## **HOUSE BILL No. 5995**

March 24, 2010, Introduced by Rep. Sheltrown 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 XIIA 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 XIIA 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 XIIA 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 quilty 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.
- (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.
- (c) Criminal sexual conduct in any degree.
- **18** (d) Sodomy.
- 19 (e) Gross indecency.
- 20 (f) Indecent liberties.
- 21 (g) Child abusive commercial activities.
- (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.