

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5277

(As amended by the Senate, December 12, 2002)

A bill to amend 1925 PA 289, entitled

"An act to create and maintain a fingerprint identification and criminal history records division 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 and remedies for a violation of this act,"

by amending section 3 (MCL 28.243), as amended by 2001 PA 203.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsection (3), 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 criminal contempt under section 2950 or 2950a of the
6 revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
7 600.2950a, or criminal contempt for a violation of a foreign
8 protection order that satisfies the conditions for validity

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1 provided in section 2950i of the revised judicature act of 1961,
2 1961 PA 236, MCL 600.2950i, or for a juvenile offense, other than
3 a juvenile offense for which the maximum possible penalty does
4 not exceed 92 days' imprisonment or a fine of \$1,000.00, or both,
5 the arresting law enforcement agency in this state shall take the
6 person's fingerprints and forward the fingerprints to the depart-
7 ment within 72 hours after the arrest. The fingerprints shall be
8 sent to the department on forms furnished by or in a manner pre-
9 scribed by the department, and the department shall forward the
10 fingerprints to the director of the federal bureau of investiga-
11 tion on forms furnished by or in a manner prescribed by the
12 director.

13 (2) A law enforcement agency shall take a person's finger-
14 prints under this subsection if the person is arrested for a mis-
15 demeanor violation of state law for which the maximum penalty is
16 93 days or for criminal contempt under section 2950 or 2950a of
17 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
18 600.2950a, or criminal contempt for a violation of a foreign pro-
19 tection order that satisfies the conditions for validity provided
20 in section 2950i of the revised judicature act of 1961, 1961 PA
21 236, MCL 600.2950i, if the fingerprints have not previously been
22 taken and forwarded to the department under subsection (1). A
23 law enforcement agency shall take a person's fingerprints under
24 this subsection if the person is arrested for a violation of a
25 local ordinance for which the maximum possible penalty is 93
26 days' imprisonment and that substantially corresponds to a
27 violation of state law that is a misdemeanor for which the

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1 maximum possible term of imprisonment is 93 days. If the person
2 is convicted of any violation, the law enforcement agency shall
3 take the person's fingerprints before sentencing if not previ-
4 ously taken. The court shall forward to the law enforcement
5 agency a copy of the disposition of conviction, and the law
6 enforcement agency shall forward the person's fingerprints and
7 the copy of the disposition of conviction to the department
8 within 72 hours after receiving the disposition of conviction in
9 the same manner as provided in subsection (1). If the person is
10 convicted of violating a local ordinance, the law enforcement
11 agency shall indicate on the form sent to the department the
12 statutory citation for the state law to which the local ordinance
13 substantially corresponds.

14 (3) A person's fingerprints are not required to be taken and
15 forwarded to the department under subsection (1) or (2) solely
16 because he or she has been convicted of violating section
17 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904,
18 or a local ordinance substantially corresponding to section
19 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL
20 257.904.

21 (4) The arresting law enforcement agency may take 1 set of
22 fingerprints of a person who is arrested for a misdemeanor pun-
23 ishable by imprisonment for not more than 92 days or a fine of
24 not more than \$1,000.00, or both, and who fails to produce satis-
25 factory evidence of identification as required by section 1 of
26 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
27 to the department immediately. Upon completion of the

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1 identification process by the department, the fingerprints shall
2 be destroyed.

3 (5) An arresting law enforcement agency in this state may
4 take the person's fingerprints on forms furnished by the command-
5 ing officer upon an arrest for a misdemeanor other than a misde-
6 meanor described in subsection (1), (2), or (4), and may forward
7 the fingerprints to the department.

8 (6) If a court orders the taking of fingerprints of a person
9 pursuant to section 11 or 18 of chapter XIIA of the probate code
10 of 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of
11 chapter IV or section 1 of chapter IX of the code of criminal
12 procedure, 1927 PA 175, MCL 764.29 and 769.1, the law enforcement
13 agency shall forward the fingerprints and arrest card to the
14 department.

15 (7) If a petition is not authorized for a juvenile accused
16 of a juvenile offense, ~~or~~ if a person arrested for having com-
17 mitted ~~a felony or a misdemeanor~~ AN OFFENSE FOR WHICH HE OR SHE
18 WAS FINGERPRINTED UNDER THIS SECTION is released without a charge
19 made against him or her, OR IF CRIMINAL CONTEMPT PROCEEDINGS ARE
20 NOT BROUGHT OR CRIMINAL CHARGES ARE NOT MADE AGAINST A PERSON
21 ARRESTED FOR CRIMINAL CONTEMPT FOR A PERSONAL PROTECTION ORDER
22 VIOLATION UNDER SECTION 2950 OR 2950A OF THE REVISED JUDICATURE
23 ACT OF 1961, 1961 PA 236, MCL 600.2950 AND 600.2950A, OR CRIMINAL
24 CONTEMPT FOR A VIOLATION OF A FOREIGN PROTECTION ORDER THAT MEETS
25 THE REQUIREMENTS FOR VALIDITY UNDER SECTION 2950I OF THE REVISED
26 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2950I, the official
27 taking or holding the person's fingerprints and arrest card shall

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1 immediately destroy the fingerprints and arrest card. The law
2 enforcement agency shall notify the department in writing that a
3 petition was not authorized against the juvenile or that a charge
4 was not made OR THAT A CRIMINAL CONTEMPT PROCEEDING WAS NOT
5 BROUGHT against the arrested person if the juvenile's or arrested
6 person's fingerprints were forwarded to the department.

7 (8) If a juvenile is adjudicated and found not to be within
8 the provisions of section 2(a)(1) of chapter XIIA of the probate
9 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found
10 not guilty of ~~the offense, the fingerprints and the arrest card~~
11 ~~shall be destroyed by the official holding this information. If~~
12 ~~for any reason the official holding the information does not~~
13 ~~destroy the information within 60 days of the adjudication or the~~
14 ~~finding of not guilty, the accused or juvenile has the right to~~
15 ~~obtain an order from the court having jurisdiction over the case~~
16 ~~for the return of the information. If the order of return is not~~
17 ~~complied with, the accused or juvenile has the right to petition~~
18 ~~the family division of circuit court of the county where the~~
19 ~~original petition was filed or the circuit court of the county~~
20 ~~where the original charge was made for a preemptory writ of man-~~
21 ~~damus to require issuance of the order of return. Upon AN~~
22 OFFENSE FOR WHICH HE OR SHE WAS FINGERPRINTED UNDER THIS SECTION,
23 UPON final disposition of the charge against the accused — OR
24 JUVENILE, THE FINGERPRINTS AND ARREST CARD SHALL BE DESTROYED BY
25 THE OFFICIAL HOLDING THOSE ITEMS AND the clerk of the court
26 entering the disposition shall notify the department of any
27 finding of not guilty or not guilty by reason of insanity,

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1 dismissal, or nolle prosequi, if it appears that the accused was
2 initially fingerprinted ~~for a felony or a misdemeanor~~ UNDER
3 THIS SECTION, or of any finding that a juvenile alleged responsi-
4 ble for a juvenile offense is not within the provisions of
5 section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939
6 PA 288, MCL 712A.2.

7 (9) Upon final disposition of the charge against the
8 accused, the clerk of the court entering the disposition shall
9 immediately advise the department of the final disposition of the
10 arrest for which the person was fingerprinted if a juvenile was
11 adjudicated to have committed a juvenile offense or if the
12 accused was convicted of ~~a felony or a misdemeanor~~ AN OFFENSE
13 FOR WHICH HE OR SHE WAS FINGERPRINTED UNDER THIS SECTION OR
14 SECTION 16A OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE,
15 1927 PA 175, MCL 769.16A. With regard to any adjudication or
16 conviction, the clerk shall transmit to the department informa-
17 tion as to any adjudication or finding of guilty or guilty but
18 mentally ill; any plea of guilty, nolo contendere, or guilty but
19 mentally ill; the offense of which the accused was convicted; and
20 a summary of any deposition or sentence imposed. The summary of
21 the sentence shall include any probationary term; any minimum,
22 maximum, or alternative term of imprisonment; the total of all
23 fines, costs, and restitution ordered; and any modification of
24 sentence. If the sentence is imposed under any of the following
25 sections, the report shall so indicate:

26 (a) Section 7411 of the public health code, 1978 PA 368, MCL
27 333.7411.

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

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

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

7 (10) The department shall record the disposition of each
8 charge and shall inform the director of the federal bureau of
9 investigation of the final disposition of ~~the felony or~~
10 ~~misdemeanor~~ ANY arrest OR OFFENSE FOR WHICH A PERSON WAS FINGER-
11 PRINTED UNDER THIS SECTION OR SECTION 16A OF CHAPTER IX OF THE
12 CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.16A.

13 (11) The department shall compare the fingerprints and
14 description received with those already on file and if the
15 department finds that the person arrested has a criminal record,
16 the department shall immediately inform the arresting agency and
17 prosecuting attorney of this fact.

18 (12) The provisions of subsection (8) that require the
19 destruction of the fingerprints and the arrest card do not apply
20 to a person who was arraigned in circuit court or the family
21 division of circuit court for any of the following:

22 (a) The commission or attempted commission of a crime with
23 or against a child under 16 years of age.

24 (b) Rape.

25 (c) Criminal sexual conduct in any degree.

26 (d) Sodomy.

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1 (e) Gross indecency.

2 (f) Indecent liberties.

3 (g) Child abusive commercial activities.

4 (h) A person who has a prior conviction, other than a misde-
5 meanor traffic offense, unless a judge of a court of record,
6 except the probate court, by express order on the record, orders
7 the destruction or return of the fingerprints and arrest card.

8 (i) A person arrested who is a juvenile charged with an
9 offense that would constitute the commission or attempted commis-
10 sion of any of the crimes in this subsection if committed by an
11 adult.

12 (13) Subsection (5) does not permit the forwarding to the
13 department of the fingerprints of a person accused and convicted
14 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
15 257.923, or a local ordinance substantially corresponding to a
16 provision of that act, unless the offense is punishable upon con-
17 viction by imprisonment for more than 92 days or is an offense
18 that is punishable by imprisonment for more than 92 days upon a
19 subsequent conviction.