

# HOUSE BILL NO. 5804

May 20, 2020, Introduced by Reps. Howell, Filler, Mueller, Bolden and Berman and referred to the Committee on Transportation.

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  
2        arrest of a person for a felony or for a misdemeanor violation of



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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 has been arrested for violating section 904(3)(a)~~  
25 ~~of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local~~  
26 ~~ordinance substantially corresponding to section 904(3)(a) of the~~  
27 ~~Michigan vehicle code, 1949 PA 300, MCL 257.904.~~

28 (3) ~~(4)~~ The arresting law enforcement agency may collect the  
29 biometric data of a person who is arrested for a misdemeanor



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

8 (4) ~~(5)~~—An arresting law enforcement agency in this state may  
9 collect the person's biometric data upon an arrest for a  
10 misdemeanor other than a misdemeanor described in subsection (1),  
11 (2), or ~~(4)~~, **(3)**, and may forward the biometric data to the  
12 department.

13 (5) ~~(6)~~—If a court orders the collection of a person's  
14 biometric data under section 11 or 18 of chapter XIIA of the  
15 probate code of 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or  
16 section 29 of chapter IV or section 1 of chapter IX of the code of  
17 criminal procedure, 1927 PA 175, MCL 764.29 and 769.1, the law  
18 enforcement agency shall forward the biometric data and arrest card  
19 to the department.

20 (6) ~~(7)~~—If a petition is not authorized for a juvenile accused  
21 of 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, or if  
24 criminal contempt proceedings are not brought or criminal charges  
25 are not made against a person arrested for criminal contempt for a  
26 personal protection order violation 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 meets the requirements for validity under



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

11 (7) ~~(8)~~ If an individual is arrested for any crime and the  
12 charge or charges are dismissed before trial, both of the following  
13 apply:

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

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

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

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

27 (8) ~~(9)~~ The department shall comply with the requirements  
28 listed in subsection ~~(8)~~ ~~upon~~ (7) on receipt of an appropriate  
29 order issued by the district court or the circuit court.



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

15       (10) ~~(11)~~ ~~Upon~~**On** final disposition of the charge against the  
16 accused, the clerk of the court ~~entering~~**that enters** the  
17 disposition shall immediately advise the department of the final  
18 disposition of the arrest for which the person's biometric data  
19 were collected if a juvenile was adjudicated to have committed a  
20 juvenile offense or if the accused was convicted of an offense for  
21 which the biometric data of the accused were collected under this  
22 section or section 16a of chapter IX of the code of criminal  
23 procedure, 1927 PA 175, MCL 769.16a. With regard to any  
24 adjudication or conviction, the clerk shall transmit to the  
25 department information as to any adjudication or finding of guilty  
26 or guilty but mentally ill; any plea of guilty, nolo contendere, or  
27 guilty but mentally ill; the offense of which the accused was  
28 convicted; and a summary of any deposition or sentence imposed. The  
29 summary of the sentence must include any probationary term; any



1 minimum, maximum, or alternative term of imprisonment; the total of  
2 all fines, costs, and restitution ordered; and any modification of  
3 sentence. If the sentence is imposed under any of the following  
4 sections, the report shall so indicate:

5 (a) Section 7411 of the public health code, 1978 PA 368, MCL  
6 333.7411.

7 (b) Section 1076(4) of the revised judicature act of 1961,  
8 1961 PA 236, MCL 600.1076.

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

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

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

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

17 (g) Section 1209(7) of the revised judicature act of 1961,  
18 1961 PA 236, MCL 600.1209.

19 **(11)** ~~(12)~~The department shall record the disposition of each  
20 charge and shall inform the director of the Federal Bureau of  
21 Investigation of the final disposition of any arrest or offense for  
22 which a person's biometric data were collected under this section  
23 or section 16a of chapter IX of the code of criminal procedure,  
24 1927 PA 175, MCL 769.16a.

25 **(12)** ~~(13)~~The department shall compare the biometric data  
26 received with those already on file and if the department finds  
27 that the person arrested has a criminal record, the department  
28 shall immediately inform the arresting agency and prosecuting  
29 attorney of this fact.



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

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

(b) Rape.

(c) Criminal sexual conduct in any degree.

(d) Sodomy.

(e) Gross indecency.

(f) Indecent liberties.

(g) Child abusive commercial activities.

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

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

(14) ~~(15)~~ Subsection ~~(5)~~ ~~(4)~~ does not permit the forwarding to the department of the biometric data of a person accused and convicted under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance **that** substantially ~~corresponding~~ **corresponds** to a provision of that act, unless the offense is punishable ~~upon~~ **on** conviction by imprisonment for more than 92 days or is an offense that is punishable by imprisonment for more than 92 days ~~upon~~ **on** a subsequent conviction.

Enacting section 1. This amendatory act does not take effect



- 1 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5802 (request no.
- 2 04927'19) of the 100th Legislature is enacted into law.

