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## FISCAL IMPACT REPORT

SPONSOR: Mohorovic DATE TYPED: 02/23/01 HB 214/aHJC  
 SHORT TITLE: Revise Fingerprinting Procedures SB \_\_\_\_\_  
 ANALYST: Rael

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |      | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY01                    | FY02 | FY01                        | FY02 |                      |               |
| See Narrative           |      |                             |      |                      |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Corrections Department (CD)  
 Department of Public Safety (DPS)

#### Response Not Received

Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of HJC Amendment

The amendments made by the House Judiciary Committee clarify that fingerprints and photograph are only taken from an arrested person. This addresses the concerns that agencies had regarding how to obtain fingerprints and photographs of a person charged but not arrested.

In addition, new language was substituted for Section 1F which clarifies the responsibilities of the Administrative Office of the Court and the Administrative Office of the District Attorneys regarding the transmission criminal case information:

The AOC “shall provide to the department the disposition of all criminal cases containing a state tracking number in electronic format promptly upon the conclusion of the case.” On the other hand, the AODA will provide the disposition of “all criminal incidents containing a state tracking number that a district attorney decides not to file with a court promptly upon determining not to file charges in the case.”

### FISCAL IMPLICATIONS

The AOC, AODA and DPS report that the appropriation of \$435.0 contained in HB 2 for the Criminal Justice Information Management Team (CJIMT) address their original concerns. The appropriation in HB 2 is to be used for a project manager, a systems analyst and expenses related to the design and development of the integration process to begin data sharing. Additionally, the AOC reports a recent NCHIP grant from the federal government to support the project. It is important to note that the CJIMT will require recurring funding for project support, including staff and technology maintenance costs, in future years.

### Synopsis Original of Bill

Section 1. Each person arrested and charged with a felony, an offense punishable for more than six months (including offenses committed during incarceration) or a municipal or county ordinance for DWI, shall submit to fingerprinting and a photograph. A person charged but not arrested must submit to fingerprinting. Fingerprint cards are assigned a state tracking number. Fingerprint cards are sent to “the department” and the FBI within 5 days. The AOC and the AODA must provide information regarding any final disposition within 5 days following the disposition. All records of law enforcement agencies, the AOC, the AODA must allow the department access to their records to ensure compliance.

Section 2. A person may petition the department to expunge information if the arrest was for a petty misdemeanor or a misdemeanor and the offense was not for a crime of moral turpitude. The department may also expunge the information when it cannot locate a final disposition.

### Significant Issues

The Criminal Justice Information Management Team (CJIMT), a multi-agency team comprised of DPS, AOC, AODA, the Public Defender Department (PDD), the Children, Youth and Families Department (CYFD) and the Corrections Department, was created to foster information sharing among criminal justice agencies. Information sharing among agencies seeks to improve public safety, enhance decision making at all levels, allow identification of fugitives from justice when they come into contact with any law enforcement agency or court, streamline data entry, and improve day-to-day operations.

Individuals may be denied employment, state licensure or housing when an arrest record contains incomplete information. Conversely, individuals may be placed in sensitive positions (such as law enforcement, child care providers, teachers and school employees) if a record is provided without conviction information that would normally deprive the individual to work in a sensitive position. Individuals may not be tried as habitual offenders, or may be sentenced incorrectly without the availability of conviction information.

### **FISCAL IMPLICATIONS**

HB 214 does not contain an appropriation. However, the estimated recurring costs to the general fund are \$360.0 as discussed below.

1. The Administrative Office of the Courts reports that it will require \$250.0 to develop software that would search the central repository data base every day for new disposition data, create a data file meeting the requirements of the Department and the FBI, and automatically transmit that file to the Department. It will also be required to develop procedures and training materials for court staff and to provide training sessions for all staff who handle criminal

cases. The AOC estimates that the cost of these activities would be \$250.0. The routine maintenance of the software program and continuing training would have a recurring impact on the AOC's Judicial Information Division, estimate at \$100.0. The AOC's costs for implementing this bill were included in the appropriations request for the Criminal Justice Information Management Team. The Legislative Finance Committee has not recommended funding for the CJIMT for FY 2002.

2. The impact on the District Attorneys' Offices will be significant. The requirement to "electronically provide information regarding a final disposition" will present some problems. Although the Administrative Office of the District Attorneys has been working with the Department of Public Safety to accomplish this, it has been very difficult because the AODA's automation staff consists of only three FTEs. The AODA will require at least one FTE (Database Administrator) to help with the on-going project of collapsing the DAs' Case Management databases, first by district, then into one large database that can be downloaded to DPS to accomplish the transfer of disposition data. Approximately \$65.1 will be needed (\$49.0 in Personal Services and \$16.1 in Employee Benefits). Without additional staff, AODA will not be able to insure compliance with these provisions.
3. The Department of Public Safety reports that it will require one additional FTE (\$45.0) to manage and audit the program.

#### ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications above. However, once the system is developed, agencies expect to see a significant advantage from sharing data and preventing any duplication of data entry.

#### TECHNICAL ISSUES

1. Sections 29-3-8 (A), (B) and (C) compel the person arrested or charged to *submit* to fingerprinting, however, the intent is to impose an obligation upon police and correctional officers to *obtain* fingerprints.
2. The term "department" should be defined to clarify that the law intends it to mean the Department of Public Safety.
3. Subsection F. should be amended as follows: "The administrative office of the courts shall provide to the Department of Public Safety the disposition of all criminal cases containing a state tracking number in electronic format promptly upon conclusion of the case. The administrative office of the district attorneys shall provide to the Department of Public Safety the disposition of all criminal incidents containing a state tracking number which a district attorney decides not to file with a court promptly upon determining not to file charges in the matter."
4. Subsection D of Section 1 should be amended to require that "both copies and a photograph" shall be forwarded to the department.
5. The term "moral turpitude" should be defined to include sex offenses and controlled substances violations. Additionally, a time frame should be inserted (ex. all records older than 10 years). DPS also believes that language should be included to add magistrate and municipal courts as agencies that the department must check with prior to expunging a record.

6. Replace fingerprint “cards” with “records” throughout the bill to allow fingerprints that are taken in digital form using Automated Fingerprint Identification Systems (AFIS).
7. Amend Subsection F to require disposition reporting requirements only for cases assigned state tracking numbers.

**OTHER SUBSTANTIVE ISSUES**

The AOC finds the five day reporting period for dispositions unreasonable and unnecessary due to the significant burden it would place on the trial courts. The AOC is already committed to providing timely disposition information as part of the CJIMT strategic plan.

**POSSIBLE QUESTIONS**

1. For many misdemeanors, a person is charged but not arrested. In the usual course of process, they are not arrested or jailed. How will fingerprints be collected for persons who are charged but not arrested?
2. Is its intention of the expungement provision to provide citizens with the right to eliminate their arrest records for minor offenses? Is the remedy limited to cases in which there is not disposition information? Is its intention to purge the Department's files of arrest records for minor offenses for which there is no disposition information? If so, why is the remedy limited to cases in which citizens seek expungement? Would it be more effective to give citizens the right to provide the Department with disposition information to be added to their records?

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