

# HOUSE BILL No. 5395

January 11, 2018, Introduced by Rep. Lucido 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 sections 2, 3, and 4 (MCL 28.242, 28.243, and 28.244), sections 2 and 3 as amended by 2012 PA 374 and section 4 as amended by 1986 PA 231.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. (1) The commanding officer shall procure and file for  
2 purposes of criminal identification criminal history record  
3 information on all persons arrested within this state of either a

1 felony or a misdemeanor, or criminal contempt under section 2950 or  
2 2950a of the revised judicature act of 1961, 1961 PA 236, MCL  
3 600.2950 and 600.2950a, or criminal contempt for a violation of a  
4 foreign protection order that satisfies the conditions for validity  
5 provided in section 2950i of the revised judicature act of 1961,  
6 1961 PA 236, MCL 600.2950i. The commanding officer shall procure  
7 and file for purposes of juvenile identification juvenile history  
8 record information on all juveniles who have been adjudicated to  
9 have committed a juvenile offense within this state.

10 (2) The commanding officer shall provide all reporting  
11 officials with forms or prescribe the format, numerical  
12 identifiers, and instructions which specify the information  
13 required, the time it is to be forwarded, the method of  
14 classifying, and other matters to facilitate criminal and juvenile  
15 history record information collection and compilation.

16 (3) The commanding officer shall file the biometric data and  
17 criminal history record information that are forwarded to the  
18 department of all persons confined in a prison or other state  
19 correctional facility.

20 (4) The commanding officer shall provide access to criminal  
21 history record information and juvenile history record information,  
22 as prescribed by the department and as authorized by law.

23 (5) ~~A-SUBJECT TO SECTION 3(14), A~~ copy of an arrest card ~~shall~~  
24 **MUST** be forwarded to the ~~federal bureau of investigation.~~ **FEDERAL**  
25 **BUREAU OF INVESTIGATION.**

26 Sec. 3. (1) Except as provided in subsection (3), upon the  
27 arrest of a person for a felony or for a misdemeanor violation of

1 state law for which the maximum possible penalty exceeds 92 days'  
2 imprisonment or a fine of \$1,000.00, or both, or a misdemeanor  
3 authorized for DNA collection under section 6(1)(b) of the DNA  
4 identification profiling system act, 1990 PA 250, MCL 28.176, 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  
7 criminal contempt for a violation of a foreign protection order  
8 that satisfies the conditions for validity provided in section  
9 2950i of the revised judicature act of 1961, 1961 PA 236, MCL  
10 600.2950i, or for a juvenile offense, other than a juvenile offense  
11 for which the maximum possible penalty does not exceed 92 days'  
12 imprisonment or a fine of \$1,000.00, or both, or for a juvenile  
13 offense that is a misdemeanor authorized for DNA collection under  
14 section 6(1)(b) of the DNA identification profiling system act,  
15 1990 PA 250, MCL 28.176, the arresting law enforcement agency in  
16 this state shall collect the person's biometric data and forward  
17 the biometric data to the department within 72 hours after the  
18 arrest. The biometric data ~~shall~~**MUST** be sent to the department on  
19 forms furnished by or in a manner prescribed by the department, and  
20 **SUBJECT TO SUBSECTION (14)**, the department shall forward the  
21 biometric data to the director of the ~~federal bureau of~~  
22 ~~investigation~~**FEDERAL BUREAU OF INVESTIGATION** on forms furnished by  
23 or in a manner prescribed by the director.

24 (2) A law enforcement agency shall collect a person's  
25 biometric data under this subsection if the person is arrested for  
26 a misdemeanor violation of state law for which the maximum penalty  
27 is 93 days or for criminal contempt under section 2950 or 2950a of

1 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and  
2 600.2950a, or criminal contempt for a violation of a foreign  
3 protection order that satisfies the conditions for validity  
4 provided in section 2950i of the revised judicature act of 1961,  
5 1961 PA 236, MCL 600.2950i, if the biometric data have not  
6 previously been collected and forwarded to the department under  
7 subsection (1). A law enforcement agency shall collect a person's  
8 biometric data under this subsection if the person is arrested for  
9 a violation of a local ordinance for which the maximum possible  
10 penalty is 93 days' imprisonment and that substantially corresponds  
11 to a violation of state law that is a misdemeanor for which the  
12 maximum possible term of imprisonment is 93 days. If the person is  
13 convicted of any violation, the law enforcement agency shall  
14 collect the person's biometric data before sentencing if not  
15 previously collected. The court shall forward to the law  
16 enforcement agency a copy of the disposition of conviction, and the  
17 law enforcement agency shall forward the person's biometric data  
18 and the copy of the disposition of conviction to the department  
19 within 72 hours after receiving the disposition of conviction in  
20 the same manner as provided in subsection (1). If the person is  
21 convicted of violating a local ordinance, the law enforcement  
22 agency shall indicate on the form sent to the department the  
23 statutory citation for the state law to which the local ordinance  
24 substantially corresponds.

25 (3) A person's biometric data are not required to be collected  
26 and forwarded to the department under subsection (1) or (2) solely  
27 because he or she has been arrested for violating section 904(3)(a)

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

4 (4) The arresting law enforcement agency may collect the  
5 biometric data of a person who is arrested for a misdemeanor  
6 punishable by imprisonment for not more than 92 days or a fine of  
7 not more than \$1,000.00, or both, and who fails to produce  
8 satisfactory evidence of identification as required by section 1 of  
9 1961 PA 44, MCL 780.581. These biometric data ~~shall~~**MUST** be  
10 forwarded to the department immediately. Upon completion of the  
11 identification process by the department, the biometric data ~~shall~~  
12 **MUST** be destroyed.

13 (5) An arresting law enforcement agency in this state may  
14 collect the person's biometric data upon an arrest for a  
15 misdemeanor other than a misdemeanor described in subsection (1),  
16 (2), or (4), and may forward the biometric data to the department.

17 (6) If a court orders the collection of a person's biometric  
18 data under section 11 or 18 of chapter XIIIA of the probate code of  
19 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of  
20 chapter IV or section 1 of chapter IX of the code of criminal  
21 procedure, 1927 PA 175, MCL 764.29 and 769.1, the law enforcement  
22 agency shall forward the biometric data and arrest card to the  
23 department.

24 (7) If a petition is not authorized for a juvenile accused of  
25 a juvenile offense, if a person arrested for having committed an  
26 offense for which biometric data were collected under this section  
27 is released without a charge made against him or her, or if

1 criminal contempt proceedings are not brought or criminal charges  
2 are not made against a person arrested for criminal contempt for a  
3 personal protection order violation under section 2950 or 2950a of  
4 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and  
5 600.2950a, or criminal contempt for a violation of a foreign  
6 protection order that meets the requirements for validity under  
7 section 2950i of the revised judicature act of 1961, 1961 PA 236,  
8 MCL 600.2950i, the official taking or holding the person's  
9 biometric data and arrest card shall immediately destroy the  
10 biometric data and arrest card. The law enforcement agency shall  
11 notify the department in a manner prescribed by the department that  
12 a petition was not authorized against the juvenile or that a charge  
13 was not made or that a criminal contempt proceeding was not brought  
14 against the arrested person if the juvenile's or arrested person's  
15 arrest card was forwarded to the department.

16 (8) If a juvenile is adjudicated and found not to be within  
17 the provisions of section 2(a)(1) of chapter XIIIA of the probate  
18 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found  
19 not guilty of an offense for which biometric data were collected  
20 under this section, upon final disposition of the charge against  
21 the accused or juvenile, the biometric data and arrest card ~~shall~~  
22 **MUST** be destroyed by the official holding those items and the clerk  
23 of the court entering the disposition shall notify the department  
24 of any finding of not guilty or nolle prosequi, if it appears that  
25 the biometric data of the accused were initially collected under  
26 this section, or of any finding that a juvenile alleged responsible  
27 for a juvenile offense is not within the provisions of section

1 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288,  
2 MCL 712A.2.

3 (9) Upon final disposition of the charge against the accused,  
4 the clerk of the court entering the disposition shall immediately  
5 advise the department of the final disposition of the arrest for  
6 which the person's biometric data were collected if a juvenile was  
7 adjudicated to have committed a juvenile offense or if the accused  
8 was convicted of an offense for which the biometric data of the  
9 accused were collected under this section or section 16a of chapter  
10 IX of the code of criminal procedure, 1927 PA 175, MCL 769.16a.  
11 With regard to any adjudication or conviction, the clerk shall  
12 transmit to the department information as to any adjudication or  
13 finding of guilty or guilty but mentally ill; any plea of guilty,  
14 nolo contendere, or guilty but mentally ill; the offense of which  
15 the accused was convicted; and a summary of any deposition or  
16 sentence imposed. The summary of the sentence ~~shall~~**MUST** include  
17 any probationary term; any minimum, maximum, or alternative term of  
18 imprisonment; the total of all fines, costs, and restitution  
19 ordered; and any modification of sentence. If the sentence is  
20 imposed under any of the following sections, the report ~~shall~~**se**  
21 **MUST** indicate **THE SECTION:**

22 (a) Section 7411 of the public health code, 1978 PA 368, MCL  
23 333.7411.

24 (b) Section 1076(4) of the revised judicature act of 1961,  
25 1961 PA 236, MCL 600.1076.

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

1 (d) Section 4a of chapter IX of the code of criminal  
2 procedure, 1927 PA 175, MCL 769.4a.

3 (e) Section 350a(4) of the Michigan penal code, 1931 PA 328,  
4 MCL 750.350a.

5 (f) Section ~~430(8)(a)~~ **430(9)** of the Michigan penal code, 1931  
6 PA 328, MCL 750.430.

7 (g) Section 1209(6) of the revised judicature act of 1961,  
8 1961 PA 236, MCL 600.1209.

9 (10) The department shall record the disposition of each  
10 charge and shall inform the director of the ~~federal bureau of~~  
11 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** of the final  
12 disposition of any arrest or offense for which a person's biometric  
13 data were collected under this section or section 16a of chapter IX  
14 of the code of criminal procedure, 1927 PA 175, MCL 769.16a.

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

20 (12) The provisions of subsection (8) that require the  
21 destruction of the biometric data and the arrest card do not apply  
22 to a person who was arraigned for any of the following:

23 (a) The commission or attempted commission of a crime with or  
24 against a child under 16 years of age.

25 (b) Rape.

26 (c) Criminal sexual conduct in any degree.

27 (d) Sodomy.



1 (e) Gross indecency.

2 (f) Indecent liberties.

3 (g) Child abusive commercial activities.

4 (h) A person who has a prior conviction, other than a  
5 misdemeanor traffic offense, unless a judge of a court of record,  
6 except the probate court, by express order on the record, orders  
7 the destruction or return of the biometric data and arrest card.

8 (i) A person arrested who is a juvenile charged with an  
9 offense that would constitute the commission or attempted  
10 commission of any of the crimes in this subsection if committed by  
11 an adult.

12 (13) Subsection (5) does not permit the forwarding to the  
13 department of the biometric data of a person accused and convicted  
14 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,  
15 or a local ordinance substantially corresponding to a provision of  
16 that act, unless the offense is punishable upon conviction by  
17 imprisonment for more than 92 days or is an offense that is  
18 punishable by imprisonment for more than 92 days upon a subsequent  
19 conviction.

20 **(14) THE BIOMETRIC DATA COLLECTED UNDER SUBSECTION (1) SHALL**  
21 **NOT BE FORWARDED TO THE FEDERAL BUREAU OF INVESTIGATION FOR**  
22 **INCLUSION IN A FEDERAL DATABASE THAT UTILIZES FACIAL RECOGNITION**  
23 **TECHNOLOGY.**

24 Sec. 4. ~~The~~ **SUBJECT TO SECTION 3(14), THE** commanding officer  
25 shall cooperate with the bureaus in other states and with the  
26 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** and  
27 the United States ~~justice department,~~ **DEPARTMENT OF JUSTICE,** to

1 develop and carry on a complete interstate, national, and  
2 international system of criminal identification and records.

3 Enacting section 1. This amendatory act takes effect 90 days  
4 after the date it is enacted into law.