

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 721

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 sections 2 and 3 (MCL 28.242 and 28.243), section 2 as amended by 1988 PA 40 and section 3 as amended by 1999 PA 266.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2. (1) The commanding officer ~~of the division~~ shall  
2 procure and file for purposes of criminal identification criminal  
3 history record information on all persons who have been convicted  
4 within ~~the~~ THIS state of EITHER a felony or a misdemeanor, or  
5 ~~both~~ WHO HAVE BEEN CONVICTED OF CRIMINAL CONTEMPT UNDER  
6 SECTION 2950 OR 2950A OF THE REVISED JUDICATURE ACT OF 1961, 1961

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

2

1 PA 236, MCL 600.2950 AND 600.2950A, OR CRIMINAL CONTEMPT FOR A  
2 VIOLATION OF A FOREIGN PROTECTION ORDER THAT SATISFIES THE CONDI-  
3 TIONS FOR VALIDITY PROVIDED IN SECTION 2950I OF THE REVISED JUDI-  
4 CATURE ACT OF 1961, 1961 PA 236, MCL 600.2950I. The commanding  
5 officer ~~of the division~~ shall procure and file for purposes of  
6 juvenile identification juvenile history record information on  
7 all juveniles who have been adjudicated to have committed a juve-  
8 nile offense within ~~the~~ THIS state.

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

15 (3) The commanding officer shall file the fingerprint  
16 impressions and photographs, if available, of all persons con-  
17 fined in a prison or other state correctional facility.

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

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

23 Sec. 3. (1) Except as provided in subsection ~~-(2)-~~ (3),  
24 immediately upon the arrest of a person for a felony or for a  
25 misdemeanor violation of state law for which the maximum possible  
26 penalty exceeds 92 days' imprisonment or a fine of \$1,000.00, or  
27 both, OR FOR CRIMINAL CONTEMPT UNDER SECTION 2950 OR 2950A OF THE

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

3

1 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2950 AND  
2 600.2950A, OR CRIMINAL CONTEMPT FOR A VIOLATION OF A FOREIGN PRO-  
3 TECTION ORDER THAT SATISFIES THE CONDITIONS FOR VALIDITY PROVIDED  
4 IN SECTION 2950I OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA  
5 236, MCL 600.2950I, or for a juvenile offense, OTHER THAN A JUVE-  
6 NILE OFFENSE FOR WHICH THE MAXIMUM POSSIBLE PENALTY DOES NOT  
7 EXCEED 92 DAYS' IMPRISONMENT OR A FINE OF \$1,000.00, OR BOTH, the  
8 arresting law enforcement agency in this state shall take the  
9 person's fingerprints ~~in duplicate~~ and forward the fingerprints  
10 to the department within 72 hours after the arrest. ~~One set of~~  
11 THE fingerprints shall be sent to the ~~division~~ DEPARTMENT on  
12 forms furnished by OR IN A MANNER PRESCRIBED BY the ~~commanding~~  
13 ~~officer~~ DEPARTMENT, and ~~1 set of fingerprints~~ THE DEPARTMENT  
14 shall ~~be furnished~~ FORWARD THE FINGERPRINTS to the director of  
15 the federal bureau of investigation on forms furnished by OR IN A  
16 MANNER PRESCRIBED BY the director. ~~A person's fingerprints are~~  
17 ~~not required to be taken and forwarded to the department under~~  
18 ~~this subsection solely because he or she has been arrested for a~~  
19 ~~violation of section 904(3)(a) of the Michigan vehicle code, 1949~~  
20 ~~PA 300, MCL 257.904.~~

21 (2) A law enforcement agency shall take a person's finger-  
22 prints under this subsection if the person is arrested for a mis-  
23 demeanor violation of state law for which the maximum penalty is  
24 93 days OR FOR CRIMINAL CONTEMPT UNDER SECTION 2950 OR 2950A OF  
25 THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2950 AND  
26 600.2950A, OR CRIMINAL CONTEMPT FOR A VIOLATION OF A FOREIGN  
27 PROTECTION ORDER THAT SATISFIES THE CONDITIONS FOR VALIDITY

S03641'01 (H-1)

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

4

1 PROVIDED IN SECTION 2950I OF THE REVISED JUDICATURE ACT OF 1961,  
2 1961 PA 236, MCL 600.2950I, if the fingerprints have not previ-  
3 ously been taken and forwarded to the department under subsection  
4 (1). A law enforcement agency shall take a person's fingerprints  
5 under this subsection if the person is arrested for a violation  
6 of a local ordinance for which the maximum possible penalty is 93  
7 days' imprisonment and that substantially corresponds to a viola-  
8 tion of state law that is a misdemeanor for which the maximum  
9 possible term of imprisonment is 93 days. If the person is con-  
10 victed of any violation, the law enforcement agency shall take  
11 the person's fingerprints before sentencing if not previously  
12 taken. The court shall forward to the law enforcement agency a  
13 copy of the disposition of conviction, and the law enforcement  
14 agency shall forward the person's fingerprints and the copy of  
15 the disposition of conviction to the department within 72 hours  
16 after receiving the disposition of conviction in the same manner  
17 as provided in subsection (1). If the person is convicted of  
18 violating a local ordinance, the law enforcement agency shall  
19 indicate on the form sent to the ~~division~~ DEPARTMENT the statu-  
20 tory citation for the state law to which the local ordinance sub-  
21 stantially corresponds.

22 (3) A person's fingerprints are not required to be taken and  
23 forwarded to the department under ~~this~~ subsection (1) OR (2)  
24 solely because he or she has been convicted of violating section  
25 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904,  
26 or a local ordinance substantially corresponding to section

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

5

1 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL

2 257.904.

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

12       (5) ~~-(4)-~~ An arresting law enforcement agency in ~~the~~ THIS  
13 state may take the person's fingerprints on forms furnished by  
14 the commanding officer upon an arrest for a misdemeanor other  
15 than a misdemeanor described in subsection (1), (2), or ~~-(3)-~~  
16 (4), ~~but~~ AND may ~~not~~ forward the fingerprints to the  
17 department. ~~unless the person is convicted of a misdemeanor.~~

18       (6) IF A COURT ORDERS THE TAKING OF FINGERPRINTS OF A PERSON  
19 PURSUANT TO SECTION 11 OR 18 OF CHAPTER XIIA OF THE PROBATE CODE  
20 OF 1939, 1939 PA 288, MCL 712A.11 AND 712A.18, OR SECTION 29 OF  
21 CHAPTER IV OR SECTION 1 OF CHAPTER IX OF THE CODE OF CRIMINAL  
22 PROCEDURE, 1927 PA 175, MCL 764.29 AND 769.1, THE LAW ENFORCEMENT  
23 AGENCY SHALL FORWARD THE FINGERPRINTS AND ARREST CARD TO THE  
24 DEPARTMENT.

25       (7) ~~-(5)-~~ If a petition is not authorized for a juvenile  
26 accused of a juvenile offense or if a person arrested for having  
27 committed a felony or a misdemeanor is released without a charge

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

6

1 made against him or her, the official taking or holding the  
2 person's fingerprints  ~~, AND arrest card , and description~~  
3 shall immediately  ~~return this information to the person without~~  
4  ~~the necessity of a request. If this information is not returned,~~  
5  ~~the person has the absolute right to demand and receive its~~  
6  ~~return at any time after the person's release and without need to~~  
7  ~~petition for court action~~ DESTROY THE FINGERPRINTS AND ARREST  
8 CARD. The law enforcement agency shall notify the  ~~commanding~~  
9  ~~officer~~ DEPARTMENT in writing that  ~~no~~ A petition was NOT  
10 authorized against the juvenile or that  ~~no~~ A charge was NOT  
11 made against the arrested person if the juvenile's or arrested  
12 person's fingerprints were forwarded to the department.

13 (8)  ~~(6)~~ If a juvenile is adjudicated and found not to be  
14 within the provisions of section 2(a)(1) of chapter XIIIA of the  
15 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused  
16 is found not guilty of the offense,  ~~the arrest card,~~ the fin-  
17 gerprints  ~~, and description~~ THE ARREST CARD shall be  
18  ~~returned to him or her~~ DESTROYED by the official holding this  
19 information. If for any reason the official holding the informa-  
20 tion does not  ~~return~~ DESTROY the information within 60 days of  
21 the adjudication or the finding of not guilty, the accused or  
22 juvenile has the right to obtain an order from the court having  
23 jurisdiction over the case for the return of the information. If  
24 the order of return is not complied with, the accused or juvenile  
25 has the right to petition the family division of circuit court of  
26 the county where the original petition was filed or the circuit  
27 court of the county where the original charge was made for a

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

7

1 preemptory writ of mandamus to require issuance of the order of  
2 return. Upon final disposition of the charge against the  
3 accused, the clerk of the court entering the disposition shall  
4 notify the ~~commanding officer~~ DEPARTMENT of any finding of not  
5 guilty or not guilty by reason of insanity, dismissal, or nolle  
6 prosequi, if it appears that the accused was initially ~~arrested~~  
7 FINGERPRINTED for a felony or a misdemeanor ~~punishable by~~  
8 ~~imprisonment for more than 92 days~~ or of any finding that a  
9 juvenile alleged responsible for a juvenile offense is not within  
10 the provisions of section 2(a)(1) of chapter XIIIA of the probate  
11 code of 1939, 1939 PA 288, MCL 712A.2.

12 (9) ~~(7)~~ Upon final disposition of the charge against the  
13 accused, the clerk of the court entering the disposition shall  
14 immediately advise the ~~commanding officer~~ DEPARTMENT of the  
15 final disposition of the arrest for which the person was finger-  
16 printed if a juvenile was adjudicated to have committed a juve-  
17 nile offense or if the accused was convicted of a felony or a  
18 misdemeanor. With regard to any adjudication or conviction, the  
19 clerk shall transmit to the ~~commanding officer~~ DEPARTMENT  
20 information as to any adjudication or finding of guilty or guilty  
21 but mentally ill; any plea of guilty, nolo contendere, or guilty  
22 but mentally ill; the offense of which the accused was convicted;  
23 and a summary of any deposition or sentence imposed. The summary  
24 of the sentence shall include any probationary term; any minimum,  
25 maximum, or alternative term of imprisonment; the total of all  
26 fines, costs, and restitution ordered; and any modification of

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

8

1 sentence. If the sentence is imposed under any of the following  
2 sections, the report shall so indicate:

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

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

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

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

11 (10) ~~-(8)-~~ The ~~commanding officer~~ DEPARTMENT shall record  
12 the disposition of each charge and shall inform the director of  
13 the federal bureau of investigation of the final disposition of  
14 the felony or misdemeanor arrest.

15 (11) ~~-(9)-~~ The ~~commanding officer~~ DEPARTMENT shall compare  
16 the fingerprints and description received with those already on  
17 file and if the ~~commanding officer~~ DEPARTMENT finds that the  
18 person arrested has a criminal record, the ~~commanding officer~~  
19 DEPARTMENT shall immediately inform the arresting agency and  
20 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~~

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

9

~~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 (12) THE PROVISIONS OF SUBSECTION (8) THAT REQUIRE THE  
10 DESTRUCTION OF THE FINGERPRINTS AND THE ARREST CARD DO NOT APPLY  
11 TO A PERSON WHO WAS ARRAIGNED IN CIRCUIT COURT OR THE FAMILY  
12 DIVISION OF CIRCUIT COURT FOR ANY OF THE FOLLOWING:

13 (A) THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIME WITH  
14 OR AGAINST A CHILD UNDER 16 YEARS OF AGE.

15 (B) RAPE.

16 (C) CRIMINAL SEXUAL CONDUCT IN ANY DEGREE.

17 (D) SODOMY.

18 (E) GROSS INDECENCY.

19 (F) INDECENT LIBERTIES.

20 (G) CHILD ABUSIVE COMMERCIAL ACTIVITIES.

21 (H) A PERSON WHO HAS A PRIOR CONVICTION, OTHER THAN A MISDE-  
22 MEANOR TRAFFIC OFFENSE, UNLESS A JUDGE OF A COURT OF RECORD,  
23 EXCEPT THE PROBATE COURT, BY EXPRESS ORDER ON THE RECORD, ORDERS  
24 THE DESTRUCTION OR RETURN OF THE FINGERPRINTS AND ARREST CARD.

25 (I) A PERSON ARRESTED WHO IS A JUVENILE CHARGED WITH AN  
26 OFFENSE THAT WOULD CONSTITUTE THE COMMISSION OR ATTEMPTED

**SB0721, As Passed House, December 12, 2001**

Senate Bill No. 721

10

1 COMMISSION OF ANY OF THE CRIMES IN THIS SUBSECTION IF COMMITTED  
2 BY AN ADULT.

3       (13) ~~(11)~~ Subsection ~~(4)~~ (5) does not permit the for-  
4 warding to the department of the fingerprints of a person accused  
5 and convicted under the Michigan vehicle code, 1949 PA 300, MCL  
6 257.1 to 257.923, or a local ordinance substantially correspond-  
7 ing to a provision of that act, unless the offense is punishable  
8 upon conviction by imprisonment for more than 92 days or is an  
9 offense that is punishable by imprisonment for more than 92 days  
10 upon a subsequent conviction.

11       ~~(12) As used in this section:~~

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

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

17       Enacting section 1. This amendatory act takes effect  
18 October 1, 2002.

19       Enacting section 2. This amendatory act does not take  
20 effect unless Senate Bill No. 722 of the 91st Legislature is  
21 enacted into law.