

SENATE BILL NO. 560

April 29, 1999, Introduced by Senators MILLER and Rogers 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 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,~~ EXCEPT AS PROVIDED
5 IN SUBSECTION (2), immediately upon the arrest of a person for a
6 felony or for a misdemeanor for which the maximum possible
7 penalty exceeds 92 days imprisonment or a fine of \$1,000.00, or
8 both, or for a juvenile offense, THE ARRESTING LAW ENFORCEMENT

1 AGENCY IN THIS STATE shall take the person's fingerprints in
2 duplicate and forward the fingerprints to the department ~~of~~
3 ~~state police~~ within 72 hours after the arrest. One set of fin-
4 gerprints shall be sent to the division on forms furnished by the
5 commanding officer, and 1 set of fingerprints shall be furnished
6 to the director of the federal bureau of investigation on forms
7 furnished by the director.

8 (2) THE ARRESTING LAW ENFORCEMENT AGENCY MAY TAKE A PERSON'S
9 FINGERPRINTS UPON THE ARREST OF THE PERSON FOR A MISDEMEANOR THAT
10 IS A VIOLATION OF A LOCAL ORDINANCE FOR WHICH THE MAXIMUM POSSI-
11 BLE PENALTY EXCEEDS 92 DAYS' IMPRISONMENT AND THAT SUBSTANTIALLY
12 CORRESPONDS TO A VIOLATION OF STATE LAW THAT IS A MISDEMEANOR FOR
13 WHICH THE MAXIMUM POSSIBLE TERM OF IMPRISONMENT EXCEEDS 92 DAYS,
14 BUT SHALL NOT FORWARD THEM TO THE DEPARTMENT BEFORE CONVICTION.
15 IF THE PERSON IS CONVICTED OF A MISDEMEANOR DESCRIBED IN THIS
16 SUBSECTION, THE LAW ENFORCEMENT AGENCY SHALL TAKE THE PERSON'S
17 FINGERPRINTS IF NOT PREVIOUSLY TAKEN UNDER THIS SUBSECTION AND
18 FORWARD THEM WITHIN 72 HOURS AFTER ENTRY OF THE CONVICTION IN THE
19 SAME MANNER AS PROVIDED IN SUBSECTION (1). ON THE FORM SENT TO
20 THE DIVISION, THE LAW ENFORCEMENT AGENCY SHALL INDICATE THE STAT-
21 UTORY CITATION FOR THE STATE LAW TO WHICH THE LOCAL ORDINANCE
22 SUBSTANTIALLY CORRESPONDS.

23 (3) ~~(2) The police department of a city or village, the~~
24 ~~police department of a township, the sheriff's department of a~~
25 ~~county, the department of state police, and any other~~
26 ~~governmental~~ THE ARRESTING law enforcement agency ~~in the state~~
27 may take 1 set of fingerprints of a person who is arrested for a

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

11 (4) ~~(3) The police department of a city or village, the~~
12 ~~police department of a township, the sheriff's department of a~~
13 ~~county, the department of state police, and any other~~
14 ~~governmental~~ AN ARRESTING law enforcement agency in the state ~~—~~
15 ~~upon the arrest of a person for a misdemeanor,~~ may take the
16 person's fingerprints on forms furnished by the commanding offi-
17 cer UPON AN ARREST FOR A MISDEMEANOR OTHER THAN A MISDEMEANOR
18 DESCRIBED IN SUBSECTION (1), (2), OR (3), but may not forward the
19 fingerprints to the department unless the person is convicted of
20 a misdemeanor.

21 (5) ~~(4)~~ If a petition is not authorized for a juvenile
22 accused of a juvenile offense or if a person arrested for having
23 committed a felony or a misdemeanor is released without a charge
24 made against him or her, the official taking or holding the
25 person's fingerprints, arrest card, and description shall immedi-
26 ately return this information to the person without the necessity
27 of a request. If this information is not returned, the person

1 ~~shall have~~ HAS the absolute right to demand and receive its
2 return at any time after the person's release and without need to
3 petition for court action. The ~~local police~~ LAW ENFORCEMENT
4 agency shall notify the commanding officer in writing that no
5 petition was authorized against the juvenile or that no charge
6 was made against the arrested person if the juvenile's or
7 arrested person's fingerprints were forwarded to the department.

8 (6) ~~(5)~~ If a juvenile is adjudicated and found not to be
9 within the provisions of section 2(a)(1) of ~~Act No. 288 of the~~
10 ~~Public Acts of 1939, being section 712A.2 of the Michigan~~
11 ~~Compiled Laws~~ CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA
12 288, MCL 712A.2, or if an accused is found not guilty of the
13 offense, the arrest card, the fingerprints, and description shall
14 be returned to him or her by the official holding this
15 information. If for any reason the official holding the informa-
16 tion does not return the information within 60 days of the adju-
17 dication or the finding of not guilty, the accused ~~shall have~~
18 OR JUVENILE HAS the right to obtain an order from the court
19 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~~ OR JUVENILE HAS the right to petition the
22 ~~juvenile~~ 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

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~~ ALLEGED RESPONSIBLE FOR a
6 juvenile offense is not within the provisions of section 2(a)(1)
7 of ~~Act No. 288 of the Public Acts of 1939~~ CHAPTER XIIIA OF THE
8 PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2.

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

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

4 (b) Sections 11 to 15 of chapter II of the code of criminal
5 procedure, ~~Act No. 175 of the Public Acts of 1927, being sec-~~
6 ~~tions 762.11 to 762.15 of the Michigan Compiled Laws~~ 1927 PA
7 175, MCL 762.11 TO 762.15.

8 (c) Section 4a of chapter IX of the code of criminal proce-
9 dure, ~~Act No. 175 of the Public Acts of 1927, being section~~
10 ~~769.4a of the Michigan Compiled Laws~~ 1927 PA 175, MCL 769.4A.

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

14 (8) ~~-(7)-~~ The commanding officer shall record the disposi-
15 tion of each charge and shall inform the director of the federal
16 bureau of investigation of the final disposition of the felony or
17 misdemeanor arrest.

18 (9) ~~-(8)-~~ The commanding officer shall compare the finger-
19 prints and description received with those already on file and if
20 the commanding officer finds that the person arrested has a crim-
21 inal record, the commanding officer shall immediately inform the
22 arresting agency and prosecuting attorney of this fact.

23 (10) ~~-(9)-~~ The provisions of this section requiring the
24 return of the fingerprints, arrest card, and description ~~shall~~
25 DO not apply in the following cases:

26 (a) The person arrested was charged with the commission or
27 attempted commission, or if the person arrested is a juvenile —

1 ~~was charged with~~ ALLEGED TO HAVE COMMITTED an offense ~~which~~
2 THAT if committed by an adult would constitute the commission or
3 attempted commission, of a crime with or against a child under 16
4 years of age or the crime of criminal sexual conduct in any
5 degree, rape, sodomy, gross indecency, indecent liberties, or
6 child SEXUALLY abusive ~~commercial~~ activities OR MATERIALS.

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

11 (11) ~~(10)~~ Subsection ~~(3)~~ (4) does not permit the for-
12 warding to the department of the fingerprints of a person accused
13 and convicted under the Michigan vehicle code, ~~Act No. 300 of~~
14 ~~the Public Acts of 1949, being sections 257.1 to 257.923 of the~~
15 ~~Michigan Compiled Laws~~ 1949 PA 300, MCL 257.1 TO 257.923, or
16 ~~under~~ a local ordinance substantially corresponding to a provi-
17 sion of ~~Act No. 300 of the Public Acts of 1949~~ THAT ACT, unless
18 the offense is punishable upon conviction by imprisonment for
19 more than 92 days or is an offense ~~which would be~~ THAT IS pun-
20 ishable by imprisonment for more than 92 days ~~as~~ UPON a
21 ~~second~~ SUBSEQUENT conviction.

22 (12) 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, OR ANY OTHER GOVERNMENTAL LAW ENFORCEMENT
27 AGENCY OF THIS STATE.

1 Enacting section 1. This amendatory act takes effect
2 October 1, 1999.

3 Enacting section 2. This amendatory act does not take
4 effect unless all of the following bills of the 90th Legislature
5 are enacted into law:

6 (a) Senate Bill No. 556.

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8 (b) Senate Bill No. 559.

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10 (c) Senate Bill No. 557.

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12 (d) Senate Bill No. 558.

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14 (e) House Bill No. 4585.

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16 (f) House Bill No. 4580.

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18 (g) House Bill No. 4583.

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20 (h) House Bill No. 4584.

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22 (i) House Bill No. 4581.

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24 (j) House Bill No. 4582.

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