



HOUSE BILL No. 5781

April 23, 1996, Introduced by Reps. Ryan, Goschka, McBryde, Nye, Weeks and Perricone and referred to the Committee on Judiciary and Civil Rights.

A bill to amend section 3 of Act No. 289 of the Public Acts of 1925, entitled as amended

"An act to create a bureau of criminal identification and records within the department of state police; to require peace officers, persons in charge of certain institutions, and others to make reports respecting juvenile offenses, crimes, and criminals to the state police; to require the fingerprinting of an accused by certain persons; and to provide penalties for violation of this act,"

as amended by Act No. 97 of the Public Acts of 1989, being section 28.243 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3 of Act No. 289 of the Public Acts of
2 1925, as amended by Act No. 97 of the Public Acts of 1989, being
3 section 28.243 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 3. (1) The police department of a city or village, the
6 police department of a township, the sheriff's department of a

1 county, the department of state police, and any other
2 governmental law enforcement agency in the state, immediately
3 upon the arrest of a person for a felony or for a misdemeanor for
4 which the maximum possible penalty exceeds 92 days imprisonment
5 or a fine of \$1,000.00, or both, or for a juvenile offense, shall
6 take the person's fingerprints in duplicate and forward the fin-
7 gerprints to the department of state police within 72 hours after
8 the arrest. One set of fingerprints shall be sent to the divi-
9 sion on forms furnished by the commanding officer, and 1 set of
10 fingerprints shall be furnished to the director of the federal
11 bureau of investigation on forms furnished by the director.

12 (2) The police department of a city or village, the police
13 department of a township, the sheriff's department of a county,
14 the department of state police, and any other governmental law
15 enforcement agency in the state may take 1 set of fingerprints of
16 a person who is arrested for a misdemeanor punishable by impris-
17 onment for not more than 92 days, or a fine of not more than
18 \$1,000.00, or both, and who fails to produce satisfactory evi-
19 dence of identification as required by section 1 of Act No. 44 of
20 the Public Acts of 1961, being section 780.581 of the Michigan
21 Compiled Laws. These fingerprints shall be forwarded to the
22 department of state police immediately. Upon completion of the
23 identification process by the department of state police, the
24 fingerprints shall be returned to the arresting agency.

25 (3) The police department of a city or village, the police
26 department of a township, the sheriff's department of a county,
27 the department of state police, and any other governmental law

1 enforcement agency in the state, upon the arrest of a person for
2 a misdemeanor, may take the person's fingerprints on forms fur-
3 nished by the commanding officer, but may not forward the finger-
4 prints to the department unless the person is convicted of a
5 misdemeanor.

6 (4) If ~~a petition is not authorized for a juvenile accused~~
7 ~~of a juvenile offense or if~~ a person arrested for having commit-
8 ted a felony or a misdemeanor is released without a charge made
9 against him or her, the official taking or holding the person's
10 fingerprints, arrest card, and description shall immediately
11 return this information to the person without the necessity of a
12 request. IF A PETITION IS NOT AUTHORIZED FOR A JUVENILE ACCUSED
13 OF A JUVENILE OFFENSE, THE OFFICIAL TAKING OR HOLDING THE
14 PERSON'S FINGERPRINTS, ARREST CARD, AND DESCRIPTION SHALL IMMEDI-
15 ATELY RETURN THIS INFORMATION TO THE PERSON WITHOUT THE NECESSITY
16 OF A REQUEST UNLESS THE JUVENILE DIVISION OF THE PROBATE COURT
17 ORDERS THAT THE INFORMATION BE RETAINED PURSUANT TO SECTION 11 OR
18 18 OF CHAPTER XIIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939,
19 BEING SECTIONS 712A.11 AND 712A.18 OF THE MICHIGAN COMPILED LAWS.
20 If ~~this~~ THE information is not returned, the person shall have
21 the absolute right to demand and receive its return at any time
22 after the person's release and without need to petition for court
23 action. The local police agency shall notify the commanding
24 officer in writing that no petition was authorized against the
25 juvenile AND THE JUVENILE DIVISION OF THE PROBATE COURT DID NOT
26 ORDER RETENTION OF THE INFORMATION or that no charge was made

1 against the arrested person if the juvenile's or arrested
2 person's fingerprints were forwarded to the department.

3 (5) If a juvenile is adjudicated and found not to be within
4 the provisions of section 2(a)(1) of CHAPTER XIIIA OF Act No. 288
5 of the Public Acts of 1939, being section 712A.2 of the Michigan
6 Compiled Laws, or if an accused is found not guilty of the
7 offense, the arrest card, the fingerprints, and description shall
8 be returned to him or her by the official holding this
9 information. If for any reason the official holding the informa-
10 tion does not return the information within 60 days of the adju-
11 dication or the finding of not guilty, the accused shall have the
12 right to obtain an order from the court having jurisdiction over
13 the case for the return of the information. If the order of
14 return is not complied with, the accused shall have the right to
15 petition the juvenile division of the probate court of the county
16 where the original petition was filed or the circuit court of the
17 county where the original charge was made for a preemptory writ
18 of mandamus to require issuance of the order of return. Upon
19 final disposition of the charge against the accused, the clerk of
20 the court entering the disposition shall notify the commanding
21 officer of any finding of not guilty or not guilty by reason of
22 insanity, dismissal, or nolle prosequi, if it appears that the
23 accused was initially arrested for a felony or a misdemeanor pun-
24 ishable by imprisonment for more than 92 days or of any finding
25 that a juvenile accused of a juvenile offense is not within the
26 provisions of section 2(a)(1) of CHAPTER XIIIA OF Act No. 288 of
27 the Public Acts of 1939.

1 (6) Upon final disposition of the charge against the
2 accused, the clerk of the court entering the disposition shall
3 immediately advise the commanding officer of the final disposi-
4 tion of the arrest for which the accused was fingerprinted if a
5 juvenile was adjudicated to have committed a juvenile offense or
6 if the accused was convicted of a felony or a misdemeanor. With
7 regard to any adjudication or conviction, the clerk shall trans-
8 mit to the commanding officer information as to any adjudication
9 or finding of guilty or guilty but mentally ill; any plea of
10 guilty, nolo contendere, or guilty but mentally ill; the offense
11 of which the accused was convicted; and a summary of any deposi-
12 tion or sentence imposed. The summary of the sentence shall
13 include any probationary term; any minimum, maximum, or alterna-
14 tive term of imprisonment; the total of all fines, costs, and
15 restitution ordered; and any modification of sentence. If the
16 sentence is imposed under any of the following sections, the
17 report shall so indicate:

18 (a) Section 7411 of the public health code, Act No. 368 of
19 the Public Acts of 1978, being section 333.7411 of the Michigan
20 Compiled Laws.

21 (b) Sections 11 to 15 of chapter II of the code of criminal
22 procedure, Act No. 175 of the Public Acts of 1927, being sections
23 762.11 to 762.15 of the Michigan Compiled Laws.

24 (c) Section 4a of chapter IX of ~~the code of criminal~~
25 ~~procedure,~~ Act No. 175 of the Public Acts of 1927, being section
26 769.4a of the Michigan Compiled Laws.

1 (d) Section 350a(4) of the Michigan penal code, Act No. 328
2 of the Public Acts of 1931, being section 750.350a of the
3 Michigan Compiled Laws.

4 (7) The commanding officer shall record the disposition of
5 each charge and shall inform the director of the federal bureau
6 of investigation of the final disposition of the felony or misde-
7 meanor arrest.

8 (8) The commanding officer shall compare the fingerprints
9 and description received with those already on file and if the
10 commanding officer finds that the person arrested has a criminal
11 record, the commanding officer shall immediately inform the
12 arresting agency and prosecuting attorney of this fact.

13 (9) The provisions of this section requiring the return of
14 the fingerprints, arrest card, and description shall not apply in
15 the following cases:

16 (a) The person arrested was charged with the commission or
17 attempted commission, or if the person arrested is a juvenile,
18 was charged with an offense which if committed by an adult would
19 constitute the commission or attempted commission ~~—~~ of a crime
20 with or against a child under 16 years of age or the crime of
21 criminal sexual conduct in any degree, rape, sodomy, gross inde-
22 cency, indecent liberties, or child SEXUALLY abusive ~~commercial~~
23 activities OR MATERIALS.

24 (b) The person arrested has a prior conviction other than a
25 misdemeanor traffic offense, unless a judge of a court of record,
26 except the probate court, by express order entered on the record,
27 orders the return.

1 (10) Subsection (3) does not permit the forwarding to the
2 department of the fingerprints of a person accused and convicted
3 under the Michigan vehicle code, Act No. 300 of the Public Acts
4 of 1949, being sections 257.1 to 257.923 of the Michigan Compiled
5 Laws, or under a local ordinance substantially corresponding to a
6 provision of Act No. 300 of the Public Acts of 1949, unless the
7 offense is punishable upon conviction by imprisonment for more
8 than 92 days or is an offense which would be punishable by
9 imprisonment for more than 92 days as a second conviction.

10 Section 2. This amendatory act shall not take effect unless
11 Senate Bill No. _____ or House Bill No. 5782 (request
12 no. 01450'95 a) of the 88th Legislature is enacted into law.