

HOUSE BILL No. 6238

November 5, 1998, Introduced by Rep. Profit and referred to the Committee on Judiciary.

A bill to amend 1925 PA 289, entitled

"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,"

by amending the title and sections 1, 1a, 2, 3, and 3a (MCL 28.241, 28.241a, 28.242, 28.243, and 28.243a), the title and sections 1 and 2 as amended by 1988 PA 40, section 1a as amended by 1996 PA 259, section 3 as amended by 1989 PA 97, and section 3a as amended by 1986 PA 231, and by adding section 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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An act to create a ~~bureau of~~ criminal identification and

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records DIVISION within the department of state police; to

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require peace officers, persons in charge of certain

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1 institutions, and others to make reports respecting juvenile
2 offenses, crimes, and criminals to the state police; to require
3 the fingerprinting of an accused by certain persons; and to pro-
4 vide penalties AND REMEDIES for A violation of this act.

5 Sec. 1. The ~~central records division of the~~ department of
6 state police ~~shall be~~ IS responsible for criminal and juvenile
7 identification and records. The ~~division~~ DEPARTMENT shall be
8 supplied with the necessary apparatus and materials for collect-
9 ing, filing, and preserving criminal and juvenile records filed
10 with the ~~division~~ DEPARTMENT.

11 Sec. 1a. As used in this act:

12 (A) "ARREST CARD" MEANS A PAPER FORM OR AN ELECTRONIC FORMAT
13 PRESCRIBED BY THE DEPARTMENT THAT FACILITATES COLLECTING AND COM-
14 PILING CRIMINAL AND JUVENILE ARREST HISTORY RECORD INFORMATION,
15 INCLUDING FINGERPRINT IMAGES, TAKEN AT OR NEAR THE TIME OF AN
16 ARREST.

17 (B) ~~(a)~~ "Commanding officer" means the department of state
18 police employee in charge of the central records division OR ITS
19 SUCCESSOR ADMINISTRATIVE UNIT.

20 (C) ~~(b)~~ "Criminal history record information" ~~means~~
21 INCLUDES name; SEX; RACE; date of birth; fingerprints;
22 photographs; ~~, if available;~~ personal descriptions ~~, includ-~~
23 ing ~~physical measurements~~ HEIGHT, WEIGHT, EYE COLOR, HAIR
24 COLOR, identifying marks, scars, amputations, and tattoos;
25 aliases and prior names; social security ~~and~~ NUMBER, driver's
26 license ~~numbers~~ NUMBER and other identifying numbers; and

1 information on misdemeanor ARRESTS AND convictions and felony
2 arrests and convictions.

3 (D) ~~-(c)- "Division"~~ "DEPARTMENT" means the ~~central records~~
4 ~~division of the~~ department of state police.

5 (E) ~~-(d)-~~ "Felony" means a violation of a penal law of this
6 state for which the offender may be punished by imprisonment for
7 more than 1 year or an offense expressly designated by law to be
8 a felony.

9 (F) "FINGERPRINT IMPRESSIONS" MEANS FINGERPRINT IMAGES
10 RECORDED IN A MANNER PRESCRIBED BY THE DEPARTMENT.

11 (G) ~~-(e)-~~ "Juvenile history record information" ~~means~~
12 INCLUDES name; SEX; RACE; date of birth; fingerprints;
13 photographs; ~~, if available;~~ personal descriptions, including
14 ~~physical measurements~~ HEIGHT, WEIGHT, EYE COLOR, HAIR COLOR,
15 identifying marks, scars, amputations, and tattoos; aliases and
16 prior names; social security ~~and~~ NUMBER, driver's license
17 ~~numbers~~ NUMBER and other identifying numbers; and information
18 on juvenile offense arrests and adjudications OR CONVICTIONS.

19 (H) ~~-(f)-~~ "Juvenile offense" means an offense committed by a
20 juvenile that, if committed by an adult, would be a ~~violation or~~
21 ~~an attempted violation of section 72, 83, 84, 86, 88, 89, 91,~~
22 ~~110, 110a(2), 186a, 316, 317, 349, 360, 413, 520b, 520c, 520d,~~
23 ~~520g, 529, 529a, 530, or 531 of the Michigan penal code, Act~~
24 ~~No. 328 of the Public Acts of 1931, being sections 750.72,~~
25 ~~750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110,~~
26 ~~750.110a, 750.186a, 750.316, 750.317, 750.349, 750.360, 750.413,~~
27 ~~750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a,~~

1 ~~750.530, and 750.531 of the Michigan Compiled Laws, or~~
2 ~~section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code,~~
3 ~~Act No. 368 of the Public Acts of 1978, being sections 333.7401~~
4 ~~and 333.7403 of the Michigan Compiled Laws~~ FELONY OR A
5 MISDEMEANOR.

6 (I) ~~(g)~~ "Misdemeanor" means either of the following:

7 (i) A violation of a penal law of this state that is not a
8 felony or a violation of an order, rule, or regulation of a state
9 agency that is punishable by imprisonment or a fine that is not a
10 civil fine.

11 (ii) A violation of a local ordinance that substantially
12 corresponds to state law AND THAT IS NOT A CIVIL INFRACTION.

13 Sec. 2. (1) The commanding officer ~~of the division~~ shall
14 procure and file for purposes of criminal identification criminal
15 history record information on all persons who have been convicted
16 within ~~the~~ THIS state of EITHER a felony or a misdemeanor. ~~—~~
17 ~~or both.~~ The commanding officer ~~of the division~~ shall procure
18 and file for purposes of juvenile identification juvenile history
19 record information on all juveniles who have been adjudicated to
20 have committed a juvenile offense within ~~the~~ THIS state.

21 (2) The commanding officer shall provide all reporting offi-
22 cials with forms OR PRESCRIBE THE FORMAT, numerical identifiers,
23 and instructions which specify ~~in detail the nature of~~ the
24 information required, the time it is to be forwarded, the method
25 of classifying, and other matters to facilitate criminal and
26 juvenile history record information collection and compilation.

1 (3) The commanding officer shall file the fingerprint
2 impressions and photographs, if available, of all persons
3 confined in a prison or other state correctional facility.

4 (4) THE COMMANDING OFFICER SHALL PROVIDE ACCESS TO CRIMINAL
5 HISTORY RECORD INFORMATION AND JUVENILE HISTORY RECORD INFORMA-
6 TION, AS AUTHORIZED BY LAW OR AS PRESCRIBED BY THE DEPARTMENT.

7 (5) A COPY OF AN ARREST CARD SHALL BE FORWARDED TO THE FED-
8 ERAL BUREAU OF INVESTIGATION.

9 Sec. 3. (1) The police department of a city, ~~or~~ village,
10 ~~the police department of a~~ OR township, the sheriff's depart-
11 ment of a county, the department of state police, and any other
12 governmental law enforcement agency in the state, immediately
13 upon the arrest of a person for a felony or for a misdemeanor for
14 which the maximum possible penalty exceeds 92 days imprisonment
15 or a fine of \$1,000.00, or both, or for a juvenile offense OTHER
16 THAN A JUVENILE OFFENSE FOR WHICH THE MAXIMUM POSSIBLE PENALTY
17 DOES NOT EXCEED 92 DAYS' IMPRISONMENT OR A FINE OF \$1,000.00, OR
18 BOTH, shall take the person's fingerprints in duplicate and for-
19 ward the fingerprints to the department of state police within 72
20 hours after the arrest. One set of fingerprints shall be sent to
21 the ~~division~~ DEPARTMENT on forms furnished by OR IN A FORMAT
22 PRESCRIBED BY the commanding officer, and 1 set of fingerprints
23 shall be furnished to the director of the federal bureau of
24 investigation on forms furnished by the director.

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

1 governmental law enforcement agency in the state may take 1 set
2 of fingerprints of a person who is arrested for a misdemeanor
3 punishable by imprisonment for not more than 92 days, or a fine
4 of not more than \$1,000.00, or both, and who fails to produce
5 satisfactory evidence of identification as required by section 1
6 of ~~Act No. 44 of the Public Acts of 1961, being section 780.581~~
7 ~~of the Michigan Compiled Laws~~ 1961 PA 44, MCL 780.581. These
8 fingerprints shall be forwarded to the department of state police
9 immediately. Upon completion of the identification process by
10 the department of state police, the fingerprints shall be
11 returned to the arresting agency OR, IF RECEIVED BY AN ELECTRONIC
12 MEANS, DESTROYED.

13 (3) ~~The~~ SUBJECT TO SUBSECTIONS (2) AND (12), THE police
14 department of a city, ~~or~~ village, ~~the police department of a~~
15 OR township, the sheriff's department of a county, the department
16 of state police, and any other governmental law enforcement
17 agency in the state, upon the arrest of a person for a misde-
18 meanor OR A JUVENILE OFFENSE THAT IF COMMITTED BY AN ADULT WOULD
19 BE A MISDEMEANOR, may take the person's fingerprints on forms
20 furnished by OR IN A MANNER PRESCRIBED BY the commanding officer,
21 ~~but~~ AND may ~~not~~ forward the fingerprints to the department.
22 ~~unless the person is convicted of a misdemeanor.~~

23 (4) THE ARRESTING AGENCY SHALL NOTIFY THE APPROPRIATE COURT
24 THAT FINGERPRINTS OF A PERSON ARRESTED FOR A MISDEMEANOR OR A
25 JUVENILE OFFENSE THAT IF COMMITTED BY AN ADULT WOULD BE A MISDE-
26 MEANOR HAVE BEEN FORWARDED TO THE DEPARTMENT.

1 (5) IF A COURT ORDERS THE TAKING OF FINGERPRINTS OF A PERSON
2 PURSUANT TO SECTION 11 OR 18 OF CHAPTER XIIA OF 1939 PA 288, MCL
3 712A.11 AND 712A.18, OR SECTION 1 OF CHAPTER IV OR SECTION 1 OF
4 CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
5 764.1 AND 769.1, THE LAW ENFORCEMENT AGENCY SHALL FORWARD THE
6 FINGERPRINTS AND ARREST CARD TO THE DEPARTMENT.

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

22 (7) ~~-(5)-~~ If a juvenile is adjudicated and found not to be
23 within the provisions of section 2(a)(1) of ~~Act No. 288 of the~~
24 ~~Public Acts of 1939, being section 712A.2 of the Michigan~~
25 ~~Compiled Laws~~ CHAPTER XIIA OF 1939 PA 288, MCL 712A.2, or if an
26 accused is found not guilty of the offense, the arrest card ~~—,~~
27 AND the fingerprints ~~—, and description—~~ shall be ~~returned to~~

1 ~~him or her~~ DESTROYED by the official holding this information.
2 If for any reason the official holding the information does not
3 ~~return~~ DESTROY the information within 60 days ~~of~~ AFTER the
4 adjudication or the finding of not guilty, the accused ~~shall~~
5 ~~have~~ HAS the right to obtain an order from the court having
6 jurisdiction over the case for the return of the information. If
7 the order of return is not complied with, the accused ~~shall~~
8 ~~have~~ HAS the right to ~~petition the juvenile~~ OBTAIN AN ORDER
9 FROM THE FAMILY division of ~~the probate~~ CIRCUIT court of the
10 county where the original petition was filed or the circuit court
11 of the county where the original charge was made for a preemptory
12 writ of mandamus to require issuance of the order of return.
13 Upon final disposition of the charge against the accused, the
14 clerk of the court entering the disposition shall notify the com-
15 manding officer of any finding of not guilty or not guilty by
16 reason of insanity, dismissal, or nolle prosequi, if it appears
17 that the accused was initially ~~arrested~~ FINGERPRINTED for a
18 felony or a misdemeanor, ~~punishable by imprisonment for more~~
19 ~~than 92 days~~ or of any finding that a juvenile accused of a
20 juvenile offense is not within the provisions of section 2(a)(1)
21 of ~~Act No. 288 of the Public Acts of 1939~~ CHAPTER XIIA OF 1939
22 PA 288, MCL 712A.2.

23 (8) ~~(6)~~ Upon final disposition of the charge against the
24 accused, the clerk of the court entering the disposition shall
25 immediately advise the commanding officer of the final disposi-
26 tion of the arrest for which the accused was fingerprinted if a
27 juvenile was adjudicated to have committed a juvenile offense or

1 if the accused was convicted of a felony or a misdemeanor. With
2 regard to any adjudication or conviction, the clerk shall trans-
3 mit to the commanding officer information as to any adjudication
4 or finding of guilty or guilty but mentally ill; any plea of
5 guilty, nolo contendere, or guilty but mentally ill; the offense
6 of which the accused was convicted; and a summary of any
7 ~~deposition~~ DISPOSITION or sentence imposed. The summary of the
8 sentence shall include any probationary term; any minimum, maxi-
9 mum, or alternative term of imprisonment; the total of all fines,
10 costs, and restitution ordered; and any modification of
11 sentence. If the sentence is imposed under any of the following
12 sections, the report shall so indicate:

13 (a) Section 7411 of the public health code, ~~Act No. 368 of~~
14 ~~the Public Acts of 1978, being section 333.7411 of the Michigan~~
15 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7411.

16 (b) Sections 11 to 15 of chapter II of the code of criminal
17 procedure, ~~Act No. 175 of the Public Acts of 1927, being sec-~~
18 ~~tions 762.11 to 762.15 of the Michigan Compiled Laws~~ 1927 PA
19 175, MCL 762.11 TO 762.15.

20 (c) Section 4a of chapter IX of the code of criminal proce-
21 dure, ~~Act No. 175 of the Public Acts of 1927, being section~~
22 ~~769.4a of the Michigan Compiled Laws~~ 1927 PA 175, MCL 769.4A.

23 (d) Section 350a(4) of the Michigan penal code, ~~Act No. 328~~
24 ~~of the Public Acts of 1931, being section 750.350a of the~~
25 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.350A.

26 (9) ~~-(7)-~~ The commanding officer shall record the
27 disposition of each charge and shall inform the director of the

1 federal bureau of investigation of the final disposition of the
2 felony or misdemeanor arrest.

3 (10) ~~-(8)-~~ The commanding officer shall compare the finger-
4 prints and description received with those already on file and if
5 the commanding officer finds that the person arrested has a crim-
6 inal record, the commanding officer shall immediately inform the
7 arresting agency and prosecuting attorney of this fact.

8 (11) ~~-(9)-The~~ UNLESS A JUDGE OF A COURT OF RECORD, WITH THE
9 APPROVAL OF THE PROSECUTING ATTORNEY, ORDERS THE DESTRUCTION OF
10 FINGERPRINTS BY EXPRESS ORDER ENTERED ON THE RECORD BEFORE
11 ARRAIGNMENT IN CIRCUIT COURT, THE provisions of this section
12 requiring the ~~return~~ DESTRUCTION of the fingerprints ~~—~~ AND
13 arrest card ~~—, and description shall~~ DO not apply ~~in~~ TO ANY OF
14 the following: ~~cases:-~~

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

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

1 (12) ~~-(10)-~~ Subsection (3) does not permit the forwarding to
2 the department of the fingerprints of a person accused and
3 convicted under the Michigan vehicle code, ~~Act No. 300 of the~~
4 ~~Public Acts of 1949, being sections 257.1 to 257.923 of the~~
5 ~~Michigan Compiled Laws~~ 1949 PA 300, MCL 257.1 TO 257.923, or
6 under a local ordinance substantially corresponding to a provi-
7 sion of ~~Act No. 300 of the Public Acts of 1949~~ THAT ACT, unless
8 the offense is punishable upon conviction by imprisonment for
9 more than 92 days or is an offense which would be punishable by
10 imprisonment for more than 92 days as a second conviction.

11 (13) A FINGERPRINT OR ARREST CARD RECEIVED BY THE DEPARTMENT
12 AND REQUIRED TO BE RETURNED TO AN INDIVIDUAL BEFORE THE EFFECTIVE
13 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION SHALL BE
14 DESTROYED BY THE DEPARTMENT.

15 Sec. 3a. (1) ~~Any person required to have his or her fin-~~
16 ~~gerprints taken under section 3 who refuses to allow or resists~~
17 ~~the taking of his or her fingerprints is guilty of a~~
18 ~~misdemeanor. Such person must be advised that his or her refusal~~
19 ~~constitutes a misdemeanor. A PERSON SHALL NOT REFUSE TO ALLOW OR~~
20 RESIST THE TAKING OF HIS OR HER FINGERPRINTS IF AUTHORIZED OR
21 REQUIRED UNDER THIS ACT.

22 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A MIS-
23 DEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 92 DAYS OR
24 BY A FINE OF NOT MORE THAN \$500.00, OR BOTH.

25 SEC. 8. FINGERPRINT IMPRESSIONS OBTAINED UNDER A LAW OR
26 RULE FOR NONCRIMINAL IDENTIFICATION PURPOSES MAY BE USED FOR

1 CRIMINAL IDENTIFICATION PURPOSES UNLESS PROHIBITED BY LAW OR
2 RULE.