

Act No. 77
Public Acts of 1999
Approved by the Governor
June 28, 1999
Filed with the Secretary of State
June 28, 1999
EFFECTIVE DATE: October 1, 1999

STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999

Introduced by Senators Miller, Rogers, Shugars, Gougeon, Peters, Steil, North, DeBeaussaert, Goschka and A. Smith

ENROLLED SENATE BILL No. 560

AN ACT to amend 1925 PA 289, entitled "An act to create a bureau of criminal identification and records 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 for violation of this act," by amending section 3 (MCL 28.243), as amended by 1989 PA 97.

The People of the State of Michigan enact:

Sec. 3. (1) Except as provided in subsection (2), immediately upon the arrest of a person for a felony or for a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment or a fine of \$1,000.00, or both, or for a juvenile offense, the arresting law enforcement agency in this state shall take the person's fingerprints in duplicate and forward the fingerprints to the department within 72 hours after the arrest. One set of fingerprints shall be sent to the division on forms furnished by the commanding officer, and 1 set of fingerprints shall be furnished to the director of the federal bureau of investigation on forms furnished by the director.

(2) The arresting law enforcement agency may take a person's fingerprints upon the arrest of the person for a misdemeanor that is a violation of a local ordinance for which the maximum possible penalty exceeds 92 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible term of imprisonment exceeds 92 days, but shall not forward them to the department before conviction. If the person is convicted of a misdemeanor described in this subsection, the law enforcement agency shall take the person's fingerprints if not previously taken under this subsection and forward them within 72 hours after entry of the conviction in the same manner as provided in subsection (1). On the form sent to the division, the law enforcement agency shall indicate the statutory citation for the state law to which the local ordinance substantially corresponds.

(3) The arresting law enforcement agency may take 1 set of fingerprints 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 fingerprints shall be forwarded to the department immediately. Upon completion of the identification process by the department, the fingerprints shall be returned to the arresting law enforcement agency.

(4) An arresting law enforcement agency in the state may take the person's fingerprints on forms furnished by the commanding officer upon an arrest for a misdemeanor other than a misdemeanor described in subsection (1), (2), or (3), but may not forward the fingerprints to the department unless the person is convicted of a misdemeanor.

(5) If a petition is not authorized for a juvenile accused of a juvenile offense or if a person arrested for having committed a felony or a misdemeanor is released without a charge made against him or her, the official taking or holding the person's fingerprints, arrest card, and description shall immediately return this information to the person without the necessity of a request. If this information is not returned, the person has the absolute right to demand and receive its return at any time after the person's release and without need to petition for court action. The law enforcement agency shall notify the commanding officer in writing that no petition was authorized against the juvenile or that no charge was made against the arrested person if the juvenile's or arrested person's fingerprints were forwarded to the department.

(6) 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 the offense, the arrest card, the fingerprints, and description shall be returned to him or her by the official holding this information. If for any reason the official holding the information does not return the information within 60 days of the adjudication or the finding of not guilty, the accused or juvenile has the right to obtain an order from the court having jurisdiction over the case for the return of the information. If the order of return is not complied with, the accused or juvenile has the right to petition the family division of circuit court of the county where the original petition was filed or the circuit court of the county where the original charge was made for a preemptory writ of mandamus to require issuance of the order of return. Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall notify the commanding officer of any finding of not guilty or not guilty by reason of insanity, dismissal, or nolle prosequi, if it appears that the accused was initially arrested for a felony or a misdemeanor punishable by imprisonment for more than 92 days 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.

(7) Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall immediately advise the commanding officer of the final disposition of the arrest for which the person was fingerprinted if a juvenile was adjudicated to have committed a juvenile offense or if the accused was convicted of a felony or a misdemeanor. With regard to any adjudication or conviction, the clerk shall transmit to the commanding officer 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 shall 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) Sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15.
- (c) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (d) Section 350a(4) of the Michigan penal code, 1931 PA 328, MCL 750.350a.

(8) The commanding officer shall record the disposition of each charge and shall inform the director of the federal bureau of investigation of the final disposition of the felony or misdemeanor arrest.

(9) The commanding officer shall compare the fingerprints and description received with those already on file and if the commanding officer finds that the person arrested has a criminal record, the commanding officer shall immediately inform the arresting agency and prosecuting attorney of this fact.

(10) The provisions of this section requiring the return of the fingerprints, arrest card, and description do not apply in the following cases:

(a) The person arrested was charged with the commission or attempted commission, or if the person arrested is a juvenile alleged to have committed an offense that if committed by an adult would constitute the commission or attempted commission, of a crime with or against a child under 16 years of age or the crime of criminal sexual conduct in any degree, rape, sodomy, gross indecency, indecent liberties, or child sexually abusive activities or materials.

(b) The person arrested 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 entered on the record, orders the return.

(11) Subsection (4) does not permit the forwarding to the department of the fingerprints 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.

(12) As used in this section:

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

(b) "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.

Enacting section 1. This amendatory act takes effect October 1, 1999.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 90th Legislature are enacted into law:

- (a) Senate Bill No. 556.
- (b) Senate Bill No. 559.
- (c) Senate Bill No. 557.
- (d) Senate Bill No. 558.
- (e) House Bill No. 4585.
- (f) House Bill No. 4580.
- (g) House Bill No. 4583.
- (h) House Bill No. 4584.
- (i) House Bill No. 4581.
- (j) House Bill No. 4582.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.