

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 478

A bill 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 the title and sections 1, 1a, 2, 3, and 3a (MCL 28.241, 28.241a, 28.242, 28.243, and 28.243a), the title and sections 1 and 2 as amended by 1988 PA 40, section 1a as amended by 1996 PA 259, section 3 as amended by 1999 PA 266, and section 3a as amended by 1986 PA 231, and by adding section 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to create AND MAINTAIN a ~~bureau of criminal~~

3

FINGERPRINT identification and CRIMINAL HISTORY records DIVISION

4

within the department of state police; to require peace officers,

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

2

1 persons in charge of certain institutions, and others to make
2 reports respecting juvenile offenses, crimes, and criminals to
3 the state police; to require the fingerprinting of an accused by
4 certain persons; and to provide penalties AND REMEDIES for A vio-
5 lation of this act.

6 Sec. 1. The ~~central records division of the~~ department of
7 state police ~~shall be~~ IS responsible for criminal and juvenile
8 identification and records. The ~~division~~ DEPARTMENT shall be
9 supplied with the necessary apparatus and materials for collect-
10 ing, filing, and preserving criminal and juvenile records filed
11 with the ~~division~~ DEPARTMENT.

12 Sec. 1a. As used in this act:

13 (A) "ARREST CARD" MEANS A PAPER FORM OR AN ELECTRONIC FORMAT
14 PRESCRIBED BY THE DEPARTMENT THAT FACILITATES COLLECTING AND COM-
15 PILING CRIMINAL AND JUVENILE ARREST HISTORY RECORD INFORMATION,
16 INCLUDING FINGERPRINT IMAGES.

17 (B) ~~(a)~~ "Commanding officer" means the department of state
18 police employee in charge of the ~~central records division~~
19 CRIMINAL JUSTICE INFORMATION CENTER OR ITS SUCCESSOR ADMINISTRA-
20 TIVE UNIT.

21 (C) ~~(b)~~ "Criminal history record information" means name;
22 date of birth; fingerprints; photographs, if available; personal
23 descriptions ~~— including physical measurements,~~ identifying
24 marks, scars, amputations, and tattoos; aliases and prior names;
25 social security ~~and~~ NUMBER, driver's license ~~numbers~~ NUMBER
26 and other identifying numbers; and information on misdemeanor
27 ARRESTS AND convictions and felony arrests and convictions.

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

3

1 (D) ~~(c) "Division"~~ "DEPARTMENT" means the ~~central records~~
2 ~~division of the~~ department of state police.

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

7 (F) "FINGERPRINT IMPRESSIONS" MEANS FINGERPRINT IMAGES
8 RECORDED IN A MANNER PRESCRIBED BY THE DEPARTMENT.

9 (G) ~~(e)~~ "Juvenile history record information" means name;
10 date of birth; fingerprints; photographs, if available; personal
11 descriptions ~~,~~ including ~~physical measurements~~ identifying
12 marks, scars, amputations, and tattoos; aliases and prior names;
13 social security ~~and~~ NUMBER, driver's license ~~numbers~~ NUMBER
14 and other identifying numbers; and information on juvenile
15 offense arrests and adjudications OR CONVICTIONS.

16 (H) ~~(f)~~ "Juvenile offense" means an offense committed by a
17 juvenile that, if committed by an adult, would be a ~~violation or~~
18 ~~an attempted violation of section 72, 83, 84, 86, 88, 89, 91,~~
19 ~~110, 110a(2), 186a, 316, 317, 349, 360, 413, 520b, 520c, 520d,~~
20 ~~520g, 529, 529a, 530, or 531 of the Michigan penal code, Act~~
21 ~~No. 328 of the Public Acts of 1931, being sections 750.72,~~
22 ~~750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110,~~
23 ~~750.110a, 750.186a, 750.316, 750.317, 750.349, 750.360, 750.413,~~
24 ~~750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a,~~
25 ~~750.530, and 750.531 of the Michigan Compiled Laws, or~~
26 ~~section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code,~~
27 ~~Act No. 368 of the Public Acts of 1978, being sections 333.7401~~

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

4

1 ~~and 333.7403 of the Michigan Compiled Laws~~ FELONY, A CRIMINAL
2 CONTEMPT CONVICTION UNDER SECTION 2950 OR 2950A OF THE REVISED
3 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2950 AND 600.2950A,
4 A CRIMINAL CONTEMPT CONVICTION FOR A VIOLATION OF A FOREIGN PRO-
5 TECTION ORDER THAT SATISFIES THE CONDITIONS FOR VALIDITY PROVIDED
6 IN SECTION 2950I OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA
7 236, MCL 600.2950I, OR A MISDEMEANOR.

8 (I) "LAW ENFORCEMENT AGENCY" MEANS THE POLICE DEPARTMENT OF
9 A CITY, TOWNSHIP, OR VILLAGE, THE SHERIFF'S DEPARTMENT OF A
10 COUNTY, THE DEPARTMENT, OR ANY OTHER GOVERNMENTAL LAW ENFORCEMENT
11 AGENCY OF THIS STATE.

12 (J) ~~(g)~~ "Misdemeanor" means either of the following:

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

17 (ii) A violation of a local ordinance that substantially
18 corresponds to state law AND THAT IS NOT A CIVIL INFRACTION.

19 Sec. 2. (1) The commanding officer ~~of the division~~ shall
20 procure and file for purposes of criminal identification criminal
21 history record information on all persons who have been convicted
22 within ~~the~~ THIS state of EITHER a felony or a misdemeanor. ~~—~~
23 ~~or both.~~ The commanding officer ~~of the division~~ shall procure
24 and file for purposes of juvenile identification juvenile history
25 record information on all juveniles who have been adjudicated to
26 have committed a juvenile offense within ~~the~~ THIS state.

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

5

1 (2) The commanding officer shall provide all reporting
2 officials with forms OR PRESCRIBE THE FORMAT, numerical
3 identifiers, and instructions which specify ~~in detail the nature~~
4 ~~of~~ the information required, the time it is to be forwarded, the
5 method of classifying, and other matters to facilitate criminal
6 and juvenile history record information collection and
7 compilation.

8 (3) The commanding officer shall file the fingerprint
9 impressions and photographs, if available, of all persons con-
10 fined in a prison or other state correctional facility.

11 (4) THE COMMANDING OFFICER SHALL PROVIDE ACCESS TO CRIMINAL
12 HISTORY RECORD INFORMATION AND JUVENILE HISTORY RECORD INFORMA-
13 TION, AS PRESCRIBED BY THE DEPARTMENT AND AS AUTHORIZED BY LAW.

14 (5) A COPY OF AN ARREST CARD SHALL BE FORWARDED TO THE FED-
15 ERAL BUREAU OF INVESTIGATION.

16 Sec. 3. (1) Except as provided in subsection ~~(2)~~ (3),
17 immediately upon the arrest of a person for a felony or for a
18 misdemeanor violation of state law for which the maximum possible
19 penalty exceeds 92 days' imprisonment or a fine of \$1,000.00, or
20 both, or for a juvenile offense, OTHER THAN A JUVENILE OFFENSE
21 FOR WHICH THE MAXIMUM POSSIBLE PENALTY DOES NOT EXCEED 92 DAYS'
22 IMPRISONMENT OR A FINE OF \$1,000.00, OR BOTH, the arresting law
23 enforcement agency in this state shall take the person's finger-
24 prints ~~in duplicate~~ and forward the fingerprints to the depart-
25 ment within 72 hours after the arrest. ~~One set of~~ THE finger-
26 prints shall be sent to the ~~division~~ DEPARTMENT on forms
27 furnished by OR IN A MANNER PRESCRIBED BY the ~~commanding~~

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

6

1 ~~officer~~ DEPARTMENT, and ~~1 set of fingerprints~~ THE DEPARTMENT
2 shall ~~be furnished~~ FORWARD THE FINGERPRINTS to the director of
3 the federal bureau of investigation on forms furnished by OR IN A
4 MANNER PRESCRIBED BY the director. ~~A person's fingerprints are~~
5 ~~not required to be taken and forwarded to the department under~~
6 ~~this subsection solely because he or she has been arrested for a~~
7 ~~violation of section 904(3)(a) of the Michigan vehicle code, 1949~~
8 ~~PA 300, MCL 257.904.~~

9 (2) A law enforcement agency shall take a person's finger-
10 prints under this subsection if the person is arrested for a mis-
11 demeanor violation of state law for which the maximum penalty is
12 93 days if the fingerprints have not previously been taken and
13 forwarded to the department under subsection (1). A law enforce-
14 ment agency shall take a person's fingerprints under this subsec-
15 tion if the person is arrested for a violation of a local ordi-
16 nance for which the maximum possible penalty is 93 days' impris-
17 onment and that substantially corresponds to a violation of state
18 law that is a misdemeanor for which the maximum possible term of
19 imprisonment is 93 days. If the person is convicted of any vio-
20 lation, the law enforcement agency shall take the person's fin-
21 gerprints before sentencing if not previously taken. The court
22 shall forward to the law enforcement agency a copy of the dispo-
23 sition of conviction, and the law enforcement agency shall for-
24 ward the person's fingerprints and the copy of the disposition of
25 conviction to the department within 72 hours after receiving the
26 disposition of conviction in the same manner as provided in
27 subsection (1). If the person is convicted of violating a local

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

7

1 ordinance, the law enforcement agency shall indicate on the form
2 sent to the ~~division~~ DEPARTMENT the statutory citation for the
3 state law to which the local ordinance substantially
4 corresponds.

5 (3) A person's fingerprints are not required to be taken and
6 forwarded to the department under ~~this~~ subsection (1) OR (2)
7 solely because he or she has been convicted of violating section
8 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904,
9 or a local ordinance substantially corresponding to section
10 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL
11 257.904.

12 (4) ~~(3)~~ The arresting law enforcement agency may take 1
13 set of fingerprints of a person who is arrested for a misdemeanor
14 punishable by imprisonment for not more than 92 days or a fine of
15 not more than \$1,000.00, or both, and who fails to produce satis-
16 factory evidence of identification as required by section 1 of
17 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded
18 to the department immediately. Upon completion of the identifi-
19 cation process by the department, the fingerprints shall be
20 ~~returned to the arresting law enforcement agency~~ DESTROYED.

21 (5) ~~(4)~~ An arresting law enforcement agency in ~~the~~ THIS
22 state may take the person's fingerprints on forms furnished by
23 the commanding officer upon an arrest for a misdemeanor other
24 than a misdemeanor described in subsection (1), (2), or ~~(3)~~
25 (4), ~~but~~ AND may ~~not~~ forward the fingerprints to the
26 department. ~~unless the person is convicted of a misdemeanor.~~

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

8

1 (6) IF A COURT ORDERS THE TAKING OF FINGERPRINTS OF A PERSON
2 PURSUANT TO SECTION 11 OR 18 OF CHAPTER XIIIA OF THE PROBATE CODE
3 OF 1939, 1939 PA 288, MCL 712A.11 AND 712A.18, OR SECTION 29 OF
4 CHAPTER IV OR SECTION 1 OF CHAPTER IX OF THE CODE OF CRIMINAL
5 PROCEDURE, 1927 PA 175, MCL 764.29 AND 769.1, THE LAW ENFORCEMENT
6 AGENCY SHALL FORWARD THE FINGERPRINTS AND ARREST CARD TO THE
7 DEPARTMENT.

8 (7) ~~(5)~~ If a petition is not authorized for a juvenile
9 accused of a juvenile offense or if a person arrested for having
10 committed a felony or a misdemeanor is released without a charge
11 made against him or her, the official taking or holding the
12 person's fingerprints ~~, AND arrest card , and description~~
13 shall immediately ~~return this information to the person without~~
14 ~~the necessity of a request. If this information is not returned,~~
15 ~~the person has the absolute right to demand and receive its~~
16 ~~return at any time after the person's release and without need to~~
17 ~~petition for court action~~ DESTROY THE FINGERPRINTS AND ARREST
18 CARD. The law enforcement agency shall notify the ~~commanding~~
19 ~~officer~~ DEPARTMENT in writing that ~~no~~ A petition was NOT
20 authorized against the juvenile or that ~~no~~ A charge was NOT
21 made against the arrested person if the juvenile's or arrested
22 person's fingerprints were forwarded to the department.

23 (8) ~~(6)~~ If a juvenile is adjudicated and found not to be
24 within the provisions of section 2(a)(1) of chapter XIIIA of the
25 probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused
26 is found not guilty of the offense, ~~the arrest card,~~ the
27 fingerprints ~~, and description~~ THE ARREST CARD shall be

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

9

1 ~~returned to him or her~~ DESTROYED by the official holding this
2 information. If for any reason the official holding the informa-
3 tion does not ~~return~~ DESTROY the information within 60 days of
4 the adjudication or the finding of not guilty, the accused or
5 juvenile has the right to obtain an order from the court having
6 jurisdiction over the case for the return of the information. If
7 the order of return is not complied with, the accused or juvenile
8 has the right to petition the family division of circuit court of
9 the county where the original petition was filed or the circuit
10 court of the county where the original charge was made for a pre-
11 emptory writ of mandamus to require issuance of the order of
12 return. Upon final disposition of the charge against the
13 accused, the clerk of the court entering the disposition shall
14 notify the ~~commanding officer~~ DEPARTMENT of any finding of not
15 guilty or not guilty by reason of insanity, dismissal, or nolle
16 prosequi, if it appears that the accused was initially ~~arrested~~
17 FINGERPRINTED for a felony or a misdemeanor ~~punishable by~~
18 ~~imprisonment for more than 92 days~~ or of any finding that a
19 juvenile alleged responsible for a juvenile offense is not within
20 the provisions of section 2(a)(1) of chapter XIIIA of the probate
21 code of 1939, 1939 PA 288, MCL 712A.2.

22 (9) ~~(7)~~ Upon final disposition of the charge against the
23 accused, the clerk of the court entering the disposition shall
24 immediately advise the ~~commanding officer~~ DEPARTMENT of the
25 final disposition of the arrest for which the person was finger-
26 printed if a juvenile was adjudicated to have committed a
27 juvenile offense or if the accused was convicted of a felony or a

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

10

1 misdemeanor. With regard to any adjudication or conviction, the
2 clerk shall transmit to the ~~commanding officer~~ DEPARTMENT
3 information as to any adjudication or finding of guilty or guilty
4 but mentally ill; any plea of guilty, nolo contendere, or guilty
5 but mentally ill; the offense of which the accused was convicted;
6 and a summary of any deposition or sentence imposed. The summary
7 of the sentence shall include any probationary term; any minimum,
8 maximum, or alternative term of imprisonment; the total of all
9 fines, costs, and restitution ordered; and any modification of
10 sentence. If the sentence is imposed under any of the following
11 sections, the report shall so indicate:

12 (a) Section 7411 of the public health code, 1978 PA 368, MCL
13 333.7411.

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

16 (c) Section 4a of chapter IX of the code of criminal proce-
17 dure, 1927 PA 175, MCL 769.4a.

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

20 (10) ~~(8)~~ The ~~commanding officer~~ DEPARTMENT shall record
21 the disposition of each charge and shall inform the director of
22 the federal bureau of investigation of the final disposition of
23 the felony or misdemeanor arrest.

24 (11) ~~(9)~~ The ~~commanding officer~~ DEPARTMENT shall compare
25 the fingerprints and description received with those already on
26 file and if the ~~commanding officer~~ DEPARTMENT finds that the
27 person arrested has a criminal record, the ~~commanding officer~~

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

11

1 DEPARTMENT shall immediately inform the arresting agency and
2 prosecuting attorney of this fact.

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

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

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

18 (12) THE PROVISIONS OF SUBSECTION (8) THAT REQUIRE THE
19 DESTRUCTION OF THE FINGERPRINTS AND THE ARREST CARD DO NOT APPLY
20 TO A PERSON WHO WAS ARRAIGNED IN CIRCUIT COURT OR THE FAMILY
21 DIVISION OF CIRCUIT COURT FOR ANY OF THE FOLLOWING:

22 (A) THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIME WITH
23 OR AGAINST A CHILD UNDER 16 YEARS OF AGE.

24 (B) RAPE.

25 (C) CRIMINAL SEXUAL CONDUCT IN ANY DEGREE.

26 (D) SODOMY.

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

12

1 (E) GROSS INDECENCY.

2 (F) INDECENT LIBERTIES.

3 (G) CHILD ABUSIVE COMMERCIAL ACTIVITIES.

4 (H) A PERSON WHO HAS A PRIOR CONVICTION, OTHER THAN A MISDE-
5 MEANOR TRAFFIC OFFENSE, UNLESS A JUDGE OF A COURT OF RECORD,
6 EXCEPT THE PROBATE COURT, BY EXPRESS ORDER ON THE RECORD, ORDERS
7 THE DESTRUCTION OR RETURN OF THE FINGERPRINTS AND ARREST CARD.

8 (I) A PERSON ARRESTED WHO IS A JUVENILE CHARGED WITH AN
9 OFFENSE THAT WOULD CONSTITUTE THE COMMISSION OR ATTEMPTED COMMIS-
10 SION OF ANY OF THE CRIMES IN THIS SUBSECTION IF COMMITTED BY AN
11 ADULT.

12 (13) ~~(11)~~ Subsection ~~(4)~~ (5) does not permit the for-
13 warding to the department of the fingerprints of a person accused
14 and convicted under the Michigan vehicle code, 1949 PA 300, MCL
15 257.1 to 257.923, or a local ordinance substantially correspond-
16 ing to a provision of that act, unless the offense is punishable
17 upon conviction by imprisonment for more than 92 days or is an
18 offense that is punishable by imprisonment for more than 92 days
19 upon a subsequent conviction.

20 ~~(12) As used in this section:~~

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

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

26 Sec. 3a. (1) ~~Any person required to have his or her~~
27 ~~fingerprints taken under section 3 who refuses to allow or~~

SB0478, As Passed House, December 12, 2001

Senate Bill No. 478

13

1 ~~resists the taking of his or her fingerprints is guilty of a~~
2 ~~misdemeanor. Such person must be advised that his or her refusal~~
3 ~~constitutes a misdemeanor.~~ A PERSON SHALL NOT REFUSE TO ALLOW OR
4 RESIST THE TAKING OF HIS OR HER FINGERPRINTS IF AUTHORIZED OR
5 REQUIRED UNDER THIS ACT.

6 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A MIS-
7 DEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR
8 BY A FINE OF NOT MORE THAN \$500.00, OR BOTH.

9 SEC. 8. FINGERPRINT IMPRESSIONS OBTAINED UNDER A LAW OR
10 RULE FOR NONCRIMINAL IDENTIFICATION PURPOSES MAY BE USED FOR
11 CRIMINAL IDENTIFICATION PURPOSES UNLESS PROHIBITED BY LAW OR
12 RULE.

13 Enacting section 1. This amendatory act does not take
14 effect unless Senate Bill No. 479 of the 91st Legislature is
15 enacted into law.

16 Enacting section 2. This amendatory act takes effect April
17 1, 2002.