

SENATE BILL NO. 707

January 08, 2020, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

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

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

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

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

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

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

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

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

1 protection order that meets the requirements for validity under
2 section 2950i of the revised judicature act of 1961, 1961 PA 236,
3 MCL 600.2950i, the official taking or holding the person's
4 biometric data and arrest card shall, ~~immediately destroy~~ **not more**
5 **than 180 days after the arrest, return** the biometric data **to the**
6 **person** and **destroy the** arrest card. The law enforcement agency
7 shall notify the department in a manner prescribed by the
8 department that a petition was not authorized against the juvenile
9 or that a charge was not made or that a criminal contempt
10 proceeding was not brought against the arrested person if the
11 juvenile's or arrested person's arrest card was forwarded to the
12 department.

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

15 (a) The arrest record shall be removed from the internet
16 criminal history access tool (ICHAT).

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

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

26 (ii) Any entry concerning the charge shall be removed from the
27 LEIN.

28 (9) The department shall comply with the requirements listed
29 in subsection (8) upon receipt of an appropriate order issued by

1 the district court or the circuit court.

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

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

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

6 (a) Section 7411 of the public health code, 1978 PA 368, MCL
7 333.7411.

8 (b) Section 1076(4) of the revised judicature act of 1961,
9 1961 PA 236, MCL 600.1076.

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

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

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

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

18 (g) Section 1209(7) of the revised judicature act of 1961,
19 1961 PA 236, MCL 600.1209.

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

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

1 this fact.

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

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

8 (b) Rape.

9 (c) Criminal sexual conduct in any degree.

10 (d) Sodomy.

11 (e) Gross indecency.

12 (f) Indecent liberties.

13 (g) Child abusive commercial activities.

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

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

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

1 Enacting section 1. This amendatory act does not take effect
2 unless Senate Bill No. 706 of the 100th Legislature is enacted into
3 law.