

HOUSE BILL No. 4178

February 10, 2015, Introduced by Reps. Lucido, Dianda, Gay-Dagnogo, Hovey-Wright, Robinson and Franz 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 section 3 (MCL 28.243), as amended by 2012 PA 374.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsection (3), upon the
2 arrest of a person for a felony or for a misdemeanor violation of
3 state law for which the maximum possible penalty exceeds 92 days'
4 imprisonment or a fine of \$1,000.00, or both, or a misdemeanor
5 authorized for DNA collection under section 6(1)(b) of the DNA
6 identification profiling system act, 1990 PA 250, MCL 28.176, or
7 for criminal contempt under section 2950 or 2950a of the revised
8 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or

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

17 (2) A law enforcement agency shall collect a person's
18 biometric data under this subsection if the person is arrested for
19 a misdemeanor violation of state law for which the maximum penalty
20 is 93 days or for criminal contempt under section 2950 or 2950a of
21 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
22 600.2950a, or criminal contempt for a violation of a foreign
23 protection order that satisfies the conditions for validity
24 provided in section 2950i of the revised judicature act of 1961,
25 1961 PA 236, MCL 600.2950i, if the biometric data have not
26 previously been collected and forwarded to the department under
27 subsection (1). A law enforcement agency shall collect a person's

1 biometric data under this subsection if the person is arrested for
2 a violation of a local ordinance for which the maximum possible
3 penalty is 93 days' imprisonment and that substantially corresponds
4 to a violation of state law that is a misdemeanor for which the
5 maximum possible term of imprisonment is 93 days. If the person is
6 convicted of any violation, the law enforcement agency shall
7 collect the person's biometric data before sentencing if not
8 previously collected. The court shall forward to the law
9 enforcement agency a copy of the disposition of conviction, and the
10 law enforcement agency shall forward the person's biometric data
11 and the copy of the disposition of conviction to the department
12 within 72 hours after receiving the disposition of conviction in
13 the same manner as provided in subsection (1). If the person is
14 convicted of violating a local ordinance, the law enforcement
15 agency shall indicate on the form sent to the department the
16 statutory citation for the state law to which the local ordinance
17 substantially corresponds.

18 (3) A person's biometric data are not required to be collected
19 and forwarded to the department under subsection (1) or (2) solely
20 because he or she has been arrested for violating section 904(3)(a)
21 of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local
22 ordinance substantially corresponding to section 904(3)(a) of the
23 Michigan vehicle code, 1949 PA 300, MCL 257.904.

24 (4) The arresting law enforcement agency may collect the
25 biometric data of a person who is arrested for a misdemeanor
26 punishable by imprisonment for not more than 92 days or a fine of
27 not more than \$1,000.00, or both, and who fails to produce

1 satisfactory evidence of identification as required by section 1 of
2 1961 PA 44, MCL 780.581. These biometric data shall be forwarded to
3 the department immediately. Upon completion of the identification
4 process by the department, the biometric data shall be destroyed.

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

9 (6) If a court orders the collection of a person's biometric
10 data under section 11 or 18 of chapter XIIA of the probate code of
11 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of
12 chapter IV or section 1 of chapter IX of the code of criminal
13 procedure, 1927 PA 175, MCL 764.29 and 769.1, the law enforcement
14 agency shall forward the biometric data and arrest card to the
15 department.

16 (7) If a petition is not authorized for a juvenile accused of
17 a juvenile offense, if a person arrested for having committed an
18 offense for which biometric data were collected under this section
19 is released without a charge made against him or her, or if
20 criminal contempt proceedings are not brought or criminal charges
21 are not made against a person arrested for criminal contempt for a
22 personal protection order violation under section 2950 or 2950a of
23 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
24 600.2950a, or criminal contempt for a violation of a foreign
25 protection order that meets the requirements for validity under
26 section 2950i of the revised judicature act of 1961, 1961 PA 236,
27 MCL 600.2950i, the official taking or holding the person's

1 biometric data and arrest card shall immediately destroy the
2 biometric data and arrest card. The law enforcement agency shall
3 notify the department in a manner prescribed by the department that
4 a petition was not authorized against the juvenile or that a charge
5 was not made or that a criminal contempt proceeding was not brought
6 against the arrested person if the juvenile's or arrested person's
7 arrest card was forwarded to the department.

8 (8) IF AN INDIVIDUAL IS ARRESTED FOR ANY CRIME AND THE
9 COMPLAINING WITNESS RECANTS HIS OR HER STATEMENT, AFFIDAVIT, OR
10 TESTIMONY ALLEGING THAT THE INDIVIDUAL COMMITTED 1 OR MORE OFFENSES
11 AGAINST THE WITNESS BEFORE TRIAL IS HELD IN THE MATTER, ALL OF THE
12 FOLLOWING APPLY:

13 (A) THE CHARGE SHALL BE DISMISSED.

14 (B) THE ARREST RECORD, ALL BIOMETRIC DATA, AND FINGERPRINTS
15 SHALL BE EXPUNGED OR DESTROYED, OR BOTH, AS APPROPRIATE.

16 (C) ANY ENTRY CONCERNING THE CHARGE AND THE INDIVIDUAL SHALL
17 BE REMOVED FROM THE LEIN.

18 (9) THE DEPARTMENT SHALL COMPLY WITH THE REQUIREMENTS LISTED
19 IN SUBSECTION (8) UPON RECEIPT OF AN ORDER ISSUED BY THE DISTRICT
20 COURT OR THE CIRCUIT COURT.

21 (10) ~~(8)~~—If a juvenile is adjudicated and found not to be
22 within the provisions of section 2(a)(1) of chapter XIIIA of the
23 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is
24 found not guilty of an offense for which biometric data were
25 collected under this section, upon final disposition of the charge
26 against the accused or juvenile, the biometric data and arrest card
27 shall be destroyed by the official holding those items and the

1 clerk of the court entering the disposition shall notify the
2 department of any finding of not guilty or nolle prosequi, if it
3 appears that the biometric data of the accused were initially
4 collected under this section, or of any finding that a juvenile
5 alleged responsible for a juvenile offense is not within the
6 provisions of section 2(a)(1) of chapter XIIA of the probate code
7 of 1939, 1939 PA 288, MCL 712A.2.

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

27 (a) Section 7411 of the public health code, 1978 PA 368, MCL

1 333.7411.

2 (b) Section 1076(4) of the revised judiciary act of 1961,
3 1961 PA 236, MCL 600.1076.

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

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

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

10 (f) Section ~~430(8)(a)~~ **430(9)(A)** of the Michigan penal code,
11 1931 PA 328, MCL 750.430.

12 (g) Section ~~1209(6)~~ **1209(7)** of the revised judiciary act of
13 1961, 1961 PA 236, MCL 600.1209.

14 **(12)** ~~(10)~~—The department shall record the disposition of each
15 charge and shall inform the director of the federal bureau of
16 investigation of the final disposition of any arrest or offense for
17 which a person's biometric data were collected under this section
18 or section 16a of chapter IX of the code of criminal procedure,
19 1927 PA 175, MCL 769.16a.

20 **(13)** ~~(11)~~—The department shall compare the biometric data
21 received with those already on file and if the department finds
22 that the person arrested has a criminal record, the department
23 shall immediately inform the arresting agency and prosecuting
24 attorney of this fact.

25 **(14)** ~~(12)~~—**EXCEPT AS PROVIDED IN SUBSECTION (8), THE**
26 provisions of subsection ~~(8)~~ **(10)** that require the destruction of
27 the biometric data and the arrest card do not apply to a person who

1 was arraigned for any of the following:

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

4 (b) Rape.

5 (c) Criminal sexual conduct in any degree.

6 (d) Sodomy.

7 (e) Gross indecency.

8 (f) Indecent liberties.

9 (g) Child abusive commercial activities.

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

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

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

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

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 98th Legislature are
3 enacted into law:

4 (a) Senate Bill No.____ or House Bill No. 4176 (request no.
5 00218'15).

6 (b) Senate Bill No.____ or House Bill No. 4177 (request no.
7 00218'15 a).