no provision in Michigan law that explicitly allowed a police department to take a child's fingerprints for that purpose. The Child Identification and Protection Act specifically authorizes the fingerprinting of children under 17 years of age upon the written request of the child's parent or guardian. Some people believe that youths older than that who have special health care needs also could benefit from having their fingerprints taken. It has been suggested that the parent or guardian of a special needs child or youth under 21 years of age also should be authorized to request a law enforcement agency to fingerprint that person.

In addition, Public Act 120 of 1935 allows Michigan residents, except as provided in the Child Identification and Protection Act, to appear before a sheriff or police agency and request to have their fingerprints taken. An individual with special health care needs who is under the legal custody of a parent or guardian, however, might not have the legal capacity to make such a request. It has been suggested that the parent or guardian of an individual with special health care needs, regardless of his or her age, should be authorized to request a law enforcement agency to fingerprint the person under Public Act 120.

CONTENT

House Bill 4137 would amend the Child Identification and Protection Act, and Senate Bill 38 would amend Public Act 120 of 1935, to do the following:

- **Allow a parent or guardian of a child or youth with special health care needs, or of an individual with special health care needs, as applicable, to request that the child's, youth's, or individual's fingerprints and photograph be taken and included in the automated fingerprint identification system (AFIS) and the statewide network of agency photographs.**
- **Require the Michigan Department of State Police (MSP) to provide on its website a form for these requests as well as a list of Department-approved entities for taking the fingerprints and photographs.**
- **Allow the MSP to charge a fee to cover its costs for processing a request, and require a Department-approved entity to collect the fee and forward it to the MSP.**
- **Require the MSP to forward fingerprints and photographs to the FBI for registration, storage, and use for identification purposes.**

-- Require the MSP to remove a child's, youth's, or individual's fingerprints and photograph from AFIS and the statewide network of agency photographs, upon a parent's or guardian's request.

Each of the bills would take effect 90 days after its enactment.

Definitions

House Bill 4137 would define "child or youth with special health care needs" as a single or married individual under 21 years of age whose activity is or may become so restricted by disease or specified medical condition as to reduce his or her normal capacity for education and self-support. Senate Bill 38 would define "individual with special health care needs" in the same manner, without reference to the age of the individual.

The bills would define "department-approved entity" as an entity, including a local law enforcement agency or a private company, approved by the MSP to take the fingerprints and photograph of a child or youth with special health care needs, or of an individual with special health care needs, as applicable.

"Guardian" would mean a person who has qualified as a guardian of a minor or child or youth with special health care needs (in House Bill 4137) or of a minor or a legally incapacitated individual (in Senate Bill 38) under a parental or spousal nomination or a court order issued under the juvenile code, the Estates and Protected Individuals Code, or the Mental Health Code. The term also could include a person appointed by a tribal court under tribal code or custom. The term would not include a guardian ad litem.

As used in the bills, "parent" would mean the natural or adoptive parent of a child or youth with special health care needs (in House Bill 4137) or of an individual with special health care needs (in Senate Bill 38) who has either or both sole or joint legal or physical custody of the child, if a court order dictating custody is in place, or the natural or adoptive parent of a child or youth or an individual with special health care needs if there is no court order dictating custody.

Written Request

The Child Identification and Protection Act governs the conditions under which a governmental unit is permitted or required to fingerprint a child. A governmental unit may fingerprint a child if parent or guardian has given written authorization for the taking of the fingerprints for use in the future if the child becomes a runaway or a missing child. A governmental unit also may take fingerprints if they are voluntarily given with the written permission of the child and parent or guardian, upon request of a law enforcement officer, to aid in a specific criminal investigation. A governmental unit must fingerprint a child if fingerprints are required to be taken under certain provisions of law or if fingerprinting is required by court order. Public Act 120 of 1935 requires the sheriff or local law enforcement agency to fingerprint a resident of the State upon that person's request.

Under the bills, a parent or guardian of a child or youth with special health care needs or a parent or guardian of an individual with special health care needs could submit a written request to a Department-approved entity to take the fingerprints and photograph of the person and add them to the AFIS database and the statewide network of agency photos maintained by the MSP.

A written request would have to be made on a form posted on the MSP website. Along with the form, the MSP would have to provide a list of Department-approved entities. At the time a person with special health care needs was presented at a Department-approved entity to have his or her fingerprints and photograph taken, the entity would have to require the parent or guardian to execute a signed waiver allowing the person's fingerprints and digital image to be collected.

Fee

The MSP could charge a fee that was sufficient to reimburse it for the costs associated with processing a request of a parent or guardian under the bills. At the time the person with special health care needs was presented at a Department-approved entity to have his or her fingerprints and photograph taken, the entity would have to require the parent or guardian to pay the required fee. The entity then would have to forward the fee to the MSP in the manner the Department prescribed.

Forwarding to the FBI

The MSP would have to forward the fingerprints and photographs taken under the bills to the FBI Director, on forms furnished by or in a manner he or she prescribed, for registration, storage, and use for identification purposes by the FBI.

Removal of Fingerprints & Photograph

A parent or guardian could make a written request to the MSP to have the fingerprints and photograph of a person with special health care needs removed from the AFIS database and the statewide network of agency photos. The MSP would have to remove them upon receiving the request.

MCL 28.271 et al. (S.B. 38)
722.772 & 722.774 (H.B. 4137)

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

The bills would provide a measure of safety and security for some of Michigan's most vulnerable individuals and could offer some peace of mind to parents and guardians of special needs children or adults.

Since 1985, the Child Protection and Identification Act has authorized the fingerprinting of children, with the consent of their parent or guardian, to provide a way to identify missing or injured children who may not be able to give their name or other identifying information. The Act applies only to children under 17 years old, but children or youths with special health care needs who are older than that may not be capable of identifying themselves or where they live if they get lost or are injured. The Act should be expanded to authorize the parent or guardian of a special needs youth up to 21 years old to request law enforcement officials to fingerprint the youth.

In addition, Public Act 120 of 1935 requires a sheriff or local law enforcement agency to fingerprint a Michigan resident, regardless of age, if he or she requests fingerprinting. A person with special health care needs may be under the legal custody of a parent or guardian, however, and might not be able to give legal consent to be fingerprinted. Like a special needs child or youth, such a person might not have the capacity to provide identifying information if he or she is lost or injured. If the parent or guardian of a special needs individual who was 21 or older wanted to have that person's fingerprints taken, as a safety measure, the Act should accommodate a request to do so.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would have a moderate fiscal impact on the MSP, requiring it to incur \$25,000 in programming charges to implement the provisions of the bills and \$3,200 in additional ongoing annual costs to maintain the implementation. The MSP would be required to create a special health

care needs database to house data and images for the proposed system, provide capabilities to retrieve and edit data and images, update existing Android applications to accommodate searches against the special health care needs database and create reports, update existing system interfaces to extract records and import to the special health care needs database, and install applications and train personnel.

The MSP also would be required to accept fingerprints, which it would process, analyze, and store. Currently, the cost of each fingerprint processing, which includes a search of State and Federal fingerprint databases, is \$42 (\$30 State fee, \$12 Federal fee). Also under current law, a law enforcement agency or vendor that takes fingerprint impressions (or photos, in the case of the bills) from an individual for submission to the MSP may charge a nominal fee for doing so (often \$15 or less, if anything).

The cost of performing fingerprint processing by the MSP would be wholly covered by the fees required under the bills. Current law requires that the fee for fingerprint processing not exceed the actual and reasonable cost incurred by the Department for this activity.

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.