

SUBSTITUTE FOR
HOUSE BILL NO. 5531

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 1989 PA 97.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) ~~The police department of a city or village,~~
2 ~~the police department of a township, the sheriff's department of~~
3 ~~a county, the department of state police, and any other govern-~~
4 ~~mental law enforcement agency in the state, immediately upon the~~
5 ~~arrest of a~~ EXCEPT AS PROVIDED IN THIS SUBSECTION, ANY LAW
6 ENFORCEMENT AGENCY IN THE STATE SHALL TAKE A PERSON'S
7 FINGERPRINTS IMMEDIATELY UPON THE ARREST OF THE person for a
8 felony or for a misdemeanor for which the maximum possible

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1 penalty exceeds 92 days imprisonment or a fine of \$1,000.00, or
2 both, or for a juvenile offense. ~~—~~ THE LAW ENFORCEMENT AGENCY
3 shall take the person's fingerprints in duplicate and forward the
4 fingerprints to the department ~~of state police~~ within 72 hours
5 after the arrest. One set of fingerprints shall be sent to the
6 division on forms furnished by the commanding officer, and 1 set
7 of fingerprints shall be furnished to the director of the federal
8 bureau of investigation on forms furnished by the director. THE
9 LAW ENFORCEMENT AGENCY MAY TAKE A PERSON'S FINGERPRINTS UPON THE
10 ARREST OF THE PERSON FOR A MISDEMEANOR THAT IS A VIOLATION OF A
11 LOCAL ORDINANCE FOR WHICH THE MAXIMUM POSSIBLE PENALTY EXCEEDS 92
12 DAYS' IMPRISONMENT AND THAT SUBSTANTIALLY CORRESPONDS TO A VIOLA-
13 TION OF STATE LAW THAT IS A MISDEMEANOR FOR WHICH THE MAXIMUM
14 POSSIBLE TERM OF IMPRISONMENT IS 93 DAYS BUT SHALL NOT FORWARD
15 THEM TO THE DEPARTMENT BEFORE CONVICTION. IF THE PERSON IS CON-
16 VICTED OF A MISDEMEANOR THAT IS A VIOLATION OF A LOCAL ORDINANCE
17 FOR WHICH THE MAXIMUM POSSIBLE PENALTY EXCEEDS 92 DAYS' IMPRISON-
18 MENT AND THAT SUBSTANTIALLY CORRESPONDS TO A VIOLATION OF STATE
19 LAW THAT IS A MISDEMEANOR FOR WHICH THE MAXIMUM POSSIBLE TERM OF
20 IMPRISONMENT IS 93 DAYS, THE LAW ENFORCEMENT AGENCY SHALL TAKE
21 THE PERSON'S FINGERPRINTS IF NOT PREVIOUSLY TAKEN UNDER THIS SUB-
22 SECTION AND FORWARD THEM WITHIN 72 HOURS AFTER ENTRY OF THE CON-
23 VICTION IN THE SAME MANNER AS PROVIDED IN THIS SUBSECTION.

24 (2) ~~The police department of a city or village, the police~~
25 ~~department of a township, the sheriff's department of a county,~~
26 ~~the department of state police, and any other governmental~~ ANY
27 law enforcement agency ~~in the state~~ may take 1 set of

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1 fingerprints of a person who is arrested for a misdemeanor
2 punishable by imprisonment for not more than 92 days ~~—~~ or a
3 fine of not more than \$1,000.00, or both, and who fails to
4 produce satisfactory evidence of identification as required by
5 section 1 of ~~Act No. 44 of the Public Acts of 1961, being sec-~~
6 ~~tion 780.581 of the Michigan Compiled Laws 1961 PA 44, MCL~~
7 780.581. These fingerprints shall be forwarded to the department
8 ~~of state police~~ immediately. Upon completion of the identifi-
9 cation process by the department, ~~of state police,~~ the finger-
10 prints shall be returned to the arresting LAW ENFORCEMENT
11 agency.

12 (3) ~~The police department of a city or village, the police~~
13 ~~department of a township, the sheriff's department of a county,~~
14 ~~the department of state police, and any other governmental-~~
15 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1), ANY law enforce-
16 ment agency ~~in the state, upon the arrest of a person for a~~
17 ~~misdemeanor,~~ may take ~~the~~ A person's fingerprints on forms
18 furnished by the commanding officer ~~, but may~~ UPON THE ARREST
19 OF THE PERSON FOR A MISDEMEANOR. HOWEVER, THE LAW ENFORCEMENT
20 AGENCY SHALL not forward the fingerprints to the department
21 unless the person is convicted of a misdemeanor.

22 (4) If a petition is not authorized for a juvenile accused
23 of a juvenile offense or if a person arrested for having commit-
24 ted a felony or a misdemeanor is released without a charge made
25 against him or her, the official taking or holding the person's
26 fingerprints, arrest card, and description shall immediately
27 return this information to the person without the necessity of a

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1 request. If this information is not returned, the person shall
2 have the absolute right to demand and receive its return at any
3 time after the person's release and without need to petition for
4 court action. The local ~~police~~ LAW ENFORCEMENT agency shall
5 notify the commanding officer in writing that no petition was
6 authorized against the juvenile or that no charge was made
7 against the arrested person if the juvenile's or arrested
8 person's fingerprints were forwarded to the department.

9 (5) If a juvenile is adjudicated and found not to be within
10 the provisions of section 2(a)(1) of ~~Act No. 288 of the Public~~
11 ~~Acts of 1939, being section 712A.2 of the Michigan Compiled Laws~~
12 CHAPTER XIIIA OF 1939 PA 288, MCL 712A.2, or if an accused is
13 found not guilty of the offense, the arrest card, the finger-
14 prints, and description shall be returned to him or her by the
15 official holding this information. If for any reason the offi-
16 cial holding the information does not return the information
17 within 60 days of the adjudication or the finding of not guilty,
18 the accused ~~shall have~~ HAS the right to obtain an order from
19 the court having jurisdiction over the case for the return of the
20 information. If the order of return is not complied with, the
21 accused ~~shall have~~ HAS the right to petition the ~~juvenile~~
22 FAMILY [] division of the ~~probate~~ CIRCUIT court of the
23 county where the original petition was filed or the circuit court
24 of the county where the original charge was made for a preemptory
25 writ of mandamus to require issuance of the order of return.
26 Upon final disposition of the charge against the accused, the
27 clerk of the court entering the disposition shall notify the

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1 commanding officer of any finding of not guilty or not guilty by
2 reason of insanity, dismissal, or nolle prosequi, if it appears
3 that the accused was initially arrested for a felony or a misde-
4 meanor punishable by imprisonment for more than 92 days or of any
5 finding that a juvenile accused of a juvenile offense is not
6 within the provisions of section 2(a)(1) of ~~Act No. 288 of the~~
7 ~~Public Acts of 1939~~ CHAPTER XIIIA OF 1939 PA 288, MCL 712A.2.

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

25 (a) Section 7411 of the public health code, ~~Act No. 368 of~~
26 ~~the Public Acts of 1978, being section 333.7411 of the Michigan~~
27 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7411.

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1 (b) Sections 11 to 15 of chapter II of the code of criminal
2 procedure, ~~Act No. 175 of the Public Acts of 1927, being sec-~~
3 ~~tions 762.11 to 762.15 of the Michigan Compiled Laws~~ 1927 PA
4 175, MCL 762.11 TO 762.15.

5 (c) Section 4a of chapter IX of the code of criminal proce-
6 dure, ~~Act No. 175 of the Public Acts of 1927, being section~~
7 ~~769.4a of the Michigan Compiled Laws~~ 1927 PA 175, MCL 769.4A.

8 (d) Section 350a(4) of the Michigan penal code, ~~Act No. 328~~
9 ~~of the Public Acts of 1931, being section 750.350a of the~~
10 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.350A.

11 (7) The commanding officer shall record the disposition of
12 each charge and shall inform the director of the federal bureau
13 of investigation of the final disposition of the felony or misde-
14 meanor arrest.

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

20 (9) The provisions of this section requiring the return of
21 the fingerprints, arrest card, and description ~~shall~~ DO not
22 apply in the following cases:

23 (a) The person arrested was charged with the commission or
24 attempted commission, or if the person arrested is a juvenile ~~,~~
25 AND was charged with an offense ~~which~~ THAT if committed by an
26 adult would constitute the commission or attempted commission, of
27 a crime with or against a child under 16 years of age or the

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1 crime of criminal sexual conduct in any degree, rape, sodomy,
2 gross indecency, indecent liberties, or child SEXUALLY abusive
3 ~~commercial~~ activities OR MATERIALS.

4 (b) The person arrested has a prior conviction other than a
5 misdemeanor traffic offense, unless a judge of a court of record,
6 except the ~~probate court~~ FAMILY DIVISION OF THE CIRCUIT COURT
7 IN A CASE NOT DESIGNATED TO BE TRIED IN THE SAME MANNER AS AN
8 ADULT UNDER SECTION 2D OF CHAPTER XIIIA OF 1939 PA 288, MCL
9 712A.2D, ORDERS THE RETURN by express order entered on the
10 record. ~~, orders the return.~~

11 (10) Subsection (3) does not permit the forwarding to the
12 department of the fingerprints of a person accused and convicted
13 under the Michigan vehicle code, ~~Act No. 300 of the Public Acts~~
14 ~~of 1949, being sections 257.1 to 257.923 of the Michigan Compiled~~
15 ~~Laws~~ 1949 PA 300, MCL 257.1 TO 257.923, or under a local ordi-
16 nance substantially corresponding to a provision of ~~Act No. 300~~
17 ~~of the Public Acts of 1949~~ THE MICHIGAN VEHICLE CODE, 1949 PA
18 300, MCL 257.1 TO 257.923, unless the offense is punishable upon
19 conviction by imprisonment for more than 92 days or is an offense
20 ~~which~~ THAT would be punishable by imprisonment for more than 92
21 days ~~as a second~~ UPON A SUBSEQUENT conviction.

22 (11) AS USED IN THIS SECTION:

23 (A) "DEPARTMENT" MEANS THE DEPARTMENT OF STATE POLICE.

24 (B) "LAW ENFORCEMENT AGENCY" MEANS THE POLICE DEPARTMENT OF
25 A CITY, TOWNSHIP, OR VILLAGE, THE SHERIFF'S DEPARTMENT OF A
26 COUNTY, THE DEPARTMENT OF STATE POLICE, AND ANY OTHER
27 GOVERNMENTAL LAW ENFORCEMENT AGENCY OF THIS STATE.

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1 Enacting section 1. [This amendatory act takes effect September
1, 1998.

Enacting section 2.] This amendatory act does not take
2 effect unless the following bills of the 89th Legislature are
3 enacted into law:

4 (a) House Bill No. 4964.

5 (b) House Bill No. 4965.

6 (c) House Bill No. 4966.

7 (d) House Bill No. 4967.

8 (e) House Bill No. 4968.