

# HOUSE BILL NO. 5919

March 16, 2022, Introduced by Reps. Bolden, LaGrand, Sowerby, Calley, Aiyash, Rabhi, Stone, Kупpa, Brixie, Brenda Carter, Ellison, Hood, Scott, Hope, Cambensy, Steenland, Breen, Brann and Yancey 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 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'

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

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

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

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

27 (4) The arresting law enforcement agency may collect the  
28 biometric data of a person who is arrested for a misdemeanor  
29 punishable by imprisonment for not more than 92 days or a fine of

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

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

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

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

1 biometric data and arrest card shall immediately destroy the  
 2 biometric data and arrest card. The law enforcement agency shall  
 3 notify the department in a manner prescribed by the department that  
 4 a petition was not authorized against the juvenile or that a charge  
 5 was not made or that a criminal contempt proceeding was not brought  
 6 against the arrested person if the juvenile's or arrested person's  
 7 arrest card was forwarded to the department.

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

10 ~~(a) The arrest record shall be removed from the internet~~  
 11 ~~criminal history access tool (ICHAT).~~

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

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

21 **(b) (ii)** ~~Any entry concerning the charge shall **must** be removed~~  
 22 ~~from the LEIN.~~

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

26 (10) If a juvenile is adjudicated and found not to be within  
 27 the provisions of section 2(a)(1) of chapter XIIA of the probate  
 28 code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found  
 29 not guilty of an offense for which biometric data were collected

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

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

1 (a) Section 7411 of the public health code, 1978 PA 368, MCL  
2 333.7411.

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

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

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

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

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

13 (g) Section 1209(7) of the revised judicature act of 1961,  
14 1961 PA 236, MCL 600.1209.

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

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

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

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

3 (b) Rape.

4 (c) Criminal sexual conduct in any degree.

5 (d) Sodomy.

6 (e) Gross indecency.

7 (f) Indecent liberties.

8 (g) Child abusive commercial activities.

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

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

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

25 Enacting section 1. This amendatory act does not take effect  
26 unless all of the following bills of the 101st Legislature are  
27 enacted into law:

28 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5917 (request no.  
29 04851'21).



1 (b) Senate Bill No. \_\_\_\_ or House Bill No. 5913 (request no.  
2 04851'21 a).