

2019 RESOLUTION NO. _____

Instructions: All fields below are required for your resolution to be considered by the Idaho Association of Counties. If you are unsure of what to enter in a certain field, enter your best estimate, and also feel free to request the assistance of IAC staff.

TITLE: Fingerprint legislation

SPONSOR: Boise County Prosecuting Attorney, Boise County Sheriff

STATUTES AFFECTED: Idaho Code 67-3004

COUNTY OFFICE(S) AFFECTED: Clerk, Courts, Prosecuting Attorney, Sheriff

COUNTIES AFFECTED: All counties (and even cities)

ISSUE/PROBLEM: People who have committed misdemeanors are not getting their fingerprints taken consistently across the state. This has several problematic implications. First, criminal history records are currently difficult to keep accurate and thorough because some defendants are not getting fingerprinted. This creates a problem when trying to ascertain when a person has prior DUI and domestic violence convictions, which often are misdemeanor offenses. This also creates a problem because defendants who may otherwise be prohibited from purchasing firearms because of a misdemeanor on their record would be able to purchase a firearm anyway because the misdemeanor would not be on the central FBI registry without fingerprints. Second, the lack of consistency creates a problem for the Idaho Bureau of Criminal Identification, housed in the Idaho State Police.

BACKGROUND & DATA: Based on Boise County's discussions so far, it appears that the judges across the state do not have a consistent approach to this issue. Some judges believe that because of the language in Idaho Code 67-3004(5) and (6), judges cannot order misdemeanor defendants to be fingerprinted; meanwhile, other judges order fingerprints on both misdemeanor and felony cases.

PROPOSED POLICY: Enact legislation that clearly explains that the court has the authority to order fingerprinting individuals committing both misdemeanor and felony cases.

ARGUMENTS & ENTITIES IN SUPPORT:

Boise County Prosecuting Attorney

Boise County Sheriff

Idaho Bureau of Criminal Identification / Idaho State Police (not verified, but expected to be in support)

Idaho Sheriffs Association (not verified, but expected to be in support)

ARGUMENTS & ENTITIES AGAINST:

Entities that oppose fingerprinting in principle.

Entities that do not recognize that anyone booked into county jail is already fingerprinted anyway, for any kind of offense.

FISCAL IMPACT: The cost will depend widely on the approach of the judges in that county. Passage of this legislation will increase the number of individuals being fingerprinted in counties which the judges currently do not order misdemeanor defendants to be fingerprinted. That increase could potentially result in an increase in administrative costs on the county sheriffs' offices.

DRAFT LEGISLATION

67-3004. FINGERPRINTING AND IDENTIFICATION. (1) The bureau shall:

(a) Obtain and file fingerprints, physical descriptions and any other available identifying data on persons who have been arrested or served a criminal summons in this state for a retainable offense;

(b) Accept fingerprints and other identifying data taken by a law enforcement agency for the purpose of identification or conducting a records review for criminal justice purposes; and

(c) Process latent fingerprints generated from crime scenes, evidence and law enforcement agencies through the automated fingerprint identification system for prospective identification.

(2) The bureau shall establish policy regarding an arrest fingerprint card and procedures for the taking of fingerprints under this section.

(3) When a person is arrested for a retainable offense, with or without a warrant, fingerprints of the person shall be taken by the law enforcement agency making the arrest. A law enforcement agency may contract or make arrangements with a jail or correctional facility or other criminal justice agency to take the required fingerprints from a person who is arrested by the law enforcement agency.

(4) If a person was arrested and is in the custody of a law enforcement agency, jail or correctional facility and a felony summons or information is filed for an offense separate from the offense for which the person is in custody, the agency, jail or correctional facility shall take the fingerprints of the person in connection with the new offense.

(5) At the initial court appearance or arraignment of a person for a misdemeanor or felony offense ~~pursuant to a felony summons or information~~, the court, upon notice from the prosecuting attorney, shall order a law enforcement agency to fingerprint the person if he has not been previously fingerprinted for the same offense.

(6) When a defendant is convicted or otherwise adjudicated for a misdemeanor or felony offense for which the defendant has not been previously fingerprinted, the court shall order, upon notice from the prosecuting attorney, a law enforcement agency to fingerprint the defendant as a condition of sentence, probation or release.

(7) When a person is received by a state correctional facility, the department of correction shall ensure that legible fingerprints of the person are taken and submitted to the bureau.

(8) When the bureau receives fingerprints of a person in connection with an arrest or incarceration, the bureau shall make a reasonable effort to confirm within five (5) working days the identity of the person fingerprinted. In an emergency situation when an immediate positive identification is needed, a criminal

justice agency may request the department to provide immediate identification service.

(9) If the arresting officer, the law enforcement agency that employs the officer, or the jail or correctional facility where fingerprints were taken is notified by the bureau that fingerprints taken under this section are not legible, the officer, agency or facility shall make a reasonable effort to obtain a legible set of fingerprints. If legible fingerprints cannot be obtained within a reasonable period of time, and if illegible fingerprints were taken under a court order, the officer or agency shall inform the court, which shall order the defendant to submit to fingerprinting again.

(10) Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department.