

# HOUSE BILL No. 4194

February 15, 1989, Introduced by Reps. Bandstra, Alley, Kosteva, Fitzgerald, Law, Hoekman, Bender, Varga and Pridnia and referred to the Committee on Judiciary.

A bill 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:

1       Section 1. Section 3 of Act No. 289 of the Public Acts of  
2 1925, as amended by Act No. 40 of the Public Acts of 1988, being  
3 section 28.243 of the Michigan Compiled Laws, is amended to read  
4 as follows:

5       Sec. 3. (1) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN  
6 SUBSECTION (2), THE police department of ~~each~~ A city or

1 village, ~~any duly constituted~~ THE police department of a  
2 township, the sheriff's department of ~~each~~ A county, the  
3 department of state police, and any other governmental law  
4 enforcement agency in the state, immediately upon the arrest of  
5 ~~any~~ A person for a felony or for a misdemeanor for which the  
6 maximum possible penalty exceeds 92 days imprisonment or a fine  
7 of \$500.00, or both, or for a juvenile offense, shall take the  
8 person's fingerprints in duplicate and forward the fingerprints  
9 to the department of state police within 72 hours ~~of~~ AFTER THE  
10 arrest. One set of fingerprints shall be sent to the division on  
11 forms furnished by the commanding officer, and 1 set of finger-  
12 prints shall be furnished to the director of the federal bureau  
13 of investigation on forms furnished by the director.

14 (2) THE FINGERPRINTING REQUIRED IN SUBSECTION (1) SHALL NOT  
15 BE MANDATORY IF THE ARREST IS FOR A VIOLATION OF 1 OF THE FOLLOW-  
16 ING ACTS AND CONSTITUTES A MISDEMEANOR:

17 (A) THE MICHIGAN SPORTSMEN FISHING LAW, ACT NO. 165 OF THE  
18 PUBLIC ACTS OF 1929, BEING SECTIONS 301.1 TO 306.3 OF THE  
19 MICHIGAN COMPILED LAWS.

20 (B) THE GAME LAW OF 1929, ACT NO. 286 OF THE PUBLIC ACTS OF  
21 1929, BEING SECTIONS 311.1 TO 315.5 OF THE MICHIGAN COMPILED  
22 LAWS.

23 (3) ~~(2)~~ The police department of ~~each~~ A city or village,  
24 ~~any duly constituted~~ THE police department of a township, the  
25 sheriff's department of ~~each~~ A county, the department of state  
26 police, and any other governmental law enforcement agency in the  
27 state may take 1 set of fingerprints of a person who is arrested

1 for a misdemeanor punishable by imprisonment for not more than 92  
2 days, or a fine of not more than \$500.00, or both, and who fails  
3 to produce satisfactory evidence of identification as required by  
4 section 1 of Act No. 44 of the Public Acts of 1961, being section  
5 780.581 of the Michigan Compiled Laws. These fingerprints shall  
6 be forwarded to the department of state police immediately. Upon  
7 completion of the identification process by the department of  
8 state police, the fingerprints shall be returned to the arresting  
9 agency.

10 (4) ~~(3)~~ The police department of ~~each~~ A city or village,  
11 ~~any duly constituted~~ THE police department of a township, the  
12 sheriff's department of ~~each~~ A county, the department of state  
13 police, and any other governmental law enforcement agency in the  
14 state, upon the arrest of a person for a misdemeanor, may take  
15 the person's fingerprints on forms furnished by the commanding  
16 officer, but may not forward the fingerprints to the department  
17 unless the person is convicted of a misdemeanor.

18 (5) ~~(4)~~ If a petition is not authorized for a juvenile  
19 accused of a juvenile offense or if a person arrested for having  
20 committed a felony or a misdemeanor is released without a charge  
21 made against him or her, the official taking or holding the  
22 person's fingerprints, arrest card, and description shall immedi-  
23 ately return this information to the person without the necessity  
24 of a request. If this information is not returned, the person  
25 shall have the absolute right to demand and receive its return at  
26 any time after the person's release and without need to petition  
27 for court action. The local police agency shall notify the

1 commanding officer in writing that no petition was authorized  
2 against the juvenile or that no charge was made against the  
3 arrested person if the juvenile's or arrested person's finger-  
4 prints were forwarded to the department.

5       (6) ~~-(5)-~~ If a juvenile is adjudicated and found not to be  
6 within the provisions of section 2(a)(1) of Act No. 288 of the  
7 Public Acts of 1939, being section 712A.2 of the Michigan  
8 Compiled Laws, or if an accused is found not guilty of the  
9 offense, the arrest card, the fingerprints, and description shall  
10 be returned to him or her by the official holding this  
11 information. If for any reason the official holding the informa-  
12 tion does not return the information within 60 days of the adju-  
13 dication or the finding of not guilty, the accused shall have the  
14 right to obtain an order from the court having jurisdiction over  
15 the case for the return of the information. If the order of  
16 return is not complied with, the accused shall have the right to  
17 petition the juvenile division of the probate court of the county  
18 where the original petition was filed or the circuit court of the  
19 county where the original charge was made for a preemptory writ  
20 of mandamus to require issuance of the order of return. Upon  
21 final disposition of the charge against the accused, the clerk of  
22 the court entering the disposition shall notify the commanding  
23 officer of any finding of not guilty or not guilty by reason of  
24 insanity, dismissal, or nolle prosequi, if it appears that the  
25 accused was initially arrested for a felony or a misdemeanor pun-  
26 ishable by imprisonment for more than 92 days or of any finding  
27 that a juvenile accused of a juvenile offense is not within the

1 provisions of section 2(a)(1) of Act No. 288 of the Public Acts  
2 of 1939.

3       (7) ~~-(6)-~~ Upon final disposition of the charge against the  
4 accused, the clerk of the court entering the disposition shall  
5 immediately advise the commanding officer of the final disposi-  
6 tion of the arrest for which the accused was fingerprinted if a  
7 juvenile was adjudicated to have committed a juvenile offense or  
8 if the accused was convicted of a felony or a misdemeanor. With  
9 regard to any adjudication or conviction, the clerk shall trans-  
10 mit to the commanding officer information as to any adjudication  
11 or finding of guilty or guilty but mentally ill; any plea of  
12 guilty, nolo contendere, or guilty but mentally ill; the offense  
13 of which the accused was convicted; and a summary of any deposi-  
14 tion or sentence imposed. The summary of the sentence shall  
15 include any probationary term; any minimum, maximum, or alterna-  
16 tive term of imprisonment; the total of all fines, costs, and  
17 restitution ordered; and any modification of sentence. If the  
18 sentence is imposed under any of the following sections, the  
19 report shall so indicate: —

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

23       (b) Sections 11 to 15 of chapter II of the code of criminal  
24 procedure, Act No. 175 of the Public Acts of 1927, being sections  
25 762.11 to 762.15 of the Michigan Compiled Laws.

1 (c) Section 4a of chapter IX of the code of criminal  
2 procedure, Act No. 175 of the Public Acts of 1927, being section  
3 769.4a of the Michigan Compiled Laws.

4 (8) The commanding officer shall record the disposition of  
5 each charge and shall inform the director of the federal bureau  
6 of investigation of the final disposition of the felony or misde-  
7 meanor arrest.

8 (9) ~~-(7)-~~ The commanding officer shall compare the finger-  
9 prints and description received with those already on file and if  
10 the commanding officer finds that the person arrested has a crim-  
11 inal record, the commanding officer shall immediately inform the  
12 arresting agency and prosecuting attorney of this fact.

13 (10) ~~-(8)-~~ The provisions of this section requiring the  
14 return of the fingerprints, arrest card, and description shall  
15 not apply in the following cases:

16 (a) The person arrested was charged with the commission or  
17 attempted commission, or if THE PERSON ARRESTED IS a juvenile,  
18 was charged with an offense which ~~—~~ if committed by an adult  
19 ~~—~~ would ~~be a violation~~ CONSTITUTE THE COMMISSION or attempted  
20 ~~violation~~ COMMISSION, of a crime ~~—~~ with or against a child  
21 under 16 years of age ~~—~~ or the crime of criminal sexual conduct  
22 in any degree, rape, sodomy, gross indecency, indecent liberties,  
23 or child abusive commercial activities.

24 (b) The person arrested has a prior conviction ~~except~~  
25 OTHER THAN a misdemeanor traffic offense, unless a judge of a  
26 court of record, except the probate court, by express order  
27 entered on the record, orders the return.

1       (11) ~~-(9)-~~ Subsection ~~-(3)-~~ (4) does not permit the  
2 forwarding to the department of the fingerprints of a person  
3 accused and convicted under the Michigan vehicle code, Act  
4 No. 300 of the Public Acts of 1949, being sections 257.1 to  
5 257.923 of the Michigan Compiled Laws, or under a local ordinance  
6 substantially corresponding to ~~state law~~ A PROVISION OF ACT  
7 NO. 300 OF THE PUBLIC ACTS OF 1949, unless the offense is punish-  
8 able upon conviction by imprisonment for more than 92 days or is  
9 an offense which would be punishable by imprisonment for more  
10 than 92 days as a second conviction.