

**SUBSTITUTE FOR
HOUSE BILL NO. 4538**

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 2012 PA 374.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsection (3), upon the
2 arrest of a person for a felony or for a misdemeanor violation of
3 state law for which the maximum possible penalty exceeds 92 days'
4 imprisonment or a fine of \$1,000.00, or both, or a misdemeanor
5 authorized for DNA collection under section 6(1)(b) of the DNA
6 identification profiling system act, 1990 PA 250, MCL 28.176, or

1 for criminal contempt under section 2950 or 2950a of the revised
2 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or
3 criminal contempt for a violation of a foreign protection order
4 that satisfies the conditions for validity provided in section
5 2950i of the revised judicature act of 1961, 1961 PA 236, MCL
6 600.2950i, or for a juvenile offense, other than a juvenile offense
7 for which the maximum possible penalty does not exceed 92 days'
8 imprisonment or a fine of \$1,000.00, or both, or for a juvenile
9 offense that is a misdemeanor authorized for DNA collection under
10 section 6(1)(b) of the DNA identification profiling system act,
11 1990 PA 250, MCL 28.176, the arresting law enforcement agency in
12 this state shall collect the person's biometric data and forward
13 the biometric data to the department within 72 hours after the
14 arrest. The biometric data ~~shall~~ **MUST** be sent to the department on
15 forms furnished by or in a manner prescribed by the department, and
16 the department shall forward the biometric data to the director of
17 the ~~federal bureau~~ **FEDERAL BUREAU** of ~~investigation~~ **INVESTIGATION** on
18 forms furnished by or in a manner prescribed by the director.

19 (2) A law enforcement agency shall collect a person's
20 biometric data under this subsection if the person is arrested for
21 a misdemeanor violation of state law for which the maximum penalty
22 is 93 days or for criminal contempt under section 2950 or 2950a of
23 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
24 600.2950a, or criminal contempt for a violation of a foreign
25 protection order that satisfies the conditions for validity
26 provided in section 2950i of the revised judicature act of 1961,
27 1961 PA 236, MCL 600.2950i, if the biometric data have not

1 previously been collected and forwarded to the department under
2 subsection (1). A law enforcement agency shall collect a person's
3 biometric data under this subsection if the person is arrested for
4 a violation of a local ordinance for which the maximum possible
5 penalty is 93 days' imprisonment and that substantially corresponds
6 to a violation of state law that is a misdemeanor for which the
7 maximum possible term of imprisonment is 93 days. If the person is
8 convicted of any violation, the law enforcement agency shall
9 collect the person's biometric data before sentencing if not
10 previously collected. The court shall forward to the law
11 enforcement agency a copy of the disposition of conviction, and the
12 law enforcement agency shall forward the person's biometric data
13 and the copy of the disposition of conviction to the department
14 within 72 hours after receiving the disposition of conviction in
15 the same manner as provided in subsection (1). If the person is
16 convicted of violating a local ordinance, the law enforcement
17 agency shall indicate on the form sent to the department the
18 statutory citation for the state law to which the local ordinance
19 substantially corresponds.

20 (3) A person's biometric data are not required to be collected
21 and forwarded to the department under subsection (1) or (2) solely
22 because he or she has been arrested for violating section 904(3)(a)
23 of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local
24 ordinance substantially corresponding to section 904(3)(a) of the
25 Michigan vehicle code, 1949 PA 300, MCL 257.904.

26 (4) The arresting law enforcement agency may collect the
27 biometric data of a person who is arrested for a misdemeanor

1 punishable by imprisonment for not more than 92 days or a fine of
2 not more than \$1,000.00, or both, and who fails to produce
3 satisfactory evidence of identification as required by section 1 of
4 1961 PA 44, MCL 780.581. These biometric data ~~shall~~**MUST** be
5 forwarded to the department immediately. Upon completion of the
6 identification process by the department, the biometric data shall
7 be destroyed.

8 (5) An arresting law enforcement agency in this state may
9 collect the person's biometric data upon an arrest for a
10 misdemeanor other than a misdemeanor described in subsection (1),
11 (2), or (4), and may forward the biometric data to the department.

12 (6) If a court orders the collection of a person's biometric
13 data under section 11 or 18 of chapter XIIA of the probate code of
14 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of
15 chapter IV or section 1 of chapter IX of the code of criminal
16 procedure, 1927 PA 175, MCL 764.29 and 769.1, the law enforcement
17 agency shall forward the biometric data and arrest card to the
18 department.

19 (7) If a petition is not authorized for a juvenile accused of
20 a juvenile offense, if a person arrested for having committed an
21 offense for which biometric data were collected under this section
22 is released without a charge made against him or her, or if
23 criminal contempt proceedings are not brought or criminal charges
24 are not made against a person arrested for criminal contempt for a
25 personal protection order violation under section 2950 or 2950a of
26 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
27 600.2950a, or criminal contempt for a violation of a foreign

1 protection order that meets the requirements for validity under
2 section 2950i of the revised judicature act of 1961, 1961 PA 236,
3 MCL 600.2950i, the official taking or holding the person's
4 biometric data and arrest card shall immediately destroy the
5 biometric data and arrest card. The law enforcement agency shall
6 notify the department in a manner prescribed by the department that
7 a petition was not authorized against the juvenile or that a charge
8 was not made or that a criminal contempt proceeding was not brought
9 against the arrested person if the juvenile's or arrested person's
10 arrest card was forwarded to the department.

11 (8) IF AN INDIVIDUAL IS ARRESTED FOR ANY CRIME AND THE CHARGE
12 OR CHARGES ARE DISMISSED BEFORE TRIAL, BOTH OF THE FOLLOWING APPLY:

13 (A) THE ARREST RECORD SHALL BE REMOVED FROM THE INTERNET
14 CRIMINAL HISTORY ACCESS TOOL (ICHAT).

15 (B) IF THE PROSECUTOR OF THE CASE AGREES AT ANY TIME AFTER THE
16 CASE IS DISMISSED, OR IF THE PROSECUTOR OF THE CASE OR THE JUDGE OF
17 THE COURT IN WHICH THE CASE WAS FILED DOES NOT OBJECT WITHIN 60
18 DAYS FROM THE DATE AN ORDER OF DISMISSAL WAS ENTERED FOR CASES IN
19 WHICH THE ORDER OF DISMISSAL IS ENTERED AFTER THE EFFECTIVE DATE OF
20 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION, BOTH OF THE
21 FOLLOWING APPLY:

22 (i) THE ARREST RECORD, ALL BIOMETRIC DATA, AND FINGERPRINTS
23 SHALL BE EXPUNGED OR DESTROYED, OR BOTH, AS APPROPRIATE.

24 (ii) ANY ENTRY CONCERNING THE CHARGE SHALL BE REMOVED FROM THE
25 LEIN.

26 (9) THE DEPARTMENT SHALL COMPLY WITH THE REQUIREMENTS LISTED
27 IN SUBSECTION (8) UPON RECEIPT OF AN APPROPRIATE ORDER ISSUED BY

1 **THE DISTRICT COURT OR THE CIRCUIT COURT.**

2 (10) ~~(8)~~—If a juvenile is adjudicated and found not to be
3 within the provisions of section 2(a)(1) of chapter XIIA of the
4 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is
5 found not guilty of an offense for which biometric data were
6 collected under this section, upon final disposition of the charge
7 against the accused or juvenile, the biometric data and arrest card
8 ~~shall~~**MUST** be destroyed by the official holding those items and the
9 clerk of the court entering the disposition shall notify the
10 department of any finding of not guilty or nolle prosequi, if it
11 appears that the biometric data of the accused were initially
12 collected under this section, or of any finding that a juvenile
13 alleged responsible for a juvenile offense is not within the
14 provisions of section 2(a)(1) of chapter XIIA of the probate code
15 of 1939, 1939 PA 288, MCL 712A.2.

16 (11) ~~(9)~~—Upon final disposition of the charge against the
17 accused, the clerk of the court entering the disposition shall
18 immediately advise the department of the final disposition of the
19 arrest for which the person's biometric data were collected if a
20 juvenile was adjudicated to have committed a juvenile offense or if
21 the accused was convicted of an offense for which the biometric
22 data of the accused were collected under this section or section
23 16a of chapter IX of the code of criminal procedure, 1927 PA 175,
24 MCL 769.16a. With regard to any adjudication or conviction, the
25 clerk shall transmit to the department information as to any
26 adjudication or finding of guilty or guilty but mentally ill; any
27 plea of guilty, nolo contendere, or guilty but mentally ill; the

1 offense of which the accused was convicted; and a summary of any
2 deposition or sentence imposed. The summary of the sentence ~~shall~~
3 **MUST** include any probationary term; any minimum, maximum, or
4 alternative term of imprisonment; the total of all fines, costs,
5 and restitution ordered; and any modification of sentence. If the
6 sentence is imposed under any of the following sections, the report
7 shall so indicate:

8 (a) Section 7411 of the public health code, 1978 PA 368, MCL
9 333.7411.

10 (b) Section 1076(4) of the revised judicature act of 1961,
11 1961 PA 236, MCL 600.1076.

12 (c) Sections 11 to 15 of chapter II of the code of criminal
13 procedure, 1927 PA 175, MCL 762.11 to 762.15.

14 (d) Section 4a of chapter IX of the code of criminal
15 procedure, 1927 PA 175, MCL 769.4a.

16 (e) Section 350a(4) of the Michigan penal code, 1931 PA 328,
17 MCL 750.350a.

18 (f) Section ~~430(8)(a)~~**430(9)(A)** of the Michigan penal code,
19 1931 PA 328, MCL 750.430.

20 (g) Section ~~1209(6)~~**1209(7)** of the revised judicature act of
21 1961, 1961 PA 236, MCL 600.1209.

22 **(12)** ~~(10)~~ The department shall record the disposition of each
23 charge and shall inform the director of the ~~federal bureau of~~
24 ~~investigation~~**FEDERAL BUREAU OF INVESTIGATION** of the final
25 disposition of any arrest or offense for which a person's biometric
26 data were collected under this section or section 16a of chapter IX
27 of the code of criminal procedure, 1927 PA 175, MCL 769.16a.

1 (13) ~~(11)~~ The department shall compare the biometric data
2 received with those already on file and if the department finds
3 that the person arrested has a criminal record, the department
4 shall immediately inform the arresting agency and prosecuting
5 attorney of this fact.

6 (14) ~~(12)~~ The **EXCEPT AS PROVIDED IN SUBSECTION (8), THE**
7 provisions of subsection ~~(8)~~ (10) that require the destruction of
8 the biometric data and the arrest card do not apply to a person who
9 was arraigned for any of the following:

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

12 (b) Rape.

13 (c) Criminal sexual conduct in any degree.

14 (d) Sodomy.

15 (e) Gross indecency.

16 (f) Indecent liberties.

17 (g) Child abusive commercial activities.

18 (h) A person who has a prior conviction, other than a
19 misdemeanor traffic offense, unless a judge of a court of record,
20 except the probate court, by express order on the record, orders
21 the destruction or return of the biometric data and arrest card.

22 (i) A person arrested who is a juvenile charged with an
23 offense that would constitute the commission or attempted
24 commission of any of the crimes in this subsection if committed by
25 an adult.

26 (15) ~~(13)~~ Subsection (5) does not permit the forwarding to the
27 department of the biometric data of a person accused and convicted

House Bill No. 4538 as amended February 21, 2018

1 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,
2 or a local ordinance substantially corresponding to a provision of
3 that act, unless the offense is punishable upon conviction by
4 imprisonment for more than 92 days or is an offense that is
5 punishable by imprisonment for more than 92 days upon a subsequent
6 conviction.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.

9 Enacting section 2. This amendatory act does not take effect
10 unless all of the following bills of the 99th Legislature are
11 enacted into law:

12 (a) House Bill No. 4536.

13 (b) House Bill No. 4537.

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