BUREAU OF CRIMINAL IDENTIFICATION AND RECORDS

Act 289 of 1925

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.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- Am. 1931, Act 197, Imd. Eff. May 28, 1931 ;-- Am. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988 ;-- Am. 2001, Act 187, Eff. Apr. 1, 2002

The People of the State of Michigan enact:

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28.241 Department of state police; responsibility for criminal and juvenile identification and records; apparatus and materials.

Sec. 1.

The department of state police is responsible for criminal and juvenile identification and records. The department shall be supplied with the necessary apparatus and materials for collecting, filing, and preserving criminal and juvenile records filed with the department.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- CL 1929, 567 ;-- Am. 1931, Act 197, Imd. Eff. May 28, 1931 ;-- CL 1948, 28.241 ;-- Am. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988 ;-- Am. 2001, Act 187, Eff. Apr. 1, 2002

28.241a Definitions.

Sec. 1a.

As used in this act:

(a) "Arrest card" means a paper form or an electronic format prescribed by the department that facilitates the collection and compilation of criminal and juvenile arrest history record information and biometric data.

(b) "Biometric data" means all of the following:

(i) Fingerprint images recorded in a manner prescribed by the department.

(ii) Palm print images, if the arresting law enforcement agency has the electronic capability to record palm print images in a manner prescribed by the department.

(iii) Digital images recorded during the arrest or booking process, including a full-face capture, left and right profile, and scars, marks, and tattoos, if the arresting law enforcement agency has the electronic capability to record the images in a manner prescribed by the department.

(iv) All descriptive data associated with identifying marks, scars, amputations, and tattoos.

(c) "Commanding officer" means the director of the department of state police or the director's designee.

(d) "Criminal history record information" means name; date of birth; personal descriptions including identifying marks, scars, amputations, and tattoos; aliases and prior names; social

security number, driver's license number, and other identifying numbers; and information on misdemeanor arrests and convictions and felony arrests and convictions.

(e) "Department" means the department of state police.

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

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

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

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

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

(i) A violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

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

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History: Add. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988 ;-- Am. 1994, Act 196, Eff. Oct. 1, 1994 ;-- Am. 1996, Act 259, Eff. Jan. 1, 1997 ;-- Am. 2001, Act 187, Eff. Apr. 1, 2002 ;-- Am. 2012, Act 374, Imd. Eff. Dec. 14, 2012

28.242 Duties of commanding officer.

Sec. 2.

(1) The commanding officer shall procure and file for purposes of criminal identification criminal history record information on all persons arrested within this state of either a felony or a misdemeanor, or criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i. The commanding officer shall procure and file for purposes of juvenile identification juvenile history record information on all juveniles who have been adjudicated to have committed a juvenile offense within this state.

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

(3) The commanding officer shall file the biometric data and criminal history record information that are forwarded to the department of all persons confined in a prison or other state correctional facility.

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

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

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- CL 1929, 568 ;-- Am. 1931, Act 197, Imd. Eff. May 28, 1931 ;-- Am. 1937, Act 205, Eff. Oct. 29, 1937 ;-- CL 1948, 28.242 ;-- Am. 1978, Act 538, Imd. Eff. Dec. 22, 1978 ;-- Am. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988 ;-- Am. 2001, Act 187, Eff. Apr. 1, 2002 ;-- Am. 2001, Act 203, Eff. Oct. 1, 2002 ;-- Am. 2012, Act 374, Imd. Eff. Dec. 14, 2012

28.242a Dissemination of criminal history record information; exception.

Sec. 2a.

(1) All criminal history record information that is associated with a state identification number and is supported by biometric data shall be disseminated in response to either a fingerprint-based search or a name-based search of the criminal history record information database. This subsection does not allow the dissemination of criminal history record information that is nonpublic or is prohibited by law from being disseminated.

(2) Except as provided in subsection (3), all juvenile history record information that is associated with a state identification number and is supported by biometric data shall be disseminated in response only to a fingerprint-based search of the criminal history record information database. This subsection does not allow the dissemination of juvenile history record information that is nonpublic or is prohibited by law from being disseminated.

(3) All juvenile history record information that is associated with a state identification number and that is supported by biometric data shall be disseminated in response to either a name-based or a fingerprint-based search of the criminal history record information database solely to a person or entity authorized to access the law enforcement information network. This subsection does not allow the dissemination of juvenile history record information that is prohibited by law from being disseminated.

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History: Add. 2005, Act 310, Eff. Feb. 1, 2006 ;-- Am. 2012, Act 374, Imd. Eff. Dec. 14, 2012 ;-- Am. 2013, Act 152, Imd. Eff. Nov. 5, 2013

28.243 Collecting and forwarding biometric data of person arrested; manner; destruction of biometric data and arrest card; compliance with subsection (8); duties of clerk on final disposition of charge; contents of report; informing director of Federal Bureau of Investigation; requirements applicable to arrest where charges dismissed before trial; comparison of biometric data with that on file; informing arresting agency and prosecuting attorney; applicability of provisions; prohibited conduct under subsection (5).

Sec. 3.

(1) Except as provided in subsection (3), upon the arrest of a person for a felony or for a misdemeanor violation of state law for which the maximum possible penalty exceeds 92 days' imprisonment or a fine of $1,000.00, or both, or a misdemeanor authorized for DNA collection under section 6(1)(b) of the DNA identification profiling system act, 1990 PA 250, MCL 28.176, or for criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a

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

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

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

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

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

(6) If a court orders the collection of a person's biometric data under section 11 or 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of chapter IV or section 1 of chapter IX of the code of criminal procedure, 1927 PA

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175, MCL 764.29 and 769.1, the law enforcement agency shall forward the biometric data and arrest card to the department.

(7) If a petition is not authorized for a juvenile accused of a juvenile offense, if a person arrested for having committed an offense for which biometric data were collected under this section is released without a charge made against him or her, or if criminal contempt proceedings are not brought or criminal charges are not made against a person arrested for criminal contempt for a personal protection order violation under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that meets the requirements for validity under section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, the official taking or holding the person's biometric data and arrest card shall immediately destroy the biometric data and arrest card. The law enforcement agency shall notify the department in a manner prescribed by the department that a petition was not authorized against the juvenile or that a charge was not made or that a criminal contempt proceeding was not brought against the arrested person if the juvenile's or arrested person's arrest card was forwarded to the department.

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

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

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

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

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

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

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

(11) Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall immediately advise the department of the final disposition of the arrest for which the person's biometric data were collected if a juvenile was adjudicated to have committed a juvenile offense or if the accused was convicted of an offense for which the biometric data of the accused were collected under this section or section 16a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16a. With regard to any adjudication or conviction, the clerk shall transmit to the department information as to any adjudication or finding of guilty or guilty but mentally ill; any plea of guilty, nolo contendere, or guilty but

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mentally ill; the offense of which the accused was convicted; and a summary of any deposition or sentence imposed. The summary of the sentence must include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

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

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

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

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

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

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

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

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

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

(14) Except as provided in subsection (8), the provisions of subsection (10) 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.

(15) Subsection (5) 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 substantially corresponding to a provision of that act, unless the offense is punishable upon conviction by imprisonment for more than 92 days or is an offense that is punishable by imprisonment for more than 92 days upon a subsequent conviction.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- Am. 1929, Act 197, Imd. Eff. May 20, 1929 ;-- CL 1929, 569 ;-- Am. 1931, Act 197, Imd. Eff. May 28, 1931 ;-- Am. 1937, Act 205, Eff. Oct. 29, 1937 ;-- CL 1948, 28.243 ;-- Am. 1951, Act 99, Eff. Sept. 23, 1951 ;-- Am. 1958, Act 92, Eff. Sept. 13, 1958 ;-- Am. 1959, Act 176, Eff. Mar. 19, 1960 ;-- Am. 1978, Act 538, Imd. Eff. Dec. 22, 1978 ;-- Am. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988 ;-- Am. 1989, Act 97, Imd. Eff. June 21, 1989 ;--

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Am. 1999, Act 77, Eff. Oct. 1, 1999 ;-- Am. 1999, Act 266, Imd. Eff. Dec. 29, 1999 ;-- Am. 2001, Act 187, Eff. Apr. 1, 2002 ;-- Am. 2001, Act 203, Eff. Oct. 1, 2002 ;-- Am. 2002, Act 694, Imd. Eff. Dec. 30, 2002 ;-- Am. 2004, Act 222, Eff. Jan. 1, 2005 ;-- Am. 2012, Act 374, Imd. Eff. Dec. 14, 2012 ;-- Am. 2018, Act 67, Eff. June 12, 2018

28.243a Collection of biometric data; refusal or resistance as misdemeanor.

Sec. 3a.

(1) A person shall not refuse to allow or resist the collection of his or her biometric data if authorized or required under this act.

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

History: Add. 1968, Act 174, Eff. Nov. 15, 1968 ;-- Am. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 2001, Act 187, Eff. Apr. 1, 2002 ;-- Am. 2012, Act 374, Imd. Eff. Dec. 14, 2012

28.244 Cooperation with bureaus in other states, federal bureau of investigation, and United States justice department.

Sec. 4.

The commanding officer shall cooperate with the bureaus in other states and with the federal bureau of investigation and the United States justice department, to develop and carry on a complete interstate, national, and international system of criminal identification and records.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- CL 1929, 570 ;-- Am. 1931, Act 197, Imd. Eff. May 28, 1931 ;-- CL 1948, 28.244 ;-- Am. 1986, Act 231, Eff. June 1, 1987

28.245 Local bureaus of identification; establishment.

Sec. 5.

The commanding officer shall offer assistance and when practicable, instruction, to county sheriffs, chiefs of police, and other peace officers in establishing an efficient local bureau of identification in their districts.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- CL 1929, 571 ;-- CL 1948, 28.245 ;-- Am. 1986, Act 231, Eff. June 1, 1987

28.245a Performance audits of criminal and juvenile history record information; report.

Sec. 5a.

(1) The commanding officer may perform random performance audits of the criminal and juvenile history record information required under this act.

(2) If the commanding officer finds during a performance audit that criminal or juvenile history record information is not being supplied as required under this act, the commanding officer shall report this fact to the attorney general.

History: Add. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988

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28.246 Neglect or refusal of officers or officials to perform duties as misdemeanor; penalty.

Sec. 6.

Neglect or refusal of any of the officers or officials mentioned in sections 2, 3, and 7 to report as required under this act or to perform any other act required to be performed by him or her under this act shall constitute a misdemeanor, punishable by a fine of not less than $25.00 nor more than $100.00, or by imprisonment for not more than 60 days, or both. Such neglect or refusal shall also constitute nonfeasance in office and subject the official or officer to removal from office.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;-- CL 1929, 572 ;-- CL 1948, 28.246 ;-- Am. 1986, Act 231, Eff. June 1, 1987

28.247 Sexually motivated crimes and juvenile offenses and crimes and juvenile offenses involving sexual conduct; reports; forms; filing; confidentiality; examination of reports; violation as misdemeanor; penalty.

Sec. 7.

The sheriff of every county and the chief executive officer of the police department of every city, village, and township shall make reports of accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes and juvenile offenses and crimes and juvenile offenses involving sexual conduct verified as such and the disposition of cases resulting from such charges. The department of state police shall provide the forms necessary for reporting such information, and the department shall file the reports or copies of the reports in a separate confidential filing system. The reports shall be available for examination only by the attorney general, any prosecuting attorney, any court of record, the director of the state police, county sheriffs, and the chief executive officer of the police department of any city, village, or township and their authorized officers. The reports shall be held confidential except for official use. Any person who violates any of the confidential provisions of this section shall be guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than $500.00, or both.

History: Add. 1955, Act 132, Imd. Eff. June 7, 1955 ;-- Am. 1986, Act 231, Eff. June 1, 1987 ;-- Am. 1988, Act 40, Eff. June 1, 1988
Former Law: See Section 7 of Act 289 of 1929, which was repealed by Act 267 of 1945 .

28.248 Use of biometric data for criminal identification.

Sec. 8.

Biometric data obtained under a law or rule for noncriminal identification purposes may be used for criminal identification purposes unless prohibited by law or rule.

History: Add. 2001, Act 187, Eff. Apr. 1, 2002 ;-- Am. 2012, Act 374, Imd. Eff. Dec. 14, 2012
Compiler's Notes: Former MCL 28.248, which pertained to director's report and recommendations, was repealed by Act 231 of 1986, Eff. June 1, 1987.

28.249 Repealed. 1986, Act 231, Eff. June 1, 1987.

Compiler's Notes: The repealed section pertained to access to public records and documents.

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