

# HOUSE BILL No. 5932

May 20, 2004, Introduced by Reps. Lipsey, Howell, Meisner, Condino, Jamnick, Clack, Law, Kolb, Brown, Adamini, Accavitti, Gleason, Gillard, Gielegem, Bieda, Woodward, Vagnozzi, Spade, Minore, Hopgood, Zelenko and Anderson and referred to the Committee on Judiciary.

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 2002 PA 694.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3. (1) Except as provided in subsection (3),  
2 immediately upon the arrest of a person for a felony or for a  
3 misdemeanor violation of state law for which the maximum possible  
4 penalty 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

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  
7 department within 72 hours after the arrest. The fingerprints  
8 shall be sent to the department on forms furnished by or in a  
9 manner prescribed by the department, and the department shall  
10 forward the fingerprints to the director of the federal bureau of  
11 investigation on forms furnished by or in a manner prescribed by  
12 the director.

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

1 which the maximum possible term of imprisonment is 93 days. If  
2 the person is convicted of any violation, the law enforcement  
3 agency shall take the person's fingerprints before sentencing if  
4 not previously taken. The court shall forward to the law  
5 enforcement agency a copy of the disposition of conviction, and  
6 the law enforcement agency shall forward the person's  
7 fingerprints and the copy of the disposition of conviction to the  
8 department within 72 hours after receiving the disposition of  
9 conviction in the same manner as provided in subsection (1). If  
10 the person is convicted of violating a local ordinance, the law  
11 enforcement agency shall indicate on the form sent to the  
12 department the statutory citation for the state law to which the  
13 local ordinance 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  
23 punishable 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  
25 satisfactory evidence of identification as required by section 1  
26 of 1961 PA 44, MCL 780.581. These fingerprints shall be  
27 forwarded to the department immediately. Upon completion of the

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  
5 commanding officer upon an arrest for a misdemeanor other than a  
6 misdemeanor described in subsection (1), (2), or (4), and may  
7 forward 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 XIIIA 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 of  
16 a juvenile offense, if a person arrested for having committed an  
17 offense for which he or she was fingerprinted under this section  
18 is released without a charge made against him or her, or if  
19 criminal contempt proceedings are not brought or criminal charges  
20 are not made against a person arrested for criminal contempt for  
21 a personal protection order violation under section 2950 or 2950a  
22 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950  
23 and 600.2950a, or criminal contempt for a violation of a foreign  
24 protection order that meets the requirements for validity under  
25 section 2950i of the revised judicature act of 1961, 1961 PA 236,  
26 MCL 600.2950i, the official taking or holding the person's  
27 fingerprints and arrest card shall immediately destroy the

1 fingerprints and arrest card. The law enforcement agency shall  
2 notify the department in writing that a petition was not  
3 authorized against the juvenile or that a charge was not made or  
4 that a criminal contempt proceeding was not brought against the  
5 arrested person if the juvenile's or arrested person's  
6 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 an offense for which he or she was fingerprinted  
11 under this section, upon final disposition of the charge against  
12 the accused or juvenile, the fingerprints and arrest card shall  
13 be destroyed by the official holding those items and the clerk of  
14 the court entering the disposition shall notify the department of  
15 any finding of not guilty or not guilty by reason of insanity,  
16 dismissal, or nolle prosequi, if it appears that the accused was  
17 initially fingerprinted under this section, or of any finding  
18 that a juvenile alleged responsible for a juvenile offense is not  
19 within the provisions of section 2(a)(1) of chapter XIIA of the  
20 probate code of 1939, 1939 PA 288, MCL 712A.2.

21       (9) Upon final disposition of the charge against the accused,  
22 the clerk of the court entering the disposition shall immediately  
23 advise the department of the final disposition of the arrest for  
24 which the person was fingerprinted if a juvenile was adjudicated  
25 to have committed a juvenile offense or if the accused was  
26 convicted of an offense for which he or she was fingerprinted  
27 under this section or section 16a of chapter IX of the code of

1 criminal procedure, 1927 PA 175, MCL 769.16a. With regard to any  
2 adjudication or conviction, the clerk shall transmit to the  
3 department information as to any adjudication or finding of  
4 guilty or guilty but mentally ill; any plea of guilty, nolo  
5 contendere, or guilty but mentally ill; the offense of which the  
6 accused was convicted; and a summary of any deposition or  
7 sentence imposed. The summary of the sentence shall include any  
8 probationary term; any minimum, maximum, or alternative term of  
9 imprisonment; the total of all fines, costs, and restitution  
10 ordered; and any modification of sentence. If the sentence is  
11 imposed under any of the following sections, the report shall so  
12 indicate:

13 (a) Section 7411 of the public health code, 1978 PA 368, MCL  
14 333.7411.

15 (b) Section 1076(4) of the revised judicature act of 1961,  
16 1961 PA 236, MCL 600.1076.

17           (c) ~~(b)~~ Sections 11 to 15 of chapter II of the code of  
18 criminal procedure, 1927 PA 175, MCL 762.11 to 762.15.

19           (d) ~~—(e)—~~ Section 4a of chapter IX of the code of criminal  
20 procedure, 1927 PA 175, MCL 769.4a.

21           (e) ~~(d)~~ Section 350a(4) of the Michigan penal code, 1931 PA  
22 328, MCL 750.350a.

23 (f) Section 430(8)(a) of the Michigan penal code, 1931 PA  
24 328, MCL 750.430.

25 [

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27 (10) The department shall record the disposition of each

1 charge and shall inform the director of the federal bureau of  
2 investigation of the final disposition of any arrest or offense  
3 for which a person was fingerprinted under this section or  
4 section 16a of chapter IX of the code of criminal procedure, 1927  
5 PA 175, MCL 769.16a.

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

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

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

17 (b) Rape.

18 (c) Criminal sexual conduct in any degree.

19 (d) Sodomy.

20 (e) Gross indecency.

21 (f) Indecent liberties.

22 (g) Child abusive commercial activities.

23 (h) A person who 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 on the record, orders  
26 the destruction or return of the fingerprints and arrest card.

27 (i) A person arrested who is a juvenile charged with an

House Bill No. 5932 as amended June 29, 2004

1 offense that would constitute the commission or attempted  
2 commission of any of the crimes in this subsection if committed  
3 by an adult.

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

<<Enacting section 1. This amendatory act takes effect January 1,  
2005.>>

12 Enacting section <<2>>. This amendatory act does not take  
13 effect unless all of the following bills of the 92nd Legislature  
14 are enacted into law:

15 (a) Senate Bill No. 998.

16 (b) House Bill No. 5674.