

SENATE BILL No. 1056

March 29, 2012, Introduced by Senators JONES and NOFS 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 sections 1a, 2, 2a, 3, 3a, and 8 (MCL 28.241a, 28.242, 28.242a, 28.243, 28.243a, and 28.248), sections 1a and 3a as amended and section 8 as added by 2001 PA 187, section 2 as amended by 2001 PA 203, section 2a as added by 2005 PA 310, and section 3 as amended by 2004 PA 222.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1a. As used in this act:

(a) "Arrest card" means a paper form or an electronic format prescribed by the department that facilitates ~~collecting~~ **THE COLLECTION** and ~~compiling~~ **COMPILATION OF** criminal and juvenile

1 arrest history record information ~~including fingerprint~~
2 ~~images.~~ AND BIOMETRIC DATA.

3 (B) "BIOMETRIC DATA" MEANS ALL OF THE FOLLOWING:

4 (i) FINGERPRINT IMAGES RECORDED IN A MANNER PRESCRIBED BY THE
5 DEPARTMENT.

6 (ii) PALM PRINT IMAGES, IF THE ARRESTING LAW ENFORCEMENT AGENCY
7 HAS THE ELECTRONIC CAPABILITY TO RECORD PALM PRINT IMAGES IN A
8 MANNER PRESCRIBED BY THE DEPARTMENT.

9 (iii) DIGITAL IMAGES RECORDED DURING THE ARREST OR BOOKING
10 PROCESS, INCLUDING A FULL-FACE CAPTURE, LEFT AND RIGHT PROFILE, AND
11 SCARS, MARKS, AND TATTOOS, IF THE ARRESTING LAW ENFORCEMENT AGENCY
12 HAS THE ELECTRONIC CAPABILITY TO RECORD THE IMAGES IN A MANNER
13 PRESCRIBED BY THE DEPARTMENT.

14 (iv) ALL DESCRIPTIVE DATA ASSOCIATED WITH IDENTIFYING MARKS,
15 SCARS, AMPUTATIONS, AND TATTOOS.

16 (C) ~~(b)~~ "Commanding officer" means the DIRECTOR OF THE
17 department of state police ~~employee in charge of the criminal~~
18 ~~justice information center or its successor administrative unit.~~ OR
19 THE DIRECTOR'S DESIGNEE.

20 (D) ~~(c)~~ "Criminal history record information" means name; date
21 of birth; ~~fingerprints; photographs, if available; personal~~
22 descriptions including identifying marks, scars, amputations, and
23 tattoos; aliases and prior names; social security number, driver's
24 license number, and other identifying numbers; and information on
25 misdemeanor arrests and convictions and felony arrests and
26 convictions.

27 (E) ~~(d)~~ "Department" means the department of state police.

1 (F) ~~(e)~~ "Felony" means a violation of a penal law of this
2 state for which the offender may be punished by imprisonment for
3 more than 1 year or an offense expressly designated by law to be a
4 felony.

5 ~~(f) "Fingerprint impressions" means fingerprint images~~
6 ~~recorded in a manner prescribed by the department.~~

7 (g) "Juvenile history record information" means name; date of
8 birth; ~~fingerprints; photographs, if available;~~ personal
9 descriptions including identifying marks, scars, amputations, and
10 tattoos; aliases and prior names; social security number, driver's
11 license number, and other identifying numbers; and information on
12 juvenile offense arrests and adjudications or convictions.

13 (h) "Juvenile offense" means an offense committed by a
14 juvenile that, if committed by an adult, would be a felony, a
15 criminal contempt conviction under section 2950 or 2950a of the
16 revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
17 600.2950a, a criminal contempt conviction for a violation of a
18 foreign protection order that satisfies the conditions for validity
19 provided in section 2950i of the revised judicature act of 1961,
20 1961 PA 236, MCL 600.2950i, or a misdemeanor.

21 (i) "Law enforcement agency" means the police department of a
22 city, township, or village, the sheriff's department of a county,
23 the department, or any other governmental law enforcement agency of
24 this state.

25 (j) "Misdemeanor" means either of the following:

26 (i) A violation of a penal law of this state that is not a
27 felony or a violation of an order, rule, or regulation of a state

1 agency that is punishable by imprisonment or a fine that is not a
2 civil fine.

3 (ii) A violation of a local ordinance that substantially
4 corresponds to state law and that is not a civil infraction.

5 Sec. 2. (1) The commanding officer shall procure and file for
6 purposes of criminal identification criminal history record
7 information on all persons ~~who have been convicted~~ **ARRESTED** within
8 this state of either a felony or a misdemeanor, or ~~who have been~~
9 ~~convicted of~~ criminal contempt under section 2950 or 2950a of the
10 revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and
11 600.2950a, or criminal contempt for a violation of a foreign
12 protection order that satisfies the conditions for validity
13 provided in section 2950i of the revised judicature act of 1961,
14 1961 PA 236, MCL 600.2950i. The commanding officer shall procure
15 and file for purposes of juvenile identification juvenile history
16 record information on all juveniles who have been adjudicated to
17 have committed a juvenile offense within this state.

18 (2) The commanding officer shall provide all reporting
19 officials with forms or prescribe the format, numerical
20 identifiers, and instructions which specify the information
21 required, the time it is to be forwarded, the method of
22 classifying, and other matters to facilitate criminal and juvenile
23 history record information collection and compilation.

24 (3) The commanding officer shall file the ~~fingerprint~~
25 ~~impressions and photographs, if available,~~ **BIOMETRIC DATA AND**
26 **CRIMINAL HISTORY RECORD INFORMATION THAT ARE FORWARDED TO THE**
27 **DEPARTMENT** of all persons confined in a prison or other state

1 correctional facility.

2 (4) The commanding officer shall provide access to criminal
3 history record information and juvenile history record information,
4 as prescribed by the department and as authorized by law.

5 (5) A copy of an arrest card shall be forwarded to the federal
6 bureau of investigation.

7 Sec. 2a. (1) Except as provided in subsection (2), all
8 criminal history **RECORD** information that is associated with a state
9 identification number and is supported by ~~fingerprint impressions~~
10 ~~or images~~ **BIOMETRIC DATA** shall be disseminated in response to a
11 fingerprint-based or name-based search of the criminal history
12 record **INFORMATION** database.

13 (2) Subsection (1) does not require the dissemination of
14 criminal history **RECORD** information that is nonpublic or is
15 prohibited by law from being disseminated.

16 Sec. 3. (1) Except as provided in subsection (3), ~~immediately~~
17 upon the arrest of a person for a felony or for a misdemeanor
18 violation of state law for which the maximum possible penalty
19 exceeds 92 days' imprisonment or a fine of \$1,000.00, or both, **OR A**
20 **MISDEMEANOR AUTHORIZED FOR DNA COLLECTION UNDER SECTION 6(1)(B) OF**
21 **THE DNA IDENTIFICATION PROFILING SYSTEM ACT, 1990 PA 250, MCL**
22 **28.176**, or for criminal contempt under section 2950 or 2950a of the
23 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 satisfies the conditions for validity
26 provided in section 2950i of the revised judicature act of 1961,
27 1961 PA 236, MCL 600.2950i, or for a juvenile offense, other than a

1 juvenile offense for which the maximum possible penalty does not
2 exceed 92 days' imprisonment or a fine of \$1,000.00, or both, **OR**
3 **FOR A JUVENILE OFFENSE THAT IS A MISDEMEANOR AUTHORIZED FOR DNA**
4 **COLLECTION UNDER SECTION 6(1)(B) OF THE DNA IDENTIFICATION**
5 **PROFILING SYSTEM ACT, 1990 PA 250, MCL 28.176**, the arresting law
6 enforcement agency in this state shall ~~take~~**COLLECT** the person's
7 ~~fingerprints~~**BIOMETRIC DATA** and forward the ~~fingerprints~~**BIOMETRIC**
8 **DATA** to the department within 72 hours after the arrest. The
9 ~~fingerprints~~**BIOMETRIC DATA** shall be sent to the department on
10 forms furnished by or in a manner prescribed by the department, and
11 the department shall forward the ~~fingerprints~~**BIOMETRIC DATA** to the
12 director of the federal bureau of investigation on forms furnished
13 by or in a manner prescribed by the director.

14 (2) A law enforcement agency shall ~~take~~**COLLECT** a person's
15 ~~fingerprints~~**BIOMETRIC DATA** under this subsection if the person is
16 arrested for a misdemeanor violation of state law for which the
17 maximum penalty is 93 days or for criminal contempt under section
18 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236,
19 MCL 600.2950 and 600.2950a, or criminal contempt for a violation of
20 a foreign protection order that satisfies the conditions for
21 validity provided in section 2950i of the revised judicature act of
22 1961, 1961 PA 236, MCL 600.2950i, if the ~~fingerprints~~**BIOMETRIC**
23 **DATA** have not previously been ~~taken~~**COLLECTED** and forwarded to the
24 department under subsection (1). A law enforcement agency shall
25 ~~take~~**COLLECT** a person's ~~fingerprints~~**BIOMETRIC DATA** under this
26 subsection if the person is arrested for a violation of a local
27 ordinance for which the maximum possible penalty is 93 days'

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

16 (3) A person's ~~fingerprints~~**BIOMETRIC DATA** are not required to
17 be ~~taken~~**COLLECTED** and forwarded to the department under subsection
18 (1) or (2) solely because he or she has been ~~convicted of~~**ARRESTED**
19 **FOR** violating section 904(3)(a) of the Michigan vehicle code, 1949
20 PA 300, MCL 257.904, or a local ordinance substantially
21 corresponding to section 904(3)(a) of the Michigan vehicle code,
22 1949 PA 300, MCL 257.904.

23 (4) The arresting law enforcement agency may ~~take 1 set of~~
24 ~~fingerprints~~**COLLECT THE BIOMETRIC DATA** of a person who is arrested
25 for a misdemeanor punishable by imprisonment for not more than 92
26 days or a fine of not more than \$1,000.00, or both, and who fails
27 to produce satisfactory evidence of identification as required by

1 section 1 of 1961 PA 44, MCL 780.581. These ~~fingerprints~~ **BIOMETRIC**
2 **DATA** shall be forwarded to the department immediately. Upon
3 completion of the identification process by the department, the
4 ~~fingerprints~~ **BIOMETRIC DATA** shall be destroyed.

5 (5) An arresting law enforcement agency in this state may ~~take~~
6 **COLLECT** the person's ~~fingerprints on forms furnished by the~~
7 ~~commanding officer~~ **BIOMETRIC DATA** upon an arrest for a misdemeanor
8 other than a misdemeanor described in subsection (1), (2), or (4),
9 and may forward the ~~fingerprints~~ **BIOMETRIC DATA** to the department.

10 (6) If a court orders the ~~taking~~ **COLLECTION** of ~~fingerprints of~~
11 ~~a person pursuant to~~ **PERSON'S BIOMETRIC DATA UNDER** section 11 or 18
12 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
13 712A.11 and 712A.18, or section 29 of chapter IV or section 1 of
14 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
15 764.29 and 769.1, the law enforcement agency shall forward the
16 ~~fingerprints~~ **BIOMETRIC DATA** and arrest card to the department.

17 (7) If a petition is not authorized for a juvenile accused of
18 a juvenile offense, if a person arrested for having committed an
19 offense for which ~~he or she was fingerprinted~~ **BIOMETRIC DATA WERE**
20 **COLLECTED** under this section is released without a charge made
21 against him or her, or if criminal contempt proceedings are not
22 brought or criminal charges are not made against a person arrested
23 for criminal contempt for a personal protection order violation
24 under section 2950 or 2950a of the revised judicature act of 1961,
25 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a
26 violation of a foreign protection order that meets the requirements
27 for validity under section 2950i of the revised judicature act of

1 1961, 1961 PA 236, MCL 600.2950i, the official taking or holding
 2 the person's ~~fingerprints~~ **BIOMETRIC DATA** and arrest card shall
 3 immediately destroy the ~~fingerprints~~ **BIOMETRIC DATA** and arrest
 4 card. The law enforcement agency shall notify the department in
 5 ~~writing~~ **A MANNER PRESCRIBED BY THE DEPARTMENT** that a petition was
 6 not authorized against the juvenile or that a charge was not made
 7 or that a criminal contempt proceeding was not brought against the
 8 arrested person if the juvenile's or arrested person's ~~fingerprints~~
 9 ~~were~~ **ARREST CARD WAS** forwarded to the department.

10 (8) If a juvenile is adjudicated and found not to be within
 11 the provisions of section 2(a)(1) of chapter XIIIA of the probate
 12 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found
 13 not guilty of an offense for which ~~he or she was fingerprinted~~
 14 **BIOMETRIC DATA WERE COLLECTED** under this section, upon final
 15 disposition of the charge against the accused or juvenile, the
 16 ~~fingerprints~~ **BIOMETRIC DATA** and arrest card shall be destroyed by
 17 the official holding those items and the clerk of the court
 18 entering the disposition shall notify the department of any finding
 19 of not guilty ~~or not guilty by reason of insanity, dismissal, or~~
 20 nolle prosequi, if it appears that the **BIOMETRIC DATA OF THE**
 21 accused ~~was~~ **WERE** initially ~~fingerprinted~~ **COLLECTED** under this
 22 section, or of any finding that a juvenile alleged responsible for
 23 a juvenile offense is not within the provisions of section 2(a)(1)
 24 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
 25 712A.2.

26 (9) Upon final disposition of the charge against the accused,
 27 the clerk of the court entering the disposition shall immediately

1 advise the department of the final disposition of the arrest for
2 which the ~~person was fingerprinted~~ **PERSON'S BIOMETRIC DATA WERE**
3 **COLLECTED** if a juvenile was adjudicated to have committed a
4 juvenile offense or if the accused was convicted of an offense for
5 which ~~he or she was fingerprinted~~ **THE BIOMETRIC DATA OF THE ACCUSED**
6 **WERE COLLECTED** under this section or section 16a of chapter IX of
7 the code of criminal procedure, 1927 PA 175, MCL 769.16a. With
8 regard to any adjudication or conviction, the clerk shall transmit
9 to the department information as to any adjudication or finding of
10 guilty or guilty but mentally ill; any plea of guilty, nolo
11 contendere, or guilty but mentally ill; the offense of which the
12 accused was convicted; and a summary of any deposition or sentence
13 imposed. The summary of the sentence shall include any probationary
14 term; any minimum, maximum, or alternative term of imprisonment;
15 the total of all fines, costs, and restitution ordered; and any
16 modification of sentence. If the sentence is imposed under any of
17 the following sections, the report shall so indicate:

18 (a) Section 7411 of the public health code, 1978 PA 368, MCL
19 333.7411.

20 (b) Section 1076(4) of the revised judicature act of 1961,
21 1961 PA 236, MCL 600.1076.

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

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

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

1 (f) Section 430(8)(a) of the Michigan penal code, 1931 PA 328,
2 MCL 750.430.

3 (10) The department shall record the disposition of each
4 charge and shall inform the director of the federal bureau of
5 investigation of the final disposition of any arrest or offense for
6 which a ~~person was fingerprinted~~ **PERSON'S BIOMETRIC DATA WERE**
7 **COLLECTED** under this section or section 16a of chapter IX of the
8 code of criminal procedure, 1927 PA 175, MCL 769.16a.

9 (11) The department shall compare the ~~fingerprints and~~
10 ~~description~~ **BIOMETRIC DATA** received with those already on file and
11 if the department finds that the person arrested has a criminal
12 record, the department shall immediately inform the arresting
13 agency and prosecuting attorney of this fact.

14 (12) The provisions of subsection (8) that require the
15 destruction of the ~~fingerprints~~ **BIOMETRIC DATA** and the arrest card
16 do not apply to a person who was arraigned ~~in circuit court or the~~
17 ~~family division of circuit court~~ for any of the following:

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

20 (b) Rape.

21 (c) Criminal sexual conduct in any degree.

22 (d) Sodomy.

23 (e) Gross indecency.

24 (f) Indecent liberties.

25 (g) Child abusive commercial activities.

26 (h) A person who has a prior conviction, other than a
27 misdemeanor traffic offense, unless a judge of a court of record,

1 except the probate court, by express order on the record, orders
2 the destruction or return of the ~~fingerprints~~**BIOMETRIC DATA** and
3 arrest card.

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

8 (13) Subsection (5) does not permit the forwarding to the
9 department of the ~~fingerprints~~**BIOMETRIC DATA** of a person accused
10 and convicted under the Michigan vehicle code, 1949 PA 300, MCL
11 257.1 to 257.923, or a local ordinance substantially corresponding
12 to a provision of that act, unless the offense is punishable upon
13 conviction by imprisonment for more than 92 days or is an offense
14 that is punishable by imprisonment for more than 92 days upon a
15 subsequent conviction.

16 Sec. 3a. (1) A person shall not refuse to allow or resist the
17 ~~taking~~**COLLECTION** of his or her ~~fingerprints~~**BIOMETRIC DATA** if
18 authorized or required under this act.

19 (2) A person who violates subsection (1) is guilty of a
20 misdemeanor punishable by imprisonment for not more than 90 days or
21 by a fine of not more than \$500.00, or both.

22 Sec. 8. ~~Fingerprint impressions~~**BIOMETRIC DATA** obtained under
23 a law or rule for noncriminal identification purposes may be used
24 for criminal identification purposes unless prohibited by law or
25 rule.