



# HOUSE BILL No. 5877

May 9, 1996, Introduced by Reps. Galloway, Gustafson, Jamian, Ryan, Kukuk, Porreca, Palamara and Hammerstrom 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,  
4 ~~for which the maximum possible penalty exceeds 92 days imprison-~~  
5 ~~ment or a fine of \$1,000.00, or both,~~ or for a juvenile offense,  
6 shall take the person's fingerprints in duplicate and forward the  
7 fingerprints to the department of state police within 72 hours  
8 after the arrest. One set of fingerprints shall be sent to the  
9 division on forms furnished by the commanding officer, and 1 set  
10 of 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 (2) ~~(3)~~ The police department of a city or village, the  
26 police department of a township, the sheriff's department of a  
27 county, the department of state police, and any other

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

6 (3) ~~(4)~~ If a petition is not authorized for a juvenile  
7 accused of a juvenile offense or if a person arrested for having  
8 committed a felony or a misdemeanor is released without a charge  
9 made against him or her, the official taking or holding the  
10 person's fingerprints, arrest card, and description shall immedi-  
11 ately return this information to the person without the necessity  
12 of a request. If this information is not returned, the person  
13 shall have the absolute right to demand and receive its return at  
14 any time after the person's release and without need to petition  
15 for court action. The local police agency shall notify the com-  
16 manding officer in writing that no petition was authorized  
17 against the juvenile or that no charge was made against the  
18 arrested person if the juvenile's or arrested person's finger-  
19 prints were forwarded to the department.

20 (4) ~~(5)~~ If a juvenile is adjudicated and found not to be  
21 within the provisions of section 2(a)(1) of Act No. 288 of the  
22 Public Acts of 1939, being section 712A.2 of the Michigan  
23 Compiled Laws, or if an accused is found not guilty of the  
24 offense, the arrest card, the fingerprints, and description shall  
25 be returned to him or her by the official holding this  
26 information. If for any reason the official holding the  
27 information does not return the information within 60 days of the

1 adjudication or the finding of not guilty, the accused shall have  
2 the right to obtain an order from the court having jurisdiction  
3 over the case for the return of the information. If the order of  
4 return is not complied with, the accused shall have the right to  
5 petition the juvenile division of the probate court of the county  
6 where the original petition was filed or the circuit court of the  
7 county where the original charge was made for a preemptory writ  
8 of mandamus to require issuance of the order of return. Upon  
9 final disposition of the charge against the accused, the clerk of  
10 the court entering the disposition shall notify the commanding  
11 officer of any finding of not guilty or not guilty by reason of  
12 insanity, dismissal, or nolle prosequi, if it appears that the  
13 accused was initially arrested for a felony or a misdemeanor pun-  
14 ishable by imprisonment for more than 92 days or of any finding  
15 that a juvenile accused of a juvenile offense is not within the  
16 provisions of section 2(a)(1) of Act No. 288 of the Public Acts  
17 of 1939.

18       (5) ~~(6)~~ Upon final disposition of the charge against the  
19 accused, the clerk of the court entering the disposition shall  
20 immediately advise the commanding officer of the final disposi-  
21 tion of the arrest for which the accused was fingerprinted if a  
22 juvenile was adjudicated to have committed a juvenile offense or  
23 if the accused was convicted of a felony or a misdemeanor. With  
24 regard to any adjudication or conviction, the clerk shall trans-  
25 mit to the commanding officer information as to any adjudication  
26 or finding of guilty or guilty but mentally ill; any plea of  
27 guilty, nolo contendere, or guilty but mentally ill; the offense

1 of which the accused was convicted; and a summary of any  
2 deposition or sentence imposed. The summary of the sentence  
3 shall include any probationary term; any minimum, maximum, or  
4 alternative term of imprisonment; the total of all fines, costs,  
5 and restitution ordered; and any modification of sentence. If  
6 the sentence is imposed under any of the following sections, the  
7 report shall so indicate:

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

11 (b) Sections 11 to 15 of chapter II of the code of criminal  
12 procedure, Act No. 175 of the Public Acts of 1927, being sections  
13 762.11 to 762.15 of the Michigan Compiled Laws.

14 (c) Section 4a of chapter IX of the code of criminal proce-  
15 dure, Act No. 175 of the Public Acts of 1927, being section  
16 769.4a of the Michigan Compiled Laws.

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

20 (6) ~~(7)~~ The commanding officer shall record the dispo-  
21 sition of each charge and shall inform the director of the federal  
22 bureau of investigation of the final disposition of the felony or  
23 misdemeanor arrest.

24 (7) ~~(8)~~ The commanding officer shall compare the finger-  
25 prints and description received with those already on file and if  
26 the commanding officer finds that the person arrested has a

1 criminal record, the commanding officer shall immediately inform  
2 the arresting agency and prosecuting attorney of this fact.

3       (8) ~~(9)~~ The provisions of this section requiring the  
4 return of the fingerprints, arrest card, and description shall  
5 not apply in the following cases:

6       (a) The person arrested was charged with the commission or  
7 attempted commission, or if the person arrested is a juvenile,  
8 was charged with an offense which if committed by an adult would  
9 constitute the commission or attempted commission, of a crime  
10 with or against a child under 16 years of age or the crime of  
11 criminal sexual conduct in any degree, rape, sodomy, gross inde-  
12 cency, indecent liberties, or child abusive commercial  
13 activities.

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

18       (9) ~~(10)~~ Subsection (3) does not permit the forwarding to  
19 the department of the fingerprints of a person accused and con-  
20 victed under the Michigan vehicle code, Act No. 300 of the Public  
21 Acts of 1949, being sections 257.1 to 257.923 of the Michigan  
22 Compiled Laws, or under a local ordinance substantially corre-  
23 sponding to a provision of Act No. 300 of the Public Acts of  
24 1949, unless the offense is punishable upon conviction by impris-  
25 onment for more than 92 days or is an offense which would be pun-  
26 ishable by imprisonment for more than 92 days as a second  
27 conviction.