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BILL ANALYSIS



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Senate Bill 1093 (as introduced 9-9-20)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

Date Completed: 10-27-20

CONTENT

The bill would amend Chapter IV (Arrest) of the Code of Criminal Procedure to require a court or law enforcement agency to make nonpublic any court document or record generated in the connection with a case if the individual had been arrested or charged for a crime and the charge or charges were dismissed before trial.

Under Chapter IV of the Code, if an individual is arrested for any crime and the charge or charges are dismissed before trial, the arrest record must be removed from the Internet Criminal History Access Tool (ICHAT). Also, if the prosecutor of the case agrees at any time after the case is dismissed, or if the prosecutor or the judge of the court in which the case was filed did not object within 60 days after an order of dismissal was entered for cases in which the order is issued after June 12, 2018, all of the following apply:

- The arrest record, all biometric data, and fingerprints must be expunged or destroyed, as appropriate.
- Any entry concerning the charge must be removed from the Law Enforcement Information Network (LEIN).
- Unless a DNA sample or profile, or both, is allowed or required to be retained by the Department of State Police (MSP) under Section 6 of the DNA Identification Profiling System Act, the sample or profile, or both, obtained from the individual must be expunged or destroyed.

(Section 6 of the DNA Identification Profiling System Act requires the MSP to retain an individual's DNA identification profile permanently if the individual is arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult, or he or she is convicted of or found responsible for a felony or attempted felony, or any of specified misdemeanors pertaining to various prostitution offenses, disorderly person by window peeping, or engaging in indecent or obscene conduct in public.)

Under the bill, if an individual were arrested for any crime and the charge or charges were dismissed before trial, any court document or record generated in connection with the case in the possession of a law enforcement agency also would have to be made nonpublic. Additionally, any DNA sample or profile obtained from the individual as described above would have to be expunged *and* destroyed.

If an individual had been charged with any crime and the charge or charges were dismissed before trial, the court would have to make nonpublic any court document or record generated in the connection with the case.

MCL 764.26a

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

According to the MSP, the bill could require significant expenditures by State and local law enforcement agencies to comply with its requirements. These would include additional programming costs and employee time in an amount that cannot be determined at this time. The bill's provisions would necessitate programming changes to the MSP's Electronic Automated Incident Capture System, the Officer Daily System, the Electronic Ticket System, the Crash Reporting System and the Statewide Record Management System. The bill also would require additional State and local labor costs for input responsibilities, with varying costs to locals that would depend on the particular local records system employed.

The bill also would add indeterminate costs to local court systems, as it would require courts to make a criminal document or record nonpublic when it referred to a dismissal. Michigan Court Rule 8.119(H) allows access to records and documents upon request; however, the rule also states that a court may provide access to case history through a publicly accessible website. A case history of a criminal case that is subsequently dismissed likely would be the type of record that would require changes in accessibility under the bill. The applicable costs for a local court to comply with the bill would depend upon the current public accessibility allowed online and in person and would be related to the types of procedural and organizational changes that would be needed to meet the bill's records requirements.

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.