

SENATE BILL No. 721

October 17, 2001, Introduced by Senators GARCIA, JOHNSON, BULLARD, MC COTTER, HAMMERSTROM and GOSCHKA 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 sections 2 and 3 (MCL 28.242 and 28.243), section 2 as amended by 1988 PA 40 and section 3 as amended by 1999 PA 266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) The commanding officer of the division shall
2 procure and file for purposes of criminal identification criminal
3 history record information on all persons who have been convicted
4 within the state of a felony or a misdemeanor, or both, OR WHO
5 HAVE BEEN CONVICTED OF CRIMINAL CONTEMPT. The commanding officer
6 of the division shall procure and file for purposes of juvenile

1 identification juvenile history record information on all
2 juveniles who have been adjudicated to have committed a juvenile
3 offense within the state.

4 (2) The commanding officer shall provide all reporting offi-
5 cials with forms, numerical identifiers, and instructions which
6 specify in detail the nature of the information required, the
7 time it is to be forwarded, the method of classifying, and other
8 matters to facilitate criminal and juvenile history record infor-
9 mation collection and compilation.

10 (3) The commanding officer shall file the fingerprint
11 impressions and photographs, if available, of all persons con-
12 fined in a prison or other state correctional facility.

13 Sec. 3. (1) Except as provided in subsection (2), immedi-
14 ately upon the arrest of a person for a felony, ~~or~~ for a misde-
15 meanor violation of state law for which the maximum possible pen-
16 alty exceeds 92 days' imprisonment or a fine of \$1,000.00, or
17 both, FOR CRIMINAL CONTEMPT, or for a juvenile offense, the
18 arresting law enforcement agency in this state shall take the
19 person's fingerprints in duplicate and forward the fingerprints
20 to the department within 72 hours after the arrest. One set of
21 fingerprints shall be sent to the division on forms furnished by
22 the commanding officer, and 1 set of fingerprints shall be fur-
23 nished to the director of the federal bureau of investigation on
24 forms furnished by the director. A person's fingerprints are not
25 required to be taken and forwarded to the department under this
26 subsection solely because he or she has been arrested for a

1 violation of section 904(3)(a) of the Michigan vehicle code, 1949
2 PA 300, MCL 257.904.

3 (2) A law enforcement agency shall take a person's finger-
4 prints under this subsection if the person is arrested for a mis-
5 demeanor violation of state law for which the maximum penalty is
6 93 days OR FOR CRIMINAL CONTEMPT if the fingerprints have not
7 previously been taken and forwarded to the department under
8 subsection (1). A law enforcement agency shall take a person's
9 fingerprints under this subsection if the person is arrested for
10 a violation of a local ordinance for which the maximum possible
11 penalty is 93 days' imprisonment and that substantially corre-
12 sponds to a violation of state law that is a misdemeanor for
13 which the maximum possible term of imprisonment is 93 days. If
14 the person is convicted of any violation, the law enforcement
15 agency shall take the person's fingerprints before sentencing if
16 not previously taken. The court shall forward to the law
17 enforcement agency a copy of the disposition of conviction, and
18 the law enforcement agency shall forward the person's finger-
19 prints and the copy of the disposition of conviction to the
20 department within 72 hours after receiving the disposition of
21 conviction in the same manner as provided in subsection (1). If
22 the person is convicted of violating a local ordinance, the law
23 enforcement agency shall indicate on the form sent to the divi-
24 sion the statutory citation for the state law to which the local
25 ordinance substantially corresponds. A person's fingerprints are
26 not required to be taken and forwarded to the department under
27 this subsection solely because he or she has been convicted of

1 violating section 904(3)(a) of the Michigan vehicle code, 1949 PA
2 300, MCL 257.904, or a local ordinance substantially correspond-
3 ing to section 904(3)(a) of the Michigan vehicle code, 1949 PA
4 300, MCL 257.904.

5 (3) The arresting law enforcement agency may take 1 set of
6 fingerprints of a person who is arrested for a misdemeanor pun-
7 ishable by imprisonment for not more than 92 days or a fine of
8 not more than \$1,000.00, or both, and who fails to produce satis-
9 factory evidence of identification as required by section 1 of
10 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
11 to the department immediately. Upon completion of the identifi-
12 cation process by the department, the fingerprints shall be
13 returned to the arresting law enforcement agency.

14 (4) An arresting law enforcement agency in the state may
15 take the person's fingerprints on forms furnished by the command-
16 ing officer upon an arrest for a misdemeanor other than a misde-
17 meanor described in subsection (1), (2), or (3), but ~~may~~ SHALL
18 not forward the fingerprints to the department unless the person
19 is convicted of a misdemeanor.

20 (5) If a petition is not authorized for a juvenile accused
21 of a juvenile offense or if a person arrested for having commit-
22 ted a felony or a misdemeanor is released without a charge made
23 against him or her, the official taking or holding the person's
24 fingerprints, arrest card, and description shall immediately
25 return this information to the person without the necessity of a
26 request. If this information is not returned, the person has the
27 absolute right to demand and receive its return at any time after

1 the person's release and without need to petition for court
2 action. The law enforcement agency shall notify the commanding
3 officer in writing that no petition was authorized against the
4 juvenile or that no charge was made against the arrested person
5 if the juvenile's or arrested person's fingerprints were for-
6 warded to the department.

7 (6) If a juvenile is adjudicated and found not to be within
8 the provisions of section 2(a)(1) of chapter XIIIA of the probate
9 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found
10 not guilty of the offense, the arrest card, the fingerprints, and
11 description shall be returned to him or her by the official hold-
12 ing this information. If for any reason the official holding the
13 information does not return the information within 60 days of the
14 adjudication or the finding of not guilty, the accused or juve-
15 nile has the right to obtain an order from the court having
16 jurisdiction over the case for the return of the information. If
17 the order of return is not complied with, the accused or juvenile
18 has the right to petition the family division of circuit court of
19 the county where the original petition was filed or the circuit
20 court of the county where the original charge was made for a pre-
21 emptory writ of mandamus to require issuance of the order of
22 return. Upon final disposition of the charge against the
23 accused, the clerk of the court entering the disposition shall
24 notify the commanding officer of any finding of not guilty or not
25 guilty by reason of insanity, dismissal, or nolle prosequi, if it
26 appears that the accused was initially arrested for a felony or a
27 misdemeanor punishable by imprisonment for more than 92 days or

1 of any finding that a juvenile alleged responsible for a juvenile
2 offense is not within the provisions of section 2(a)(1) of chap-
3 ter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

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

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

23 (b) Sections 11 to 15 of chapter II of the code of criminal
24 procedure, 1927 PA 175, MCL 762.11 to 762.15.

25 (c) Section 4a of chapter IX of the code of criminal proce-
26 dure, 1927 PA 175, MCL 769.4a.

1 (d) Section 350a(4) of the Michigan penal code, 1931 PA 328,
2 MCL 750.350a.

3 (8) The commanding officer shall record the disposition of
4 each charge and shall inform the director of the federal bureau
5 of investigation of the final disposition of the felony or misde-
6 meanor arrest.

7 (9) The commanding officer shall compare the fingerprints
8 and description received with those already on file and if the
9 commanding officer finds that the person arrested has a criminal
10 record, the commanding officer shall immediately inform the
11 arresting agency and prosecuting attorney of this fact.

12 (10) The provisions of this section requiring the return of
13 the fingerprints, arrest card, and description do not apply in
14 the following cases:

15 (a) The person arrested was charged with the commission or
16 attempted commission, or if the person arrested is a juvenile
17 alleged to have committed an offense that if committed by an
18 adult would constitute the commission or attempted commission, of
19 a crime with or against a child under 16 years of age or the
20 crime of criminal sexual conduct in any degree, rape, sodomy,
21 gross indecency, indecent liberties, or child sexually abusive
22 activities or materials.

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

1 (11) Subsection (4) does not permit the forwarding to the
2 department of the fingerprints of a person accused and convicted
3 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
4 257.923, or a local ordinance substantially corresponding to a
5 provision of that act, unless the offense is punishable upon con-
6 viction by imprisonment for more than 92 days or is an offense
7 that is punishable by imprisonment for more than 92 days upon a
8 subsequent conviction.

9 (12) As used in this section:

10 (a) "Department" means the department of state police.

11 (b) "Law enforcement agency" means the police department of
12 a city, township, or village, the sheriff's department of a
13 county, the department, or any other governmental law enforcement
14 agency of this state.

15 Enacting section 1. This amendatory act does not take
16 effect unless Senate Bill No. 722

17 of the 91st Legislature is enacted into
18 law.