

BUREAU OF CRIMINAL IDENTIFICATION AND RECORDS (EXCERPT)
Act 289 of 1925

***** 28.243.amended THIS AMENDED SECTION IS EFFECTIVE JUNE 12, 2018 *****

28.243.amended 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 XA 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 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 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;—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.