



HOUSE BILL No. 5715

May 2, 2000, Introduced by Reps. Schauer, Basham, Jamnick, Gielegem, Dennis, Martinez, Hale, Pappageorge, Woodward and Jacobs and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1925 PA 289, entitled

"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,"

by amending section 3 (MCL 28.243), as amended by 1999 PA 266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsection (2), immedi-
2 ately upon the arrest of a person for a felony or for a misde-
3 meanor violation of state law for which the maximum possible pen-
4 alty exceeds 92 days' imprisonment or a fine of \$1,000.00, or
5 both, or for a juvenile offense, the arresting law enforcement
6 agency in this state shall take the person's fingerprints in
7 duplicate and forward the fingerprints to the department within
8 72 hours after the arrest. One set of fingerprints shall be sent

1 to the division on forms furnished by the commanding officer, and
2 1 set of fingerprints shall be furnished to the director of the
3 federal bureau of investigation on forms furnished by the
4 director. A person's fingerprints are not required to be taken
5 and forwarded to the department under this subsection solely
6 because he or she has been arrested for a violation of section
7 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL
8 257.904.

9 (2) A law enforcement agency shall take a person's finger-
10 prints under this subsection if the person is arrested for a mis-
11 demeanor violation of state law for which the maximum penalty is
12 93 days if the fingerprints have not previously been taken and
13 forwarded to the department under subsection (1). A law enforce-
14 ment agency shall take a person's fingerprints under this subsec-
15 tion if the person is arrested for a violation of a local ordi-
16 nance for which the maximum possible penalty is 93 days' impris-
17 onment and that substantially corresponds to a violation of state
18 law that is a misdemeanor for which the maximum possible term of
19 imprisonment is 93 days. If the person is convicted of any vio-
20 lation, the law enforcement agency shall take the person's fin-
21 gerprints before sentencing if not previously taken. The court
22 shall forward to the law enforcement agency a copy of the dispo-
23 sition of conviction, and the law enforcement agency shall for-
24 ward the person's fingerprints and the copy of the disposition of
25 conviction to the department within 72 hours after receiving the
26 disposition of conviction in the same manner as provided in
27 subsection (1). If the person is convicted of violating a local

1 ordinance, the law enforcement agency shall indicate on the form
2 sent to the division the statutory citation for the state law to
3 which the local ordinance substantially corresponds. A person's
4 fingerprints are not required to be taken and forwarded to the
5 department under this subsection solely because he or she has
6 been convicted of violating section 904(3)(a) of the Michigan
7 vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance sub-
8 stantially corresponding to section 904(3)(a) of the Michigan
9 vehicle code, 1949 PA 300, MCL 257.904.

10 (3) The arresting law enforcement agency may take 1 set of
11 fingerprints of a person who is arrested for a misdemeanor pun-
12 ishable by imprisonment for not more than 92 days or a fine of
13 not more than \$1,000.00, or both, and who fails to produce satis-
14 factory evidence of identification as required by section 1 of
15 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
16 to the department immediately. Upon completion of the identifi-
17 cation process by the department, the fingerprints shall be
18 returned to the arresting law enforcement agency.

19 (4) An arresting law enforcement agency in the state may
20 take the person's fingerprints on forms furnished by the command-
21 ing officer upon an arrest for a misdemeanor other than a misde-
22 meanor described in subsection (1), (2), or (3), but may not for-
23 ward the fingerprints to the department unless the person is con-
24 victed of a misdemeanor.

25 (5) UPON ENTRY OF A PLEA OF GUILTY, NOLO CONTENDERE, OR
26 GUILTY BUT MENTALLY ILL TO A MISDEMEANOR PUNISHABLE BY
27 IMPRISONMENT FOR NOT MORE THAN 92 DAYS OR A FINE OF NOT MORE THAN

1 \$1,000.00, OR BOTH, PURSUANT TO A PLEA BARGAIN UNDER WHICH AN
2 ORIGINAL CHARGE OF CRIMINAL SEXUAL CONDUCT IS DISMISSED AS
3 DESCRIBED IN SECTION 520N OF THE MICHIGAN PENAL CODE, 1931 PA
4 328, MCL 750.520N, THE COURT SHALL ORDER THAT THE PERSON'S FIN-
5 GERPRINTS BE TAKEN AND FORWARDED IN THE SAME MANNER AS DESCRIBED
6 IN SUBSECTION (1).

7 (6) ~~—(5)—~~ If a petition is not authorized for a juvenile
8 accused of a juvenile offense or if a person arrested for having
9 committed a felony or a misdemeanor is released without a charge
10 made against him or her, the official taking or holding the
11 person's fingerprints, arrest card, and description shall immedi-
12 ately return this information to the person without the necessity
13 of a request. If this information is not returned, the person
14 has the absolute right to demand and receive its return at any
15 time after the person's release and without need to petition for
16 court action. The law enforcement agency shall notify the com-
17 manding officer in writing that no petition was authorized
18 against the juvenile or that no charge was made against the
19 arrested person if the juvenile's or arrested person's finger-
20 prints were forwarded to the department.

21 (7) ~~—(6)—~~ If a juvenile is adjudicated and found not to be
22 within the provisions of section 2(a)(1) of chapter XIIA of the
23 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused
24 is found not guilty of the offense, the arrest card, the finger-
25 prints, and description shall be returned to him or her by the
26 official holding this information. If for any reason the
27 official holding the information does not return the information

1 within 60 days of the adjudication or the finding of not guilty,
2 the accused or juvenile has the right to obtain an order from the
3 court having jurisdiction over the case for the return of the
4 information. If the order of return is not complied with, the
5 accused or juvenile has the right to petition the family division
6 of circuit court of the county where the original petition was
7 filed or the circuit court of the county where the original
8 charge was made for a preemptory writ of mandamus to require
9 issuance of the order of return. Upon final disposition of the
10 charge against the accused, the clerk of the court entering the
11 disposition shall notify the commanding officer of any finding of
12 not guilty or not guilty by reason of insanity, dismissal, or
13 nolle prosequi, if it appears that the accused was initially
14 arrested for a felony or a misdemeanor punishable by imprisonment
15 for more than 92 days or of any finding that a juvenile alleged
16 responsible for a juvenile offense is not within the provisions
17 of section 2(a)(1) of chapter XIIIA of the probate code of 1939,
18 1939 PA 288, MCL 712A.2.

19 (8) ~~(7)~~ Upon final disposition of the charge against the
20 accused, the clerk of the court entering the disposition shall
21 immediately advise the commanding officer of the final disposi-
22 tion of the arrest for which the person was fingerprinted if a
23 juvenile was adjudicated to have committed a juvenile offense or
24 if the accused was convicted of a felony or a misdemeanor. With
25 regard to any adjudication or conviction, the clerk shall trans-
26 mit to the commanding officer information as to any adjudication
27 or finding of guilty or guilty but mentally ill; any plea of

1 guilty, nolo contendere, or guilty but mentally ill; the offense
2 of which the accused was convicted; and a summary of any deposi-
3 tion or sentence imposed. The summary of the sentence shall
4 include any probationary term; any minimum, maximum, or alterna-
5 tive term of imprisonment; the total of all fines, costs, and
6 restitution ordered; and any modification of sentence. If the
7 sentence is imposed under any of the following sections, the
8 report shall so indicate:

9 (a) Section 7411 of the public health code, 1978 PA 368, MCL
10 333.7411.

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

13 (c) Section 4a of chapter IX of the code of criminal proce-
14 dure, 1927 PA 175, MCL 769.4a.

15 (d) Section 350a(4) of the Michigan penal code, 1931 PA 328,
16 MCL 750.350a.

17 (9) ~~-(8)-~~ The commanding officer shall record the disposi-
18 tion of each charge and shall inform the director of the federal
19 bureau of investigation of the final disposition of the felony or
20 misdemeanor arrest.

21 (10) ~~-(9)-~~ The commanding officer shall compare the finger-
22 prints and description received with those already on file and if
23 the commanding officer finds that the person arrested has a crim-
24 inal record, the commanding officer shall immediately inform the
25 arresting agency and prosecuting attorney of this fact.

1 (11) ~~(10)~~ The provisions of this section requiring the
2 return of the fingerprints, arrest card, and description do not
3 apply in the following cases:

4 (a) The person arrested was charged with the commission or
5 attempted commission, or if the person arrested is a juvenile
6 alleged to have committed an offense that if committed by an
7 adult would constitute the commission or attempted commission, of
8 a crime with or against a child under 16 years of age or the
9 crime of criminal sexual conduct in any degree, rape, sodomy,
10 gross indecency, indecent liberties, or child sexually abusive
11 activities or materials.

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

16 (12) ~~(11)~~ Subsection (4) does not permit the forwarding to
17 the department of the fingerprints of a person accused and con-
18 victed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
19 257.923, or a local ordinance substantially corresponding to a
20 provision of that act, unless the offense is punishable upon con-
21 viction by imprisonment for more than 92 days or is an offense
22 that is punishable by imprisonment for more than 92 days upon a
23 subsequent conviction.

24 (13) ~~(12)~~ As used in this section:

25 (a) "Department" means the department of state police.

26 (b) "Law enforcement agency" means the police department of
27 a city, township, or village, the sheriff's department of a

1 county, the department, or any other governmental law enforcement
2 agency of this state.

3 Enacting section 1. This amendatory act does not take
4 effect unless Senate Bill No. _____ or House Bill No. 5714
5 (request no. 03816'99) of the 90th Legislature is enacted into
6 law.