

HOUSE BILL NO. 4144

February 04, 2021, Introduced by Reps. Howell and Filler 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 2018 PA 67.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) ~~Except as provided in subsection (3), upon~~ **On** the

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

25 (2) A law enforcement agency shall collect ~~a person's~~ **an**
26 **individual's** biometric data under this subsection if the ~~person~~
27 **individual** is arrested for a misdemeanor violation of state law for
28 which the maximum penalty is 93 days or for criminal contempt under
29 section 2950 or 2950a of the revised judicature act of 1961, 1961

1 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a
2 violation of a foreign protection order that satisfies the
3 conditions for validity provided in section 2950i of the revised
4 judiciary act of 1961, 1961 PA 236, MCL 600.2950i, if the
5 biometric data have not previously been collected and forwarded to
6 the department under subsection (1). A law enforcement agency shall
7 collect ~~a person's~~ **an individual's** biometric data under this
8 subsection if the ~~person~~ **individual** is arrested for a violation of
9 a local ordinance for which the maximum possible penalty is 93
10 days' imprisonment and that substantially corresponds to a
11 violation of state law that is a misdemeanor for which the maximum
12 possible term of imprisonment is 93 days. If the ~~person~~ **individual**
13 is convicted of any violation, the law enforcement agency shall
14 collect the ~~person's~~ **individual's** biometric data before sentencing
15 if not 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~~ **individual's**
18 biometric data and the copy of the disposition of conviction to the
19 department within 72 hours after receiving the disposition of
20 conviction in the same manner as provided in subsection (1). If the
21 ~~person~~ **individual** is convicted of violating a local ordinance, the
22 law enforcement agency shall indicate on the form sent to the
23 department the statutory citation for the state law to which the
24 local ordinance 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)~~
28 ~~of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local~~
29 ~~ordinance substantially corresponding to section 904(3)(a) of the~~

1 ~~Michigan vehicle code, 1949 PA 300, MCL 257.904.~~

2 (3) ~~(4)~~—The arresting law enforcement agency may collect the
3 biometric data of ~~a person~~ **an individual** who is arrested for a
4 misdemeanor punishable by imprisonment for not more than 92 days or
5 a fine of not more than \$1,000.00, or both, and who fails to
6 produce satisfactory evidence of identification as required by
7 section 1 of 1961 PA 44, MCL 780.581. These biometric data must be
8 forwarded to the department immediately. ~~Upon~~ **On** completion of the
9 identification process by the department, the biometric data ~~shall~~
10 **must** be destroyed.

11 (4) ~~(5)~~—An arresting law enforcement agency in this state may
12 collect the ~~person's~~ **individual's** biometric data upon an arrest for
13 a misdemeanor other than a misdemeanor described in subsection (1),
14 (2), or ~~(4)~~, **(3)**, and may forward the biometric data to the
15 department.

16 (5) ~~(6)~~—If a court orders the collection of ~~a person's~~ **an**
17 **individual's** biometric data under section 11 or 18 of chapter XIIA
18 of the probate code of 1939, 1939 PA 288, MCL 712A.11 and 712A.18,
19 or section 29 of chapter IV or section 1 of chapter IX of the code
20 of criminal procedure, 1927 PA 175, MCL 764.29 and 769.1, the law
21 enforcement agency shall forward the biometric data and arrest card
22 to the department.

23 (6) ~~(7)~~—If a petition is not authorized for a juvenile accused
24 of a juvenile offense, if ~~a person~~ **an individual** arrested for
25 having committed an offense for which biometric data were collected
26 under this section is released without a charge made against him or
27 her, or if criminal contempt proceedings are not brought or
28 criminal charges are not made against ~~a person~~ **an individual**
29 arrested for criminal contempt for a personal protection order

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

15 (7) ~~(8)~~—If an individual is arrested for any crime and the
 16 charge or charges are dismissed before trial, both of the following
 17 apply:

18 (a) The arrest record ~~shall-must~~ be removed from the internet
 19 criminal history access tool (ICHAT).

20 (b) If the prosecutor of the case agrees at any time after the
 21 case is dismissed, or if the prosecutor of the case or the judge of
 22 the court in which the case was filed does not object within 60
 23 days from the date an order of dismissal was entered for cases in
 24 which the order of dismissal is entered after ~~the effective date of~~
 25 ~~the amendatory act that added this subdivision,~~ **June 12, 2018**, both
 26 of the following apply:

27 (i) The arrest record, all biometric data, and fingerprints
 28 ~~shall-must~~ be expunged or destroyed, or both, as appropriate.

29 (ii) Any entry concerning the charge ~~shall-must~~ be removed from

1 the LEIN.

2 (8) ~~(9)~~—The department shall comply with the requirements
 3 listed in subsection ~~(8)~~ ~~upon~~ **(7)** on receipt of an appropriate
 4 order issued by the district court or the circuit court.

5 (9) ~~(10)~~—If a juvenile is adjudicated and found not to be
 6 within the provisions of section 2(a)(1) of chapter XIIIA of the
 7 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is
 8 found not guilty of an offense for which biometric data were
 9 collected under this section, ~~upon~~ **on** final disposition of the
 10 charge against the accused or juvenile, the biometric data and
 11 arrest card must be destroyed by the official ~~holding~~ **that holds**
 12 those items and the clerk of the court ~~entering~~ **that enters** the
 13 disposition shall notify the department of any finding of not
 14 guilty or nolle prosequi, if it appears that the biometric data of
 15 the accused were initially collected under this section, or of any
 16 finding that a juvenile alleged responsible for a juvenile offense
 17 is not within the provisions of section 2(a)(1) of chapter XIIIA of
 18 the probate code of 1939, 1939 PA 288, MCL 712A.2.

19 (10) ~~(11)~~ ~~Upon~~ **On** final disposition of the charge against the
 20 accused, the clerk of the court ~~entering~~ **that enters** the
 21 disposition shall immediately advise the department of the final
 22 disposition of the arrest for which the ~~person's~~ **individual's**
 23 biometric data were collected if a juvenile was adjudicated to have
 24 committed a juvenile offense or if the accused was convicted of an
 25 offense for which the biometric data of the accused were collected
 26 under this section or section 16a of chapter IX of the code of
 27 criminal procedure, 1927 PA 175, MCL 769.16a. With regard to any
 28 adjudication or conviction, the clerk shall transmit to the
 29 department information as to any adjudication or finding of guilty

1 or guilty but mentally ill; any plea of guilty, nolo contendere, or
2 guilty but mentally ill; the offense of which the accused was
3 convicted; and a summary of any deposition or sentence imposed. The
4 summary of the sentence must include any probationary term; any
5 minimum, maximum, or alternative term of imprisonment; the total of
6 all fines, costs, and restitution ordered; and any modification of
7 sentence. If the sentence is imposed under any of the following
8 sections, the report ~~shall so~~ **must** indicate **the section:**

9 (a) Section 7411 of the public health code, 1978 PA 368, MCL
10 333.7411.

11 (b) Section 1076(4) of the revised judicature act of 1961,
12 1961 PA 236, MCL 600.1076.

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

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

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

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

21 (g) Section 1209(7) of the revised judicature act of 1961,
22 1961 PA 236, MCL 600.1209.

23 **(11)** ~~(12)~~—The department shall record the disposition of each
24 charge and shall inform the director of the Federal Bureau of
25 Investigation of the final disposition of any arrest or offense for
26 which ~~a person's~~ **an individual's** biometric data were collected
27 under this section or section 16a of chapter IX of the code of
28 criminal procedure, 1927 PA 175, MCL 769.16a.

29 **(12)** ~~(13)~~—The department shall compare the biometric data

1 received with those already on file and if the department finds
2 that the ~~person~~**individual** arrested has a criminal record, the
3 department shall immediately inform the arresting agency and
4 prosecuting attorney of this fact.

5 (13) ~~(14)~~ Except as provided in subsection ~~(8)~~, ~~(7)~~, the
6 provisions of subsection ~~(10)~~ ~~(9)~~ that require the destruction of
7 the biometric data and the arrest card do not apply to ~~a person~~**an**
8 **individual** who was arraigned for any of the following:

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

11 (b) Rape.

12 (c) Criminal sexual conduct in any degree.

13 (d) Sodomy.

14 (e) Gross indecency.

15 (f) Indecent liberties.

16 (g) Child abusive commercial activities.

17 (h) ~~A person~~**An individual** who has a prior conviction, other
18 than a misdemeanor traffic offense, unless a judge of a court of
19 record, except the probate court, by express order on the record,
20 orders the destruction or return of the biometric data and arrest
21 card.

22 (i) ~~A person~~**An individual** arrested who is a juvenile charged
23 with an offense that would constitute the commission or attempted
24 commission of any of the crimes in this subsection if committed by
25 an adult.

26 (14) ~~(15)~~ Subsection ~~(5)~~ ~~(4)~~ does not permit the forwarding to
27 the department of the biometric data of ~~a person~~**an individual**
28 accused and convicted under the Michigan vehicle code, 1949 PA 300,
29 MCL 257.1 to 257.923, or a local ordinance **that** substantially

1 ~~corresponding~~**corresponds** to a provision of that act, unless the
2 offense is punishable ~~upon~~**on** conviction by imprisonment for more
3 than 92 days or is an offense that is punishable by imprisonment
4 for more than 92 days ~~upon~~**on** a subsequent conviction.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. ____ or House Bill No. 4153 (request no.
7 01303'21) of the 101st Legislature is enacted into law.