

**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

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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.

5 (2) ~~The arresting~~ A law enforcement agency ~~may~~ SHALL
6 take a person's fingerprints ~~upon the arrest of the person~~
7 UNDER THIS SUBSECTION for a misdemeanor ~~that is a~~ violation of
8 STATE LAW FOR WHICH THE MAXIMUM PENALTY IS 93 DAYS IF THE FINGER-
9 PRINTS HAVE NOT PREVIOUSLY BEEN TAKEN AND FORWARDED TO THE
10 DEPARTMENT UNDER SUBSECTION (1). A LAW ENFORCEMENT AGENCY SHALL
11 TAKE A PERSON'S FINGERPRINTS UNDER THIS SUBSECTION FOR a
12 MISDEMEANOR VIOLATION OF A local ordinance for which the maximum
13 possible penalty ~~exceeds 92~~ IS 93 days' imprisonment and that
14 substantially corresponds to a violation of state law that is a
15 misdemeanor for which the maximum possible term of imprisonment
16 ~~exceeds 92~~ IS 93 days. ~~, but shall not forward them to the~~
17 ~~department before conviction.~~ If the person is convicted of ~~a~~
18 ~~misdemeanor described in this subsection~~ THE VIOLATION, the law
19 enforcement agency shall take the person's fingerprints BEFORE
20 SENTENCING, if not previously taken, ~~under this subsection~~ and
21 PROMPTLY forward ~~them within 72 hours after entry of the convic-~~
22 ~~tion in the same manner as provided in subsection (1)~~ ALL FORMS
23 REQUIRED TO BE SENT TO THE DEPARTMENT UNDER SUBSECTION (1) TO THE
24 COURT. ~~On the form sent to the division, the~~ THE law enforce-
25 ment agency shall indicate the statutory citation for the state
26 law to which the local ordinance substantially corresponds ON THE
27 FORMS THAT ARE TO BE SENT BY THE COURT TO THE DIVISION. THE

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1 COURT SHALL FORWARD THE FORMS TO THE DEPARTMENT WITH THE REPORT
2 OF THE FINAL DISPOSITION REQUIRED UNDER SECTION 16A OF CHAPTER IX
3 OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.16A.

4 (3) The arresting law enforcement agency may take 1 set of
5 fingerprints of a person who is arrested for a misdemeanor pun-
6 ishable by imprisonment for not more than 92 days or a fine of
7 not more than \$1,000.00, or both, and who fails to produce satis-
8 factory evidence of identification as required by section 1 of
9 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
10 to the department immediately. Upon completion of the identifi-
11 cation process by the department, the fingerprints shall be
12 returned to the arresting law enforcement agency.

13 (4) An arresting law enforcement agency in the state may
14 take the person's fingerprints on forms furnished by the command-
15 ing officer upon an arrest for a misdemeanor other than a misde-
16 meanor described in subsection (1), (2), or (3), but may not for-
17 ward the fingerprints to the department unless the person is con-
18 victed of a misdemeanor.

19 (5) If a petition is not authorized for a juvenile accused
20 of a juvenile offense or if a person arrested for having commit-
21 ted a felony or a misdemeanor is released without a charge made
22 against him or her, the official taking or holding the person's
23 fingerprints, arrest card, and description shall immediately
24 return this information to the person without the necessity of a
25 request. If this information is not returned, the person has the
26 absolute right to demand and receive its return at any time after
27 the person's release and without need to petition for court

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1 action. The law enforcement agency shall notify the commanding
2 officer in writing that no petition was authorized against the
3 juvenile or that no charge was made against the arrested person
4 if the juvenile's or arrested person's fingerprints were for-
5 warded to the department.

6 (6) If a juvenile is adjudicated and found not to be within
7 the provisions of section 2(a)(1) of chapter XIIIA of the probate
8 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found
9 not guilty of the offense, the arrest card, the fingerprints, and
10 description shall be returned to him or her by the official hold-
11 ing this information. If for any reason the official holding the
12 information does not return the information within 60 days of the
13 adjudication or the finding of not guilty, the accused or juve-
14 nile has the right to obtain an order from the court having
15 jurisdiction over the case for the return of the information. If
16 the order of return is not complied with, the accused or juvenile
17 has the right to petition the family division of circuit court of
18 the county where the original petition was filed or the circuit
19 court of the county where the original charge was made for a pre-
20 emptory writ of mandamus to require issuance of the order of
21 return. Upon final disposition of the charge against the
22 accused, the clerk of the court entering the disposition shall
23 notify the commanding officer of any finding of not guilty or not
24 guilty by reason of insanity, dismissal, or nolle prosequi, if it
25 appears that the accused was initially arrested for a felony or a
26 misdemeanor punishable by imprisonment for more than 92 days or
27 of any finding that a juvenile alleged responsible for a juvenile

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1 offense is not within the provisions of section 2(a)(1) of
2 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
3 712A.2.

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

21 (a) Section 7411 of the public health code, 1978 PA 368, MCL
22 333.7411.

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

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

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

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

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

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

15 (a) The person arrested was charged with the commission or
16 attempted commission, or if the person arrested is a juvenile
17 alleged to have committed an offense that 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 sexually abusive
22 activities or materials.

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

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

9 (12) As used in this section:

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

11 (b) "Law enforcement agency" means the police department of
12 a city, township, or village, the sheriff's department of a
13 county, the department, or any other governmental law enforcement
14 agency of this state.

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

18 (a) Senate Bill No. 831.

19 (b) Senate Bill No. 832.

20 (c) Senate Bill No. 833.

21 (d) Senate Bill No. 834.

22 (e) Senate Bill No. 856.