

Act No. 97
Public Acts of 1989
Approved by the Governor
June 21, 1989
Filed with the Secretary of State
June 21, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Bandstra, Alley, Kosteva, Fitzgerald, Law, Hoekman, Bender, Varga and Pridnia

ENROLLED HOUSE BILL No. 4194

AN ACT to amend section 3 of Act No. 289 of the Public Acts of 1925, entitled as amended "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." as amended by Act No. 40 of the Public Acts of 1988, being section 28.243 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 3 of Act No. 289 of the Public Acts of 1925, as amended by Act No. 40 of the Public Acts of 1988, being section 28.243 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 3. (1) The police department of a city or village, the police department of a township, the sheriff's department of a county, the department of state police, and any other governmental law enforcement agency in the state, immediately upon the arrest of a person for a felony or for a misdemeanor for which the maximum possible penalty exceeds 92 days imprisonment or a fine of \$1,000.00, or both, or for a juvenile offense, shall take the person's fingerprints in duplicate and forward the fingerprints to the department of state police within 72 hours after the arrest. One set of fingerprints shall be sent to the division on forms furnished by the commanding officer, and 1 set of fingerprints shall be furnished to the director of the federal bureau of investigation on forms furnished by the director.

(2) The police department of a city or village, the police department of a township, the sheriff's department of a county, the department of state police, and any other governmental law enforcement agency in the state may take 1 set of fingerprints of a person who is arrested for a misdemeanor punishable by imprisonment for not more than 92 days, or a fine of not more than \$1,000.00, or both, and who fails to produce satisfactory evidence of identification as required by section 1 of Act No. 44 of the Public Acts of 1961, being section 780.581 of the Michigan Compiled Laws. These fingerprints shall be forwarded to the department of state police immediately. Upon completion of the identification process by the department of state police, the fingerprints shall be returned to the arresting agency.

(3) The police department of a city or village, the police department of a township, the sheriff's department of a county, the department of state police, and any other governmental law enforcement agency in the state, upon the arrest of a person for a misdemeanor, may take the person's fingerprints on forms furnished by the commanding officer, but may not forward the fingerprints to the department unless the person is convicted of a misdemeanor.

(4) If a petition is not authorized for a juvenile accused of a juvenile offense or if a person arrested for having committed a felony or a misdemeanor is released without a charge made against him or her, the official taking or holding the person's fingerprints, arrest card, and description shall immediately return this information to the person without the necessity of a request. If this information is not returned, the person shall have the absolute right to demand and receive its return at any time after the person's release and without need to petition for court action. The local police agency shall notify the commanding officer in writing that no petition was authorized against the juvenile or that no charge was made against the arrested person if the juvenile's or arrested person's fingerprints were forwarded to the department.

(5) If a juvenile is adjudicated and found not to be within the provisions of section 2(a)(1) of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, or if an accused is found not guilty of the offense, the arrest card, the fingerprints, and description shall be returned to him or her by the official holding this information. If for any reason the official holding the information does not return the information within 60 days of the adjudication or the finding of not guilty, the accused shall have the right to obtain an order from the court having jurisdiction over the case for the return of the information. If the order of return is not complied with, the accused shall have the right to petition the juvenile division of the probate court of the county where the original petition was filed or the circuit court of the county where the original charge was made for a preemptory writ of mandamus to require issuance of the order of return. Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall notify the commanding officer of any finding of not guilty or not guilty by reason of insanity, dismissal, or nolle prosequi, if it appears that the accused was initially arrested for a felony or a misdemeanor punishable by imprisonment for more than 92 days or of any finding that a juvenile accused of a juvenile offense is not within the provisions of section 2(a)(1) of Act No. 288 of the Public Acts of 1939.

(6) Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall immediately advise the commanding officer of the final disposition of the arrest for which the accused was fingerprinted if a juvenile was adjudicated to have committed a juvenile offense or if the accused was convicted of a felony or a misdemeanor. With regard to any adjudication or conviction, the clerk shall transmit to the commanding officer information as to any adjudication or finding of guilty or guilty but mentally ill; any plea of guilty, nolo contendere, or guilty but mentally ill; the offense of which the accused was convicted; and a summary of any deposition or sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

(a) Section 7411 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7411 of the Michigan Compiled Laws.

(b) Sections 11 to 15 of chapter II of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 762.11 to 762.15 of the Michigan Compiled Laws.

(c) Section 4a of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.4a of the Michigan Compiled Laws.

(d) Section 350a(4) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.350a of the Michigan Compiled Laws.

(7) The commanding officer shall record the disposition of each charge and shall inform the director of the federal bureau of investigation of the final disposition of the felony or misdemeanor arrest.

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

(9) The provisions of this section requiring the return of the fingerprints, arrest card, and description shall not apply in the following cases:

(a) The person arrested was charged with the commission or attempted commission, or if the person arrested is a juvenile, was charged with an offense which if committed by an adult would constitute the commission or attempted commission, of a crime with or against a child under 16 years of age or the crime of criminal sexual conduct in any degree, rape, sodomy, gross indecency, indecent liberties, or child abusive commercial activities.

(b) The person arrested has a prior conviction other than a misdemeanor traffic offense, unless a judge of a court of record, except the probate court, by express order entered on the record, orders the return.

(10) Subsection (3) does not permit the forwarding to the department of the fingerprints of a person accused and convicted under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or under a local ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, unless the offense is punishable upon conviction by imprisonment for more than 92 days or is an offense which would be punishable by imprisonment for more than 92 days as a second conviction.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.