

# HOUSE BILL NO. 6255

September 23, 2020, Introduced by Reps. Calley, Sabo and Bolden and referred to the Committee on Judiciary.

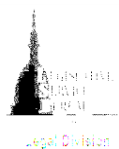
A bill to amend 1925 PA 289, entitled

"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 2018 PA 67.

## **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



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

23 (2) A law enforcement agency shall collect a person's  
24 biometric data under this subsection if the person is arrested for  
25 a misdemeanor violation of state law for which the maximum penalty  
26 is 93 days or for criminal contempt under section 2950 or 2950a of  
27 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and  
28 600.2950a, or criminal contempt for a violation of a foreign  
29 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, if the biometric data have not  
3 previously been collected and forwarded to the department under  
4 subsection (1). A law enforcement agency shall collect a person's  
5 biometric data under this subsection if the person is arrested for  
6 a violation of a local ordinance for which the maximum possible  
7 penalty is 93 days' imprisonment and that substantially corresponds  
8 to a violation of state law that is a misdemeanor for which the  
9 maximum possible term of imprisonment is 93 days. If the person is  
10 convicted of any violation, the law enforcement agency shall  
11 collect the person's biometric data before sentencing if not  
12 previously collected. The court shall forward to the law  
13 enforcement agency a copy of the disposition of conviction, and the  
14 law enforcement agency shall forward the person's biometric data  
15 and the copy of the disposition of conviction to the department  
16 within 72 hours after receiving the disposition of conviction in  
17 the same manner as provided in subsection (1). If the person is  
18 convicted of violating a local ordinance, the law enforcement  
19 agency shall indicate on the form sent to the department the  
20 statutory citation for the state law to which the local ordinance  
21 substantially corresponds.

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

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



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

1 MCL 600.2950i, the official taking or holding the person's  
2 biometric data and arrest card shall immediately destroy the  
3 biometric data and arrest card. The law enforcement agency shall  
4 notify the department in a manner prescribed by the department that  
5 a petition was not authorized against the juvenile or that a charge  
6 was not made or that a criminal contempt proceeding was not brought  
7 against the arrested person if the juvenile's or arrested person's  
8 arrest card was forwarded to the department.

9 (8) If an individual is arrested for any crime and the charge  
10 or charges are dismissed before trial, both of the following apply:

11 (a) The arrest record ~~shall~~**must** be removed from the internet  
12 criminal history access tool (ICHAT).

13 (b) If the prosecutor of the case agrees at any time after the  
14 case is dismissed, or if the prosecutor of the case or the judge of  
15 the court in which the case was filed does not object within 60  
16 days from the date an order of dismissal was entered for cases in  
17 which the order of dismissal is entered after the effective date of  
18 the amendatory act that added this subdivision, both of the  
19 following apply:

20 (i) The arrest record, all biometric data, and fingerprints  
21 ~~shall~~**must** be expunged or destroyed, or both, as appropriate.

22 (ii) Any entry concerning the charge ~~shall~~**must** be removed from  
23 the LEIN.

24 (9) If an individual is arrested for any crime and is  
25 acquitted on the charge or charges after a trial is held, both of  
26 the following apply:

27 (a) The arrest record must be removed from the internet  
28 criminal history access tool (ICHAT).

29 (b) Any other document or record generated in connection with



1 the charge or charges in the possession of a law enforcement agency  
2 must be made nonpublic.

3 (10) If an individual is arrested for any crime and is not  
4 charged with a crime as a result of the arrest before the  
5 expiration of the applicable period of limitation under section 24  
6 of chapter VII of the code of criminal procedure, 1927 PA 175, MCL  
7 767.24, both of the following apply:

8 (a) The arrest record must be removed from the internet  
9 criminal history access tool (ICHAT).

10 (b) Any other document or record generated in connection with  
11 the charge or charges in the possession of a law enforcement agency  
12 must be made nonpublic.

13 (11) ~~(9)~~ The department shall comply with the requirements  
14 listed in ~~subsection~~ **subsections** (8) and (9) upon receipt of an  
15 appropriate order issued by the district court or the circuit  
16 court.

17 (12) ~~(10)~~ If a juvenile is adjudicated and found not to be  
18 within the provisions of section 2(a)(1) of chapter XIIIA of the  
19 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is  
20 found not guilty of an offense for which biometric data were  
21 collected under this section, upon final disposition of the charge  
22 against the accused or juvenile, the biometric data and arrest card  
23 must be destroyed by the official holding those items and the clerk  
24 of the court entering the disposition shall notify the department  
25 of any finding of not guilty or nolle prosequi, if it appears that  
26 the biometric data of the accused were initially collected under  
27 this section, or of any finding that a juvenile alleged responsible  
28 for a juvenile offense is not within the provisions of section  
29 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288,



1 MCL 712A.2.

2 (13) ~~(11)~~ Upon final disposition of the charge against the  
3 accused, the clerk of the court entering the disposition shall  
4 immediately advise the department of the final disposition of the  
5 arrest for which the person's biometric data were collected if a  
6 juvenile was adjudicated to have committed a juvenile offense or if  
7 the accused was convicted of an offense for which the biometric  
8 data of the accused were collected under this section or section  
9 16a of chapter IX of the code of criminal procedure, 1927 PA 175,  
10 MCL 769.16a. With regard to any adjudication or conviction, the  
11 clerk shall transmit to the department information as to any  
12 adjudication or finding of guilty or guilty but mentally ill; any  
13 plea of guilty, nolo contendere, or guilty but mentally ill; the  
14 offense of which the accused was convicted; and a summary of any  
15 deposition or sentence imposed. The summary of the sentence must  
16 include any probationary term; any minimum, maximum, or alternative  
17 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 report  
20 ~~shall~~**must** so indicate:

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

23 (b) Section 1076(4) of the revised judicature act of 1961,  
24 1961 PA 236, MCL 600.1076.

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

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

29 (e) Section 350a(4) of the Michigan penal code, 1931 PA 328,



1 MCL 750.350a.

2 (f) Section 430(9)(a) of the Michigan penal code, 1931 PA 328,  
3 MCL 750.430.

4 (g) Section 1209(7) of the revised judicature act of 1961,  
5 1961 PA 236, MCL 600.1209.

6 **(14)** ~~(12)~~—The department shall record the disposition of each  
7 charge and shall inform the director of the Federal Bureau of  
8 Investigation of the final disposition of any arrest or offense for  
9 which a person's biometric data were collected under this section  
10 or section 16a of chapter IX of the code of criminal procedure,  
11 1927 PA 175, MCL 769.16a.

12 **(15)** ~~(13)~~—The department shall compare the biometric data  
13 received with those already on file and if the department finds  
14 that the person arrested has a criminal record, the department  
15 shall immediately inform the arresting agency and prosecuting  
16 attorney of this fact.

17 **(16)** ~~(14)~~—Except as provided in ~~subsection~~ **subsections** (8) and  
18 **(9)**, the provisions of subsection ~~(10)~~ **(12)** that require the  
19 destruction of the biometric data and the arrest card do not apply  
20 to a person who was arraigned for any of the following:

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

23 (b) Rape.

24 (c) Criminal sexual conduct in any degree.

25 (d) Sodomy.

26 (e) Gross indecency.

27 (f) Indecent liberties.

28 (g) Child abusive commercial activities.

29 (h) A person who has a prior conviction, other than a



1 misdemeanor traffic offense, unless a judge of a court of record,  
2 except the probate court, by express order on the record, orders  
3 the destruction or return of the biometric data and arrest card.

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

8 (17) ~~(15)~~ Subsection (5) does not permit the forwarding to the  
9 department of the biometric data of a person accused and convicted  
10 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,  
11 or a local ordinance substantially corresponding to a provision of  
12 that act, unless the offense is punishable upon conviction by  
13 imprisonment for more than 92 days or is an offense that is  
14 punishable by imprisonment for more than 92 days upon a subsequent  
15 conviction.

16 Enacting section 1. This amendatory act does not take effect  
17 unless Senate Bill No. \_\_\_\_ or House Bill No. 6256 (request no.  
18 07595'20) of the 100th Legislature is enacted into law.

