

HOUSE BILL No. 5531

February 4, 1998, Introduced by Rep. Profit and referred to the Committee on Judiciary.

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 243 (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

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 DESCRIBED IN THIS SUBSEC-
11 TION THAT IS A VIOLATION OF A LOCAL ORDINANCE BUT SHALL NOT FOR-
12 WARD THEM TO THE DEPARTMENT BEFORE CONVICTION. IF THE PERSON IS
13 CONVICTED OF A MISDEMEANOR DESCRIBED IN THIS SUBSECTION THAT IS A
14 VIOLATION OF A LOCAL ORDINANCE, THE LAW ENFORCEMENT AGENCY SHALL
15 TAKE THE PERSON'S FINGERPRINTS IF NOT PREVIOUSLY TAKEN UNDER THIS
16 SUBSECTION AND FORWARD THEM WITHIN 72 HOURS AFTER ENTRY OF THE
17 CONVICTION IN THE SAME MANNER AS PROVIDED IN THIS SUBSECTION.

18 (2) ~~The police department of a city or village, the police~~
19 ~~department of a township, the sheriff's department of a county,~~
20 ~~the department of state police, and any other governmental~~ ANY
21 law enforcement agency ~~in the state~~ may take 1 set of finger-
22 prints of a person who is arrested for a misdemeanor punishable
23 by imprisonment for not more than 92 days ~~—, or a fine of not~~
24 more than \$1,000.00, or both, and who fails to produce satisfac-
25 tory evidence of identification as required by section 1 of ~~Act~~
26 ~~No. 44 of the Public Acts of 1961, being section 780.581 of the~~
27 ~~Michigan Compiled Laws~~ 1961 PA 44, MCL 780.581. These

1 fingerprints shall be forwarded to the department ~~of state~~
2 ~~police~~ immediately. Upon completion of the identification pro-
3 cess by the department, ~~of state police,~~ the fingerprints shall
4 be returned to the arresting LAW ENFORCEMENT agency.

5 (3) ~~The police department of a city or village, the police~~
6 ~~department of a township, the sheriff's department of a county,~~
7 ~~the department of state police, and any other governmental~~ ANY
8 law enforcement agency ~~in the state, upon the arrest of a person~~
9 ~~for a misdemeanor,~~ may take ~~the~~ A person's fingerprints on
10 forms furnished by the commanding officer ~~, but may~~ UPON THE
11 ARREST OF THE PERSON FOR A MISDEMEANOR. HOWEVER, THE LAW
12 ENFORCEMENT AGENCY SHALL not forward the fingerprints to the
13 department unless the person is convicted of a misdemeanor.

14 (4) If a petition is not authorized for a juvenile accused
15 of a juvenile offense or if a person arrested for having commit-
16 ted a felony or a misdemeanor is released without a charge made
17 against him or her, the official taking or holding the person's
18 fingerprints, arrest card, and description shall immediately
19 return this information to the person without the necessity of a
20 request. If this information is not returned, the person shall
21 have the absolute right to demand and receive its return at any
22 time after the person's release and without need to petition for
23 court action. The local ~~police~~ LAW ENFORCEMENT agency shall
24 notify the commanding officer in writing that no petition was
25 authorized against the juvenile or that no charge was made
26 against the arrested person if the juvenile's or arrested
27 person's fingerprints were forwarded to the department.

1 (5) If a juvenile is adjudicated and found not to be within
2 the provisions of section 2(a)(1) of ~~Act No. 288 of the Public~~
3 ~~Acts of 1939, being section 712A.2 of the Michigan Compiled Laws~~
4 CHAPTER XIIIA OF 1939 PA 288, MCL 712A.2, or if an accused is
5 found not guilty of the offense, the arrest card, the finger-
6 prints, and description shall be returned to him or her by the
7 official holding this information. If for any reason the offi-
8 cial holding the information does not return the information
9 within 60 days of the adjudication or the finding of not guilty,
10 the accused ~~shall have~~ HAS the right to obtain an order from
11 the court having jurisdiction over the case for the return of the
12 information. If the order of return is not complied with, the
13 accused ~~shall have~~ HAS the right to petition the ~~juvenile~~
14 FAMILY COURT division of the ~~probate~~ CIRCUIT court of the
15 county where the original petition was filed or the circuit court
16 of the county where the original charge was made for a preemptory
17 writ of mandamus to require issuance of the order of return.
18 Upon final disposition of the charge against the accused, the
19 clerk of the court entering the disposition shall notify the com-
20 manding officer of any finding of not guilty or not guilty by
21 reason of insanity, dismissal, or nolle prosequi, if it appears
22 that the accused was initially arrested for a felony or a misde-
23 meanor punishable by imprisonment for more than 92 days or of any
24 finding that a juvenile accused of a juvenile offense is not
25 within the provisions of section 2(a)(1) of ~~Act No. 288 of the~~
26 ~~Public Acts of 1939~~ CHAPTER XIIIA OF 1939 PA 288, MCL 712A.2.

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

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

21 (b) Sections 11 to 15 of chapter II of the code of criminal
22 procedure, ~~Act No. 175 of the Public Acts of 1927, being sec-~~
23 ~~tions 762.11 to 762.15 of the Michigan Compiled Laws~~ 1927 PA
24 175, MCL 762.11 TO 762.15.

25 (c) Section 4a of chapter IX of the code of criminal proce-
26 dure, ~~Act No. 175 of the Public Acts of 1927, being section~~
27 ~~769.4a of the Michigan Compiled Laws~~ 1927 PA 175, MCL 769.4A.

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

4 (7) The commanding officer shall record the disposition of
5 each charge and shall inform the director of the federal bureau
6 of investigation of the final disposition of the felony or misde-
7 meanor arrest.

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

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

16 (a) The person arrested was charged with the commission or
17 attempted commission, or if the person arrested is a juvenile,
18 was charged with an offense ~~which~~ THAT if committed by an adult
19 would constitute the commission or attempted commission ~~—~~ of a
20 crime with or against a child under 16 years of age or the crime
21 of criminal sexual conduct in any degree, rape, sodomy, gross
22 indecency, indecent liberties, or child SEXUALLY abusive
23 ~~commercial~~ activities OR MATERIALS.

24 (b) The person arrested has a prior conviction other than a
25 misdemeanor traffic offense, unless a judge of a court of record,
26 except the JUVENILE DIVISION OF probate court OR THE FAMILY
27 DIVISION OF THE CIRCUIT COURT IN A CASE NOT DESIGNATED TO BE

1 TRIED IN THE SAME MANNER AS AN ADULT UNDER SECTION 2D OF
2 CHAPTER XIIIA OF 1939 PA 288, MCL 712A.2D, ORDERS THE RETURN by
3 express order entered on the record. ~~-, orders the return.-~~

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

15 (11) AS USED IN THIS SECTION:

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

17 (B) "LAW ENFORCEMENT AGENCY" MEANS THE POLICE DEPARTMENT OF
18 A CITY, TOWNSHIP, OR VILLAGE, THE SHERIFF'S DEPARTMENT OF A
19 COUNTY, THE DEPARTMENT OF STATE POLICE, AND ANY OTHER GOVERNMEN-
20 TAL LAW ENFORCEMENT AGENCY OF THIS STATE.

21 Enacting section 1. This amendatory act does not take
22 effect unless the following bills of the 89th Legislature are
23 enacted into law:

24 (a) House Bill No. 4964.

25 (b) House Bill No. 4965.

26 (c) House Bill No. 4966.

1 (d) House Bill No. 4967.

2 (e) House Bill No. 4968.