

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 855

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 section 3 (MCL 28.243), as amended by 1999 PA 77.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsection (2), immedi-
2 ately upon the arrest of a person for a felony or for a misde-
3 meanor VIOLATION OF STATE LAW for which the maximum possible pen-
4 alty exceeds 92 days' imprisonment or a fine of \$1,000.00, or
5 both, or for a juvenile offense, the arresting law enforcement
6 agency in this state shall take the person's fingerprints in
7 duplicate and forward the fingerprints to the department within
8 72 hours after the arrest. One set of fingerprints shall be sent

1 to the division on forms furnished by the commanding officer, and
2 1 set of fingerprints shall be furnished to the director of the
3 federal bureau of investigation on forms furnished by the
4 director. A PERSON'S FINGERPRINTS ARE NOT REQUIRED TO BE TAKEN
5 AND FORWARDED TO THE DEPARTMENT UNDER THIS SUBSECTION SOLELY
6 BECAUSE HE OR SHE HAS BEEN ARRESTED FOR A VIOLATION OF SECTION
7 904(3)(A) OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.904.

8 (2) ~~The arresting~~ A law enforcement agency ~~may~~ SHALL
9 take a person's fingerprints ~~upon the arrest of the person~~
10 UNDER THIS SUBSECTION IF THE PERSON IS ARRESTED for a misdemeanor
11 ~~that is a~~ violation of STATE LAW FOR WHICH THE MAXIMUM PENALTY
12 IS 93 DAYS IF THE FINGERPRINTS HAVE NOT PREVIOUSLY BEEN TAKEN AND
13 FORWARDED TO THE DEPARTMENT UNDER SUBSECTION (1). A LAW ENFORCE-
14 MENT AGENCY SHALL TAKE A PERSON'S FINGERPRINTS UNDER THIS SUBSEC-
15 TION IF THE PERSON IS ARRESTED FOR a VIOLATION OF A local ordi-
16 nance for which the maximum possible penalty ~~exceeds 92~~ IS 93
17 days' imprisonment and that substantially corresponds to a viola-
18 tion of state law that is a misdemeanor for which the maximum
19 possible term of imprisonment ~~exceeds 92~~ IS 93 days. ~~, but~~
20 ~~shall not forward them to the department before conviction.~~ If
21 the person is convicted of ~~a misdemeanor described in this~~
22 ~~subsection~~ ANY VIOLATION, the law enforcement agency shall take
23 the person's fingerprints BEFORE SENTENCING if not previously
24 taken. ~~under this subsection and~~ THE COURT SHALL FORWARD TO THE
25 LAW ENFORCEMENT AGENCY A COPY OF THE DISPOSITION OF CONVICTION,
26 AND THE LAW ENFORCEMENT AGENCY SHALL forward ~~them~~ THE PERSON'S
27 FINGERPRINTS AND THE COPY OF THE DISPOSITION OF CONVICTION TO THE

1 DEPARTMENT within 72 hours after ~~entry of the~~ RECEIVING THE
2 DISPOSITION OF conviction in the same manner as provided in
3 subsection (1). ~~On the form sent to the division, the~~ IF THE
4 PERSON IS CONVICTED OF VIOLATING A LOCAL ORDINANCE, THE law
5 enforcement agency shall indicate ON THE FORM SENT TO THE
6 DIVISION the statutory citation for the state law to which the
7 local ordinance substantially corresponds. A PERSON'S FINGER-
8 PRINTS ARE NOT REQUIRED TO BE TAKEN AND FORWARDED TO THE DEPART-
9 MENT UNDER THIS SUBSECTION SOLELY BECAUSE HE OR SHE HAS BEEN CON-
10 VICTED OF VIOLATING SECTION 904(3)(A) OF THE MICHIGAN VEHICLE
11 CODE, 1949 PA 300, MCL 257.904, OR A LOCAL ORDINANCE SUBSTAN-
12 Tially CORRESPONDING TO SECTION 904(3)(A) OF THE MICHIGAN VEHICLE
13 CODE, 1949 PA 300, MCL 257.904.

14 (3) The arresting law enforcement agency may take 1 set of
15 fingerprints of a person who is arrested for a misdemeanor pun-
16 ishable by imprisonment for not more than 92 days or a fine of
17 not more than \$1,000.00, or both, and who fails to produce satis-
18 factory evidence of identification as required by section 1 of
19 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
20 to the department immediately. Upon completion of the identifi-
21 cation process by the department, the fingerprints shall be
22 returned to the arresting law enforcement agency.

23 (4) An arresting law enforcement agency in the state may
24 take the person's fingerprints on forms furnished by the command-
25 ing officer upon an arrest for a misdemeanor other than a misde-
26 meanor described in subsection (1), (2), or (3), but may not

1 forward the fingerprints to the department unless the person is
2 convicted of a misdemeanor.

3 (5) If a petition is not authorized for a juvenile accused
4 of a juvenile offense or if a person arrested for having commit-
5 ted a felony or a misdemeanor is released without a charge made
6 against him or her, the official taking or holding the person's
7 fingerprints, arrest card, and description shall immediately
8 return this information to the person without the necessity of a
9 request. If this information is not returned, the person has the
10 absolute right to demand and receive its return at any time after
11 the person's release and without need to petition for court
12 action. The law enforcement agency shall notify the commanding
13 officer in writing that no petition was authorized against the
14 juvenile or that no charge was made against the arrested person
15 if the juvenile's or arrested person's fingerprints were for-
16 warded to the department.

17 (6) If a juvenile is adjudicated and found not to be within
18 the provisions of section 2(a)(1) of chapter XIIIA of the probate
19 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found
20 not guilty of the offense, the arrest card, the fingerprints, and
21 description shall be returned to him or her by the official hold-
22 ing this information. If for any reason the official holding the
23 information does not return the information within 60 days of the
24 adjudication or the finding of not guilty, the accused or juve-
25 nile has the right to obtain an order from the court having
26 jurisdiction over the case for the return of the information. If
27 the order of return is not complied with, the accused or juvenile

1 has the right to petition the family division of circuit court of
2 the county where the original petition was filed or the circuit
3 court of the county where the original charge was made for a pre-
4 emptory writ of mandamus to require issuance of the order of
5 return. Upon final disposition of the charge against the
6 accused, the clerk of the court entering the disposition shall
7 notify the commanding officer of any finding of not guilty or not
8 guilty by reason of insanity, dismissal, or nolle prosequi, if it
9 appears that the accused was initially arrested for a felony or a
10 misdemeanor punishable by imprisonment for more than 92 days or
11 of any finding that a juvenile alleged responsible for a juvenile
12 offense is not within the provisions of section 2(a)(1) of chap-
13 ter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

14 (7) Upon final disposition of the charge against the
15 accused, the clerk of the court entering the disposition shall
16 immediately advise the commanding officer of the final disposi-
17 tion of the arrest for which the person was fingerprinted if a
18 juvenile was adjudicated to have committed a juvenile offense or
19 if the accused was convicted of a felony or a misdemeanor. With
20 regard to any adjudication or conviction, the clerk shall trans-
21 mit to the commanding officer information as to any adjudication
22 or finding of guilty or guilty but mentally ill; any plea of
23 guilty, nolo contendere, or guilty but mentally ill; the offense
24 of which the accused was convicted; and a summary of any deposi-
25 tion or sentence imposed. The summary of the sentence shall
26 include any probationary term; any minimum, maximum, or
27 alternative term of imprisonment; the total of all fines, costs,

1 and restitution ordered; and any modification of sentence. If
2 the sentence is imposed under any of the following sections, the
3 report shall so indicate:

4 (a) Section 7411 of the public health code, 1978 PA 368, MCL
5 333.7411.

6 (b) Sections 11 to 15 of chapter II of the code of criminal
7 procedure, 1927 PA 175, MCL 762.11 to 762.15.

8 (c) Section 4a of chapter IX of the code of criminal proce-
9 dure, 1927 PA 175, MCL 769.4a.

10 (d) Section 350a(4) of the Michigan penal code, 1931 PA 328,
11 MCL 750.350a.

12 (8) The commanding officer shall record the disposition of
13 each charge and shall inform the director of the federal bureau
14 of investigation of the final disposition of the felony or misde-
15 meanor arrest.

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

21 (10) The provisions of this section requiring the return of
22 the fingerprints, arrest card, and description do not apply in
23 the following cases:

24 (a) The person arrested was charged with the commission or
25 attempted commission, or if the person arrested is a juvenile
26 alleged to have committed an offense that if committed by an
27 adult would constitute the commission or attempted commission, of

SB0855, As Passed House, December 9, 1999

Senate Bill No. 855

7

1 a crime with or against a child under 16 years of age or the
2 crime of criminal sexual conduct in any degree, rape, sodomy,
3 gross indecency, indecent liberties, or child sexually abusive
4 activities or materials.

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

9 (11) Subsection (4) does not permit the forwarding to the
10 department of the fingerprints of a person accused and convicted
11 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
12 257.923, or a local ordinance substantially corresponding to a
13 provision of that act, unless the offense is punishable upon con-
14 viction by imprisonment for more than 92 days or is an offense
15 that is punishable by imprisonment for more than 92 days upon a
16 subsequent conviction.

17 (12) As used in this section:

18 (a) "Department" means the department of state police.

19 (b) "Law enforcement agency" means the police department of
20 a city, township, or village, the sheriff's department of a
21 county, the department, or any other governmental law enforcement
22 agency of this state.

23 Enacting section 1. This amendatory act does not take
24 effect unless all of the following bills of the 90th Legislature
25 are enacted into law:

26 (a) Senate Bill No. 831 or House Bill No. 5009.

SB0855, As Passed House, December 9, 1999

Senate Bill No. 855

8

- 1 (b) Senate Bill No. 832 or House Bill No. 5008.
- 2 (c) Senate Bill No. 833 or House Bill No. 5010.
- 3 (d) Senate Bill No. 834 or House Bill No. 5016.
- 4 (e) Senate Bill No. 856.