

HOUSE BILL No. 5995

March 24, 2010, Introduced by Rep. Sheltroun 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 2004 PA 222.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsection (3), immediately
2 upon the arrest of a person for a felony or for a misdemeanor
3 violation of state law for which the maximum possible penalty
4 exceeds 92 days' imprisonment or a fine of \$1,000.00, or both, 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

1 criminal contempt for a violation of a foreign protection order
2 that satisfies the conditions for validity provided in section
3 2950i of the revised judicature act of 1961, 1961 PA 236, MCL
4 600.2950i, or for a juvenile offense, other than a juvenile offense
5 for which the maximum possible penalty does not exceed 92 days'
6 imprisonment or a fine of \$1,000.00, or both, the arresting law
7 enforcement agency in this state shall take the person's
8 fingerprints and forward the fingerprints to the department within
9 72 hours after the arrest. The fingerprints shall be sent to the
10 department on forms furnished by or in a manner prescribed by the
11 department, and the department shall forward the fingerprints to
12 the director of the federal bureau of investigation on forms
13 furnished by or in a manner prescribed by the director.

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

1 state law that is a misdemeanor for which the maximum possible term
2 of imprisonment is 93 days. If the person is convicted of any
3 violation, the law enforcement agency shall take the person's
4 fingerprints before sentencing if not previously taken. The court
5 shall forward to the law enforcement agency a copy of the
6 disposition of conviction, and the law enforcement agency shall
7 forward the person's fingerprints and the copy of the disposition
8 of conviction to the department within 72 hours after receiving the
9 disposition of conviction in the same manner as provided in
10 subsection (1). If the person is convicted of violating a local
11 ordinance, the law enforcement agency shall indicate on the form
12 sent to the department the statutory citation for the state law to
13 which the 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 904(3)(a)
17 of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local
18 ordinance substantially corresponding to section 904(3)(a) of the
19 Michigan vehicle code, 1949 PA 300, MCL 257.904.

20 (4) The arresting law enforcement agency may take 1 set of
21 fingerprints of a person who is arrested for a misdemeanor
22 punishable by imprisonment for not more than 92 days or a fine of
23 not more than \$1,000.00, or both, and who fails to produce
24 satisfactory evidence of identification as required by section 1 of
25 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded to
26 the department immediately. Upon completion of the identification
27 process by the department, the fingerprints shall be destroyed.

1 (5) An arresting law enforcement agency in this state may take
2 the person's fingerprints on forms furnished by the commanding
3 officer upon an arrest for a misdemeanor other than a misdemeanor
4 described in subsection (1), (2), or (4), and may forward the
5 fingerprints to the department.

6 (6) If a court orders the taking of fingerprints of a person
7 pursuant to section 11 or 18 of chapter XIIIA of the probate code of
8 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of
9 chapter IV or section 1 of chapter IX of the code of criminal
10 procedure, 1927 PA 175, MCL 764.29 and 769.1, the law enforcement
11 agency shall forward the fingerprints and arrest card to the
12 department.

13 (7) If a petition is not authorized for a juvenile accused of
14 a juvenile offense, if a person arrested for having committed an
15 offense for which he or she was fingerprinted under this section is
16 released without a charge made against him or her, or if criminal
17 contempt proceedings are not brought or criminal charges are not
18 made against a person arrested for criminal contempt for a personal
19 protection order violation under section 2950 or 2950a of the
20 revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
21 600.2950a, or criminal contempt for a violation of a foreign
22 protection order that meets the requirements for validity under
23 section 2950i of the revised judicature act of 1961, 1961 PA 236,
24 MCL 600.2950i, the official taking or holding the person's
25 fingerprints and arrest card shall immediately destroy the
26 fingerprints and arrest card. The law enforcement agency shall
27 notify the department in writing that a petition was not authorized

1 against the juvenile or that a charge was not made or that a
2 criminal contempt proceeding was not brought against the arrested
3 person if the juvenile's or arrested person's fingerprints were
4 forwarded to the department.

5 (8) If a juvenile is adjudicated and found not to be within
6 the provisions of section 2(a)(1) of chapter XIIIA of the probate
7 code of 1939, 1939 PA 288, MCL 712A.2, **OR SUCCESSFULLY COMPLETES A**
8 **PERIOD OF PROBATION RESULTING IN A DISMISSAL OF THE ALLEGED**
9 **JUVENILE OFFENSE** or if an accused is found not guilty of an offense
10 for which he or she was fingerprinted under this section, upon
11 final disposition of the charge against the accused or juvenile,
12 the fingerprints and arrest card shall be destroyed by the official
13 holding those items and the clerk of the court entering the
14 disposition shall notify the department of any finding of not
15 guilty or not guilty by reason of insanity, dismissal, or nolle
16 prosequi, if it appears that the accused was initially
17 fingerprinted under this section, or of any finding that a juvenile
18 alleged responsible for a juvenile offense is not within the
19 provisions of section 2(a)(1) of chapter XIIIA of the probate code
20 of 1939, 1939 PA 288, MCL 712A.2, **OR HAS HAD HIS OR HER ALLEGED**
21 **JUVENILE OFFENSE DISMISSED AFTER SUCCESSFULLY COMPLETING A PERIOD**
22 **OF PROBATION.**

23 (9) Upon final disposition of the charge against the accused,
24 the clerk of the court entering the disposition shall immediately
25 advise the department of the final disposition of the arrest for
26 which the person was fingerprinted if a juvenile was adjudicated to
27 have committed a juvenile offense or if the accused was convicted

1 of an offense for which he or she was fingerprinted under this
2 section or section 16a of chapter IX of the code of criminal
3 procedure, 1927 PA 175, MCL 769.16a. With regard to any
4 adjudication or conviction, the clerk shall transmit to the
5 department information as to any adjudication or finding of guilty
6 or guilty but mentally ill; any plea of guilty, nolo contendere, or
7 guilty but mentally ill; the offense of which the accused was
8 convicted; and a summary of any deposition or sentence imposed. The
9 summary of the sentence shall include any probationary term; any
10 minimum, maximum, or alternative term of imprisonment; the total of
11 all fines, costs, and restitution ordered; and any modification of
12 sentence. If the sentence is imposed under any of the following
13 sections, the report shall so indicate:

14 (a) Section 7411 of the public health code, 1978 PA 368, MCL
15 333.7411.

16 (b) Section 1076(4) of the revised judicature act of 1961,
17 1961 PA 236, MCL 600.1076.

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

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

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

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

26 (10) The department shall record the disposition of each
27 charge and shall inform the director of the federal bureau of

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

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

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

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

16 (b) Rape.

17 (c) Criminal sexual conduct in any degree.

18 (d) Sodomy.

19 (e) Gross indecency.

20 (f) Indecent liberties.

21 (g) Child abusive commercial activities.

22 (h) A person who has a prior conviction, other than a
23 misdemeanor traffic offense, unless a judge of a court of record,
24 except the probate court, by express order on the record, orders
25 the destruction or return of the fingerprints and arrest card.

26 (i) A person arrested who is a juvenile charged with an
27 offense that would constitute the commission or attempted

1 commission of any of the crimes in this subsection if committed by
2 an adult.

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