



HOUSE BILL No. 5939

September 26, 2000, Introduced by Rep. Patterson 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 the title and sections 1, 1a, 2, 3, and 3a (MCL 28.241, 28.241a, 28.242, 28.243, and 28.243a), the title and sections 1 and 2 as amended by 1988 PA 40, section 1a as amended by 1996 PA 259, section 3 as amended by 1999 PA 266, and section 3a as amended by 1986 PA 231, and by adding section 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

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An act to create a ~~bureau of~~ criminal identification and records DIVISION within the department of state police; to require peace officers, persons in charge of certain

1 institutions, and others to make reports respecting juvenile
2 offenses, crimes, and criminals to the state police; to require
3 the fingerprinting of an accused by certain persons; and to pro-
4 vide penalties AND REMEDIES for A violation of this act.

5 Sec. 1. The ~~central records division of the~~ department of
6 state police ~~shall be~~ IS responsible for criminal and juvenile
7 identification and records. The ~~division~~ DEPARTMENT shall be
8 supplied with the necessary apparatus and materials for collect-
9 ing, filing, and preserving criminal and juvenile records filed
10 with the ~~division~~ DEPARTMENT.

11 Sec. 1a. As used in this act:

12 (A) "ARREST CARD" MEANS A PAPER FORM OR AN ELECTRONIC FORMAT
13 PRESCRIBED BY THE DEPARTMENT THAT FACILITATES COLLECTING AND COM-
14 PILING CRIMINAL AND JUVENILE ARREST HISTORY RECORD INFORMATION,
15 INCLUDING FINGERPRINT IMAGES.

16 (B) ~~(a)~~ "Commanding officer" means the department of state
17 police employee in charge of the ~~central records division~~
18 CRIMINAL JUSTICE INFORMATION CENTER OR ITS SUCCESSOR ADMINISTRA-
19 TIVE UNIT.

20 (C) ~~(b)~~ "Criminal history record information" means name;
21 date of birth; fingerprints; photographs, if available; personal
22 descriptions ~~,~~ including ~~physical measurements,~~ identifying
23 marks, scars, amputations, and tattoos; aliases and prior names;
24 social security ~~and~~ NUMBER, driver's license ~~numbers~~ NUMBER
25 and other identifying numbers; and information on misdemeanor
26 ARRESTS AND convictions and felony arrests and convictions.

1 (D) ~~(c)~~ "Division" "DEPARTMENT" means the ~~central records~~
2 ~~division of the~~ department of state police.

3 (E) ~~(d)~~ "Felony" means a violation of a penal law of this
4 state for which the offender may be punished by imprisonment for
5 more than 1 year or an offense expressly designated by law to be
6 a felony.

7 (F) "FINGERPRINT IMPRESSIONS" MEANS FINGERPRINT IMAGES
8 RECORDED IN A MANNER PRESCRIBED BY THE DEPARTMENT.

9 (G) ~~(e)~~ "Juvenile history record information" means name;
10 date of birth; fingerprints; photographs, if available; personal
11 descriptions ~~,~~ including ~~physical measurements~~ identifying
12 marks, scars, amputations, and tattoos; aliases and prior names;
13 social security ~~and~~ NUMBER, driver's license ~~numbers~~ NUMBER
14 and other identifying numbers; and information on juvenile
15 offense arrests and adjudications OR CONVICTIONS.

16 (H) ~~(f)~~ "Juvenile offense" means an offense committed by a
17 juvenile that, if committed by an adult, would be a ~~violation or~~
18 ~~an attempted violation of section 72, 83, 84, 86, 88, 89, 91,~~
19 ~~110, 110a(2), 186a, 316, 317, 349, 360, 413, 520b, 520c, 520d,~~
20 ~~520g, 529, 529a, 530, or 531 of the Michigan penal code, Act~~
21 ~~No. 328 of the Public Acts of 1931, being sections 750.72,~~
22 ~~750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110,~~
23 ~~750.110a, 750.186a, 750.316, 750.317, 750.349, 750.360, 750.413,~~
24 ~~750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a,~~
25 ~~750.530, and 750.531 of the Michigan Compiled Laws, or~~
26 ~~section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code,~~
27 ~~Act No. 368 of the Public Acts of 1978, being sections 333.7401~~

1 and ~~333.7403~~ of the Michigan Compiled Laws FELONY OR A
2 MISDEMEANOR.

3 (I) "LAW ENFORCEMENT AGENCY" MEANS THE POLICE DEPARTMENT OF
4 A CITY, TOWNSHIP, OR VILLAGE, THE SHERIFF'S DEPARTMENT OF A
5 COUNTY, THE DEPARTMENT, OR ANY OTHER GOVERNMENTAL LAW ENFORCEMENT
6 AGENCY OF THIS STATE.

7 (J) ~~(g)~~ "Misdemeanor" means either of the following:

8 (i) A violation of a penal law of this state that is not a
9 felony or a violation of an order, rule, or regulation of a state
10 agency that is punishable by imprisonment or a fine that is not a
11 civil fine.

12 (ii) A violation of a local ordinance that substantially
13 corresponds to state law AND THAT IS NOT A CIVIL INFRACTION.

14 Sec. 2. (1) The commanding officer ~~of the division~~ shall
15 procure and file for purposes of criminal identification criminal
16 history record information on all persons who have been convicted
17 within ~~the~~ THIS state of EITHER a felony or a misdemeanor. ~~—~~
18 ~~or both.~~ The commanding officer ~~of the division~~ shall procure
19 and file for purposes of juvenile identification juvenile history
20 record information on all juveniles who have been adjudicated to
21 have committed a juvenile offense within ~~the~~ THIS state.

22 (2) The commanding officer shall provide all reporting offi-
23 cials with forms OR PRESCRIBE THE FORMAT, numerical identifiers,
24 and instructions which specify ~~in detail the nature of~~ the
25 information required, the time it is to be forwarded, the method
26 of classifying, and other matters to facilitate criminal and
27 juvenile history record information collection and compilation.

1 (3) The commanding officer shall file the fingerprint
2 impressions and photographs, if available, of all persons con-
3 fined in a prison or other state correctional facility.

4 (4) THE COMMANDING OFFICER SHALL PROVIDE ACCESS TO CRIMINAL
5 HISTORY RECORD INFORMATION AND JUVENILE HISTORY RECORD INFORMA-
6 TION, AS PRESCRIBED BY THE DEPARTMENT AND AS AUTHORIZED BY LAW.

7 (5) A COPY OF AN ARREST CARD SHALL BE FORWARDED TO THE FED-
8 ERAL BUREAU OF INVESTIGATION.

9 Sec. 3. (1) Except as provided in subsection ~~(2)~~ (3),
10 immediately upon the arrest of a person for a felony or for a
11 misdemeanor violation of state law for which the maximum possible
12 penalty exceeds 92 days' imprisonment or a fine of \$1,000.00, or
13 both, or for a juvenile offense, OTHER THAN A JUVENILE OFFENSE
14 FOR WHICH THE MAXIMUM POSSIBLE PENALTY DOES NOT EXCEED 92 DAYS'
15 IMPRISONMENT OR A FINE OF \$1,000.00, OR BOTH, the arresting law
16 enforcement agency in this state shall take the person's finger-
17 prints in duplicate and forward the fingerprints to the depart-
18 ment within 72 hours after the arrest. One set of fingerprints
19 shall be sent to the ~~division~~ DEPARTMENT on forms furnished by
20 OR IN A MANNER PRESCRIBED BY the ~~commanding officer~~ DEPARTMENT,
21 and 1 set of fingerprints shall be furnished to the director of
22 the federal bureau of investigation on forms furnished by OR IN A
23 MANNER PRESCRIBED BY the director. ~~A person's fingerprints are~~
24 ~~not required to be taken and forwarded to the department under~~
25 ~~this subsection solely because he or she has been arrested for a~~
26 ~~violation of section 904(3)(a) of the Michigan vehicle code, 1949~~
27 ~~PA 300, MCL 257.904.~~

1 (2) ~~A law enforcement agency shall take a person's~~
2 ~~fingerprints under this subsection if the person is arrested for~~
3 ~~a misdemeanor violation of state law for which the maximum pen-~~
4 ~~alty is 93 days if the fingerprints have not previously been~~
5 ~~taken and forwarded to the department under subsection (1).~~ A
6 law enforcement agency shall take a person's fingerprints ~~under~~
7 ~~this subsection~~ if the person is arrested for a violation of a
8 local ordinance for which the maximum possible penalty is 93
9 days' imprisonment and that substantially corresponds to a viola-
10 tion of state law that is a misdemeanor for which the maximum
11 possible term of imprisonment is 93 days. If the person is con-
12 victed of any violation, the law enforcement agency shall take
13 the person's fingerprints before sentencing if not previously
14 taken. The court shall forward to the law enforcement agency a
15 copy of the disposition of conviction, and the law enforcement
16 agency shall forward the person's fingerprints and the copy of
17 the disposition of conviction to the department within 72 hours
18 after receiving the disposition of conviction in the same manner
19 as provided in subsection (1). If the person is convicted of
20 violating a local ordinance, the law enforcement agency shall
21 indicate on the form sent to the ~~division~~ DEPARTMENT the statu-
22 tory citation for the state law to which the local ordinance sub-
23 stantially corresponds.

24 (3) A person's fingerprints are not required to be taken and
25 forwarded to the department under this subsection solely because
26 he or she has been convicted of violating section 904(3)(a) of
27 the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local

1 ordinance substantially corresponding to section 904(3)(a) of the
2 Michigan vehicle code, 1949 PA 300, MCL 257.904.

3 (4) ~~(3)~~ The arresting law enforcement agency may take 1
4 set of fingerprints of a person who is arrested for a misdemeanor
5 punishable by imprisonment for not more than 92 days or a fine of
6 not more than \$1,000.00, or both, and who fails to produce satis-
7 factory evidence of identification as required by section 1 of
8 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
9 to the department immediately. Upon completion of the identifi-
10 cation process by the department, the fingerprints shall be
11 ~~returned to the arresting law enforcement agency~~ DESTROYED.

12 (5) ~~(4)~~ An arresting law enforcement agency in ~~the~~ THIS
13 state may take the person's fingerprints on forms furnished by
14 the commanding officer upon an arrest for a misdemeanor other
15 than a misdemeanor described in subsection (1), (2), or ~~(3)~~
16 (4), ~~but~~ AND may ~~not~~ forward the fingerprints to the
17 department. ~~unless the person is convicted of a misdemeanor.~~

18 (6) IF A COURT ORDERS THE TAKING OF FINGERPRINTS OF A PERSON
19 PURSUANT TO SECTION 11 OR 18 OF CHAPTER XIIIA OF THE PROBATE CODE
20 OF 1939, 1939 PA 288, MCL 712A.11 AND 712A.18, OR SECTION 29 OF
21 CHAPTER IV OR SECTION 1 OF CHAPTER IX OF THE CODE OF CRIMINAL
22 PROCEDURE, 1927 PA 175, MCL 764.29 AND 769.1, THE LAW ENFORCEMENT
23 AGENCY SHALL FORWARD THE FINGERPRINTS AND ARREST CARD TO THE
24 DEPARTMENT.

25 (7) ~~(5)~~ If a petition is not authorized for a juvenile
26 accused of a juvenile offense or if a person arrested for having
27 committed a felony or a misdemeanor is released without a charge

1 made against him or her, the official taking or holding the
 2 person's fingerprints ~~, AND arrest card , and description~~
 3 shall immediately ~~return this information to the person without~~
 4 ~~the necessity of a request. If this information is not returned,~~
 5 ~~the person has the absolute right to demand and receive its~~
 6 ~~return at any time after the person's release and without need to~~
 7 ~~petition for court action~~ DESTROY THE FINGERPRINTS AND ARREST
 8 CARD. The law enforcement agency shall notify the ~~commanding~~
 9 ~~officer~~ DEPARTMENT in writing that ~~no~~ A petition was NOT
 10 authorized against the juvenile or that ~~no~~ A charge was NOT
 11 made against the arrested person if the juvenile's or arrested
 12 person's fingerprints were forwarded to the department.

13 (8) ~~(6)~~ If a juvenile is adjudicated and found not to be
 14 within the provisions of section 2(a)(1) of chapter XIIIA of the
 15 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused
 16 is found not guilty of the offense, ~~the arrest card,~~ the fin-
 17 gerprints ~~, and description~~ THE ARREST CARD shall be
 18 ~~returned to him or her~~ DESTROYED by the official holding this
 19 information. If for any reason the official holding the informa-
 20 tion does not ~~return~~ DESTROY the information within 60 days of
 21 the adjudication or the finding of not guilty, the accused or
 22 juvenile has the right to obtain an order from the court having
 23 jurisdiction over the case for the return of the information. If
 24 the order of return is not complied with, the accused or juvenile
 25 has the right to petition the family division of circuit court of
 26 the county where the original petition was filed or the circuit
 27 court of the county where the original charge was made for a

1 preemptory writ of mandamus to require issuance of the order of
2 return. Upon final disposition of the charge against the
3 accused, the clerk of the court entering the disposition shall
4 notify the ~~commanding officer~~ DEPARTMENT of any finding of not
5 guilty or not guilty by reason of insanity, dismissal, or nolle
6 prosequi, if it appears that the accused was initially ~~arrested~~
7 FINGERPRINTED for a felony or a misdemeanor ~~punishable by~~
8 ~~imprisonment for more than 92 days~~ or of any finding that a
9 juvenile alleged responsible for a juvenile offense is not within
10 the provisions of section 2(a)(1) of chapter XIIA of the probate
11 code of 1939, 1939 PA 288, MCL 712A.2.

12 (9) ~~(7)~~ Upon final disposition of the charge against the
13 accused, the clerk of the court entering the disposition shall
14 immediately advise the ~~commanding officer~~ DEPARTMENT of the
15 final disposition of the arrest for which the person was finger-
16 printed if a juvenile was adjudicated to have committed a juve-
17 nile offense or if the accused was convicted of a felony or a
18 misdemeanor. With regard to any adjudication or conviction, the
19 clerk shall transmit to the commanding officer information as to
20 any adjudication or finding of guilty or guilty but mentally ill;
21 any plea of guilty, nolo contendere, or guilty but mentally ill;
22 the offense of which the accused was convicted; and a summary of
23 any deposition or sentence imposed. The summary of the sentence
24 shall include any probationary term; any minimum, maximum, or
25 alternative term of imprisonment; the total of all fines, costs,
26 and restitution ordered; and any modification of sentence. If

1 the sentence is imposed under any of the following sections, the
2 report shall so indicate:

3 (a) Section 7411 of the public health code, 1978 PA 368, MCL
4 333.7411.

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

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

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

11 (10) ~~(8)~~ The ~~commanding officer~~ DEPARTMENT shall record
12 the disposition of each charge and shall inform the director of
13 the federal bureau of investigation of the final disposition of
14 the felony or misdemeanor arrest.

15 (11) ~~(9)~~ The ~~commanding officer~~ DEPARTMENT shall compare
16 the fingerprints and description received with those already on
17 file and if the ~~commanding officer~~ DEPARTMENT finds that the
18 person arrested has a criminal record, the ~~commanding officer~~
19 DEPARTMENT shall immediately inform the arresting agency and
20 prosecuting attorney of this fact.

21 ~~(10) The provisions of this section requiring the return of~~
22 ~~the fingerprints, arrest card, and description do not apply in~~
23 ~~the following cases:~~

24 ~~(a) The person arrested was charged with the commission or~~
25 ~~attempted commission, or if the person arrested is a juvenile~~
26 ~~alleged to have committed an offense that if committed by an~~
27 ~~adult would constitute the commission or attempted commission, of~~

1 ~~a crime with or against a child under 16 years of age or the~~
2 ~~crime of criminal sexual conduct in any degree, rape, sodomy,~~
3 ~~gross indecency, indecent liberties, or child sexually abusive~~
4 ~~activities or materials.~~

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

9 (12) AFTER NOTICE TO THE PROSECUTING ATTORNEY AND AN OPPOR-
10 TUNITY TO BE HEARD, A JUDGE OF A COURT OF RECORD MAY BY AN
11 EXPRESS ORDER ENTERED ON THE RECORD, BEFORE ARRAIGNMENT IN CIR-
12 CUIT COURT, ORDER THE DESTRUCTION OF THE PERSON'S FINGERPRINTS.
13 THE PROVISIONS OF THIS SECTION REQUIRING THE DESTRUCTION OF FIN-
14 GERPRINTS AND ARREST CARDS DO NOT APPLY TO THE FOLLOWING:

15 (A) IF THE PERSON ARRESTED WAS CHARGED WITH THE COMMISSION
16 OR ATTEMPTED COMMISSION, OR, IF THE PERSON ARRESTED IS A JUVE-
17 NILE, WAS CHARGED WITH AN OFFENSE WHICH IF COMMITTED BY AN ADULT
18 WOULD CONSTITUTE THE COMMISSION OR ATTEMPTED COMMISSION, OF A
19 CRIME WITH OR AGAINST A CHILD UNDER 16 YEARS OF AGE OR THE CRIME
20 OF CRIMINAL SEXUAL CONDUCT IN ANY DEGREE, RAPE, SODOMY, GROSS
21 INDECENCY, INDECENT LIBERTIES, OR CHILD ABUSIVE COMMERCIAL
22 ACTIVITIES.

23 (B) IF THE PERSON ARRESTED HAS A PRIOR CONVICTION OTHER THAN
24 A MISDEMEANOR TRAFFIC OFFENSE.

25 (13) A FINGERPRINT OR ARREST CARD RECEIVED BY THE DEPARTMENT
26 AND REQUIRED TO BE RETURNED TO AN INDIVIDUAL BEFORE THE EFFECTIVE

1 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION SHALL BE
2 DESTROYED BY THE DEPARTMENT.

3 (14) ~~(11)~~ Subsection ~~(4)~~ (5) does not permit the for-
4 warding to the department of the fingerprints of a person accused
5 and convicted under the Michigan vehicle code, 1949 PA 300, MCL
6 257.1 to 257.923, or a local ordinance substantially correspond-
7 ing to a provision of that act, unless the offense is punishable
8 upon conviction by imprisonment for more than 92 days or is an
9 offense that is punishable by imprisonment for more than 92 days
10 upon a subsequent conviction.

11 ~~(12) As used in this section:~~

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

13 ~~(b) "Law enforcement agency" means the police department of~~
14 ~~a city, township, or village, the sheriff's department of a~~
15 ~~county, the department, or any other governmental law enforcement~~
16 ~~agency of this state.~~

17 Sec. 3a. (1) ~~Any person required to have his or her fin-~~
18 ~~gerprints taken under section 3 who refuses to allow or resists~~
19 ~~the taking of his or her fingerprints is guilty of a~~
20 ~~misdemeanor. Such person must be advised that his or her refusal~~
21 ~~constitutes a misdemeanor. A PERSON SHALL NOT REFUSE TO ALLOW OR~~
22 ~~RESIST THE TAKING OF HIS OR HER FINGERPRINTS IF AUTHORIZED OR~~
23 ~~REQUIRED UNDER THIS ACT.~~

24 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A MIS-
25 ~~DEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 92 DAYS OR~~
26 ~~BY A FINE OF NOT MORE THAN \$500.00, OR BOTH.~~

1 SEC. 8. FINGERPRINT IMPRESSIONS OBTAINED UNDER A LAW OR
2 RULE FOR NONCRIMINAL IDENTIFICATION PURPOSES MAY BE USED FOR
3 CRIMINAL IDENTIFICATION PURPOSES UNLESS PROHIBITED BY LAW OR
4 RULE.

5 Enacting section 1. This amendatory act does not take
6 effect unless Senate Bill No. _____ or House Bill No. 5946
7 (request no. 01197'99 a) of the 90th Legislature is enacted into
8 law.