

HOUSE BILL NO. 5412

January 30, 2024, Introduced by Reps. Dievendorf, Arbit, Rheingans, Byrnes, Miller and MacDonell and referred to the Committee on Criminal Justice.

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 the
2 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 must be sent to the department on forms
19 furnished by or in a manner prescribed by the department, and the
20 department shall forward the biometric data to the director of the
21 Federal Bureau of Investigation on forms furnished by or in a
22 manner prescribed by the director.

23 (2) A law enforcement agency shall collect a person's
24 biometric data under this subsection if the person is arrested for
25 a misdemeanor violation of state law for which the maximum penalty
26 is 93 days or for criminal contempt under section 2950 or 2950a of
27 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
28 600.2950a, or criminal contempt for a violation of a foreign
29 protection order that satisfies the conditions for validity

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

22 (3) A person's biometric data are not required to be collected
23 and forwarded to the department under subsection (1) or (2) solely
24 because ~~he or she~~ **the person** has been arrested for violating
25 section 904(3) (a) of the Michigan vehicle code, 1949 PA 300, MCL
26 257.904, or a local ordinance substantially corresponding to
27 section 904(3) (a) of the Michigan vehicle code, 1949 PA 300, MCL
28 257.904.

29 (4) The arresting law enforcement agency may collect the

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

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

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

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

1 under section 2950i of the revised judicature act of 1961, 1961 PA
2 236, MCL 600.2950i, the official taking or holding the person's
3 biometric data and arrest card shall immediately destroy the
4 biometric data and arrest card. The law enforcement agency shall
5 notify the department in a manner prescribed by the department that
6 a petition was not authorized against the juvenile or that a charge
7 was not made or that a criminal contempt proceeding was not brought
8 against the arrested person if the juvenile's or arrested person's
9 arrest card was forwarded to the department.

10 (8) If an individual is arrested for any crime and the charge
11 or charges are dismissed before trial, both of the following apply:

12 (a) The arrest record ~~shall~~**must** be removed from the internet
13 criminal history access tool (ICHAT).

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

21 (i) The arrest record, all biometric data, and fingerprints
22 ~~shall~~**must** be expunged or destroyed, or both, as appropriate.

23 (ii) Any entry concerning the charge ~~shall~~**must** be removed from
24 the LEIN.

25 (9) The department shall comply with the requirements ~~listed~~
26 ~~in~~**under** subsection (8) upon receipt of an appropriate order issued
27 by the district court or the circuit court.

28 (10) If a juvenile is adjudicated and found not to be within
29 the provisions of section 2(a)(1) of chapter XIIA of the probate

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

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

1 imposed under any of the following sections, the report ~~shall~~**must**
2 so indicate:

3 (a) Section 7411 of the public health code, 1978 PA 368, MCL
4 333.7411.

5 (b) Section 1076(4) of the revised judicature act of 1961,
6 1961 PA 236, MCL 600.1076.

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

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

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

13 (f) Section 430(9)(a) of the Michigan penal code, 1931 PA 328,
14 MCL 750.430.

15 (g) Section 1209(7) of the revised judicature act of 1961,
16 1961 PA 236, MCL 600.1209.

17 (12) The department shall record the disposition of each
18 charge and shall inform the director of the Federal Bureau of
19 Investigation of the final disposition of any arrest or offense for
20 which a person's biometric data were collected under this section
21 or section 16a of chapter IX of the code of criminal procedure,
22 1927 PA 175, MCL 769.16a.

23 (13) The department shall compare the biometric data received
24 with those already on file and if the department finds that the
25 person arrested has a criminal record, the department shall
26 immediately inform the arresting agency and prosecuting attorney of
27 this fact.

28 (14) Except as provided in subsection (8), the provisions of
29 subsection (10) that require the destruction of the biometric data

1 and the arrest card do not apply to a person who was arraigned for
2 any of the following:

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

5 (b) Rape.

6 (c) Criminal sexual conduct in any degree.

7 (d) ~~Sodomy.~~ **Bestiality or sexual contact or sexual penetration**
8 **upon a human corpse.**

9 (e) Gross indecency.

10 (f) Indecent liberties.

11 (g) Child abusive commercial activities.

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

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

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

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

1 Enacting section 2. This amendatory act does not take effect
2 unless Senate Bill No. _____ or House Bill No. 5410 (request no.
3 04459'23) of the 102nd Legislature is enacted into law.