



## Michigan Supreme Court

State Court Administrative Office

**Trial Court Services Division**

Michigan Hall of Justice

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Jennifer Warner  
Director

### MEMORANDUM

DATE: February 25, 2020

TO: Circuit and District Judges  
District Court Magistrates  
Circuit and District Court Administrators

FROM: Bobbi Morrow, District Court Analyst

RE: Destruction of Arrest Record, Biometric Data and DNA

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In June of 2018, MCL 28.243<sup>1</sup> was amended to require the destruction of the arrest record, all biometric data, and fingerprints of an individual who was arrested for a crime if the charge or charges were dismissed before trial. It also requires the arrest record to be removed from ICHAT and from LEIN. The arrest record and biometric data will only be destroyed by the Michigan State Police “upon receipt of an appropriate order issued by the district court or the circuit court.” MCL 28.243(9).

As such, the Order of Acquittal/Dismissal or Remand ([MC 262](#)) and the Motion/Order of Nolle Prosequi ([MC 263](#)) were amended in June of 2019 to include a checkbox where the court can order the Michigan State Police and arresting agency to destroy the arrest record, biometric data, and, as applicable, the DNA<sup>2</sup> profile for the dismissed charge(s).

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<sup>1</sup> MCL 28.243(8) provides that “[i]f 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.”

<sup>2</sup>MCL 28.176(4)(a) provides “[t]hat, except as otherwise provided by law, the individual's DNA sample or DNA identification profile, or both, shall be destroyed or expunged, as appropriate, if the charge for which the sample was obtained has been dismissed or resulted in acquittal, or no charge was filed within the limitations period.”

Since publication of the amended forms, the State Court Administrative Office has received several questions from courts regarding this process. Please see the Frequently Asked Questions below:

**Q1: What constitutes a dismissal before trial?**

*A1: The statute does not define “dismissal before trial.” Therefore, it is up to judicial discretion to determine if this means a charge is dismissed prior to any disposition (including a bench or jury trial, guilty plea, no contest plea, etc.) or whether it would allow destruction of the arrest record and biometric data after a guilty plea, such as those involving a delayed sentence or a deferred judgement of guilt. Once those items are permanently destroyed, there is no longer any arrest record or biometric data for other prosecutors or courts to consider in support of future discretionary decisions involving the same individual. Additionally, once biometric data is destroyed, any later requests to MSP to help “verify” that a person previously availed himself or herself of a dismissal following a delayed sentence or deferred judgment of guilt will not yield any verifiable information from MSP.*

**Q2: Does the Michigan State Police determine eligibility prior to destruction of the records?**

*A2: No, the Michigan State Police (MSP) will follow the court’s order as entered. If the court orders the destruction of an arrest record and biometric data, MSP will not determine whether the record is eligible for destruction; rather, it will destroy all records as ordered. A court should use its discretion when determining whether to utilize the checkbox on the forms for the destruction of records. Only in situations dealing with the DNA sample or DNA identification profile can MSP retain the sample if the individual from whom the sample was taken is otherwise obligated to submit a sample.<sup>3</sup>*

**Q3: How does a prosecutor object to destruction of the record?**

*A3: MSP will wait 60 days after receipt of the order of dismissal and/or order to destroy the arrest record, biometric data, and DNA before destroying the record. If the prosecutor chooses to object within the 60 days, the prosecutor will send the objection directly to the court.*

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<sup>3</sup> MCL 28.176(4)(b) provides “[t]at the individual's DNA sample or DNA identification profile, or both, will not be destroyed or expunged, as appropriate, if the department determines that the individual from whom the sample is taken is otherwise obligated to submit a sample or if it is evidence relating to another individual that would otherwise be retained under this section.”

**Q4: Is an electronic judgment of sentence (EJUD) an appropriate order for destruction?**

*A4: While many courts are able to electronically submit dismissal information (EJUD) to MSP for purposes of updating the criminal history information, this will not adequately transmit the order for destruction of the arrest record, biometric data, and DNA. All Orders of Acquittal/Dismissal or Remand ([MC 262](#)) and Orders of Nolle Prosequi ([MC 263](#)) that include the checkbox to destroy the arrest record, biometric data, and DNA must be faxed to:*

<i>Arrest Record/Biometric Data</i>	<i>CJIC</i>	<i>517-241-0866</i>
<i>DNA</i>	<i>CODIS</i>	<i>517-636-0491</i>

If you have questions, please contact Bobbi Morrow at [courtservices@courts.mi.gov](mailto:courtservices@courts.mi.gov) or 517-373-2173.