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BILL  ANALYSIS

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Senate Bill 1056 (as enacted)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 374 of 2012

Date Completed: 9-3-13

CONTENT**The bill amended the fingerprinting law to do the following:**

- Refer to the collection of "biometric data", rather than the taking of fingerprint impressions, upon a person's arrest.
- Require biometric data to be collected when a person is arrested for a misdemeanor for which DNA collection is authorized, in addition to the other offenses described in the law.
- Require the Michigan Department of State Police (MSP) to procure and file criminal history information for all people arrested, rather than convicted, within Michigan.
- Require a court report on the final disposition of a charge for which biometric data were collected to indicate if proceedings were dismissed under a veterans treatment court program.

The bill took effect on December 14, 2012.

The bill defines "biometric data" as all of the following:

- Fingerprint images recorded in a manner prescribed by the MSP.
- Palm print images, if the arresting law enforcement agency has the electronic capability to record them in a manner prescribed by the MSP.
- Digital images recorded during the arrest or booking process, including full-face capture, left and right profile, and scars, marks, and tattoos, if the arresting agency has the electronic capability to record the images in a manner prescribed by the MSP.

- All descriptive data associated with identifying marks, scars, amputations, and tattoos.

The bill deleted the law's definition of "fingerprint impressions", which meant images recorded in a manner prescribed by the MSP.

Fingerprints & Biometric Data

The bill requires an arresting law enforcement agency to collect a person's biometric data upon arrest for any of the following, and to forward the data to the MSP within 72 hours:

- A felony.
- A misdemeanor violation of State law for which the maximum penalty exceeds 92 days' imprisonment and/or a \$1,000 fine.
- Criminal contempt for violating a domestic violence or stalking personal protection order (PPO).
- Violation of a foreign protection order that meets the conditions for validity in the Revised Judicature Act.
- A juvenile offense, other than one for which the maximum penalty does not exceed 92 days' imprisonment and/or a \$1,000 fine.

A person's biometric data also must be taken if he or she is arrested for a misdemeanor for which the maximum penalty is 93 days or for criminal contempt for violating a PPO enjoining domestic violence or stalking, if the person's prints have not previously been taken and forwarded, or if a person is arrested for violating a local ordinance for which the maximum penalty is 93 days' imprisonment

and that substantially corresponds to a State violation with that maximum penalty. If the person is convicted of any violation, biometric data must be taken before sentencing, if not previously taken, and forwarded to the MSP within 72 hours. The bill also allows an arresting law enforcement agency to take and forward a person's biometric data upon arrest for other misdemeanors.

Previously, the fingerprinting law required or permitted the arresting law enforcement agency to collect and forward the arrested person's fingerprints, when a person was arrested for an offense described above.

Additional Violation

In addition to the offenses described above, the bill requires the collection of biometric data from a person arrested for a misdemeanor, or a juvenile arrested for a misdemeanor offense that would be a misdemeanor if committed by an adult, for which DNA collection is authorized under the DNA Identification Profiling System Act. (That Act requires the MSP to retain permanently a DNA identification profile of individuals convicted of a felony or any of the following misdemeanors: enticing a child for immoral purposes; being a disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of prostitution; indecent exposure; a first or second prostitution violation; leasing a house for purposes of prostitution; or the presence of a female under the age of 17 in a house of prostitution.)

MSP Retention of Info

Under the bill, the commanding officer (the MSP Director) is required to procure and file, for purposes of criminal identification, criminal history record information on all individuals who have been *arrested* within Michigan for a felony or misdemeanor, or criminal contempt for violating a PPO enjoining domestic violence or stalking or a foreign protection order.

Previously, the fingerprinting law required the commanding officer (the MSP employee in charge of the Criminal Justice Information Center or its successor unit) to procure and file that information for all people *convicted* within Michigan for any of those violations.

Court Report

The bill requires the court clerks, upon final disposition of a charge, to advise the MSP of the final disposition of the arrest for which a person's biometric data were collected, if the accused was convicted or the juvenile was adjudicated to have committed a juvenile offense. As previously required upon the final disposition of a charge for which fingerprints were taken, the report must indicate if the sentence is imposed under any of the following:

- Section 7411 of the Public Health Code (possession or use of controlled substances).
- Section 1076(4) of the Revised Judicature Act (discharge and dismissal of proceedings under a drug treatment court program).
- Sections 11 to 15 of Chapter II of the Code of Criminal Procedure (the Holmes Youthful Trainee Act).
- Section 4a of Chapter IX of the Code of Criminal Procedure (discharge and dismissal of proceedings under a domestic assault charge).
- Section 350a(4) of the Michigan Penal Code (discharge and dismissal of proceedings under a charge of parental kidnapping).
- Section 430(8)(a) of the Michigan Penal Code (discharge and dismissal of proceedings under a charge of engaging in the practice of a health care profession under the influence of alcohol or a controlled substance).

The bill also requires the report to indicate if the sentence is imposed under Section 1209(6) of the Revised Judicature Act (discharge and dismissal of proceedings under a veterans treatment court program).

MCL 28.241a et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have no fiscal impact on State or local government. The bill put into statute what has been law enforcement practice for the last several years by most agencies in the State: the forwarding of certain palm print images and digital images along with fingerprint images as part of a "biometric" package to the Department of State Police

for analysis and inclusion in the State criminal records information system. While there are eight counties in the State (Alpena, Arenac, Baraga, Houghton, Luce, Montmorency, Otsego, and St. Joseph) that do not yet take and submit palm prints to the State Police, "biometric data" within the bill is defined to include palm print images (and digital images) for only those agencies with the capability of recording them.

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.