

**Michigan Supreme Court**  
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**M E M O R A N D U M**

**DATE:** March 22, 2002

**TO:** Chief Judges  
**cc:** Court Administrators, Juvenile Registers and Clerks  
Court Case Management Software Vendors

**FROM:** John D. Ferry, Jr.

**SUBJ:** SCAO Administrative Memorandum 2002-01  
Public Acts 187-188 and 203-204, Fingerprinting and Reporting to Criminal Justice Information Center

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Public Acts 187 and 188 of 2001(effective April 1, 2002) and Public Acts 203 and 204 of 2001(effective October 1, 2002) amend requirements for fingerprinting and for reporting case disposition information to the Criminal Justice Information Center (CJIC) of the Michigan State Police (MSP). These public acts are part of a 26 act package focusing on domestic violence. This memorandum focuses on the provisions in Public Acts 187, 188, 203, and 204 which may be of interest to courts.

**A. Taking of Fingerprints at Arrest**

**1. Juveniles**

On April 1, 2002, the statutory definition of “juvenile offense” will change markedly. “Juvenile offense” is currently defined at MCL 28.241a(f) as an offense by a juvenile that, if committed by an adult, would be any offense on a particular list of 25 felonies. Under the new definition [now at renumbered MCL 28.241a(h)], a “juvenile offense” will be an offense by a juvenile that, if committed by an adult, would be a felony, a misdemeanor, or a criminal contempt conviction for violation of a personal protection order (PPO) or a foreign protection order (FPO). [An FPO is essentially the equivalent of a PPO issued against the individual in another state.] [MCL 28.241a(h); 2001 PA 187]

In conjunction with the change in the definition of “juvenile offense,” the requirement for fingerprinting a juvenile upon arrest will also be altered. As of April 1, the arresting law enforcement agency shall take the juvenile’s fingerprints upon arrest for a juvenile offense *other than a juvenile offense for which the maximum possible penalty does not exceed 92 days’ imprisonment, a fine of \$1000, or both.* A juvenile’s fingerprints should be taken by law enforcement whenever he or she is taken into custody for committing what for an adult

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would be a felony, a misdemeanor with maximum penalty of 93 days' imprisonment or more, or a violation of a PPO or FPO. [MCL 28.243(1); 2001 PA 187]

**2. Adults**

As of October 1, 2002, an arresting law enforcement agency shall take fingerprints immediately upon arrest for criminal contempt of a PPO or FPO. [MCL 28.243(1); 2001 PA 203]

**B. Forwarding of Fingerprints Taken Upon Arrest by Law Enforcement to the CJIC**

Fingerprints may be on paper or in an electronic format prescribed by the MSP. [MCL 28.241a(a); 2001 PA 187] An electronic format would be the use of the Automated Fingerprint Identification System (AFIS) via live-scan transmission.

Notification to the court that fingerprints were submitted electronically by law enforcement and the inclusion of the live-scan Transaction Control Number (TCN) could be on:

- a Uniform Law Citation,
- a criminal complaint,
- a juvenile petition, or
- a document created by live-scan containing an eleven-digit TCN number in the upper right-hand corner, similar in appearance to a fingerprint/arrest card.

**1. Juveniles**

As a result of the abovementioned changes to the term "juvenile offense" and to the requirements for taking fingerprints, requirements for forwarding fingerprints to CJIC within 72 hours of arrest will also change. As of April 1, 2002, law enforcement shall forward to CJIC fingerprints taken upon arrest of a juvenile for any offense on the newly expanded list of juvenile offenses. [MCL 28.241a(h), 28.243(1); 2001 PA 187]

**2. Adults**

As of April 1, 2002 fingerprints may now be forwarded upon arrest for any misdemeanor offense. Unaffected by this change in law is the exception that fingerprints may not be forwarded for offenses under the Michigan Vehicle Code or a substantially corresponding local ordinance unless the offense is punishable by imprisonment for more than 92 days or is an offense that is punishable by more than 92 days upon a subsequent conviction. [MCL 28.243(5) 28.243(13); 2001 PA 187]

As of October 1, 2002, law enforcement shall forward fingerprints to CJIC within 72 hours after arrest for criminal contempt of a PPO or FPO. [MCL 28.243(1); 2001 PA 203]

**C. Ordering Fingerprints**

## 1. Juveniles

Requirements under the Juvenile Code for courts to examine court files for evidence that fingerprints have been taken pursuant to MCL 28.243, and to issue a relevant order if fingerprints need to be taken, have not been amended. [See MCL 712A.11(5) and 712A.18(10).] However, due to the abovementioned changes to the definition of “juvenile offense” and to fingerprinting requirements, the instances where such examination and ordering are required have also been altered.

MCL 712A.11(5) and 712A.18(10) of the Juvenile Code require a court to examine a juvenile’s file for fingerprints, if fingerprints were to have been taken pursuant to MCL 28.243. As indicated in A1. above, as of April 1, the fingerprinting provision of MCL 28.243, using a new definition for “juvenile offense,” directs that an arresting law enforcement agency shall take a juvenile’s fingerprints upon arrest 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 \$1000, or both.* [MCL 28.241a(h), 28.243(1); 2001 PA 187]

## 2. Adults

MCL 764.29 requires the court at arraignment to examine court files where the maximum possible penalty is more than 92 days imprisonment to determine if fingerprints have been taken and, if not, order the person to be taken into custody or to surrender himself or herself to law enforcement for the taking of fingerprints. This same requirement was apparently not created in the new legislation for PPO and FPO criminal contempt actions. Courts should consider following the procedure outlined in MCL 764.29 for PPO and FPO contempt actions in order to comply with reporting requirements included in D.2., Report of Disposition by Court, below.

Fingerprints are not required solely because a person has been convicted of violating MCL 257.904(3)(a) or a substantially corresponding local ordinance. [MCL 28.243(3), 2001 PA 187]

## D. Report of Disposition by Court

Effective April 1, 2002, the clerk of the court shall not report a conviction of a misdemeanor offense under the Michigan Vehicle Code, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act, unless one or more of the following apply:

- The offense is punishable by imprisonment for more than 92 days .
- The offense is an offense that would be punishable by more than 92 days as a second conviction. **Note:** This provision was in effect prior to October 1, 2000, and was removed by 2000 PA 200. It is now reinstated.
- A judge of the court orders the clerk to report the conviction. **Note:** This provision was in

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effective prior to October 1, 2000, and was removed by 2000 PA 200. It is now reinstated. [MCL 769.16a(3); 2001 PA 188]

Unchanged in law is the provision that the clerk, unless ordered by the court, is not required to report a conviction of MCL 257.904(3)(a) or a substantially corresponding local ordinance. [MCL 769.16a(4)]

**1. Juveniles**

Under statute, courts are required to notify CJIC of the final disposition both in cases where a juvenile alleged responsible for a juvenile offense is found not to be within the provisions of 712A.2(a)(1) and in cases where a previously arrested and fingerprinted juvenile is adjudicated to have committed a juvenile offense. As of April 1, 2002, with the abovementioned expansion in the definition of "juvenile offense," offenses for which these reporting requirements apply will expand as well. [MCL 28.241a(h), 28.243(8), 28.243(9); 2001 PA 187]

**2. Adults or Juveniles Tried as Adults**

Effective April 1, 2002, if the court is notified that the accused was initially fingerprinted and the fingerprints were transmitted to the CJIC, including electronic fingerprinting, the clerk of the court is now required to notify the CJIC of the final disposition for any misdemeanor. [769.16a(1); 2001 PA 188]

Effective April 1, 2002, if it appears that the accused was initially fingerprinted for a felony or a misdemeanor and the final disposition is a finding of not guilty or not guilty by reason of insanity, or the charges were dismissed or nolle prosequi, the court must send the disposition to CJIC. [MCL 28.243(8); 2001 PA 187] Effective October 1, 2002, upon final disposition of a charge of criminal contempt for a PPO or FPO the court must submit the disposition to CJIC. [MCL 769.16a(1); 2001 PA 204] In either case, if fingerprints were not previously submitted to CJIC, the reported disposition cannot be matched to an arrest. Coordination at the local level between the court and local law enforcement will be necessary to determine whether all relevant fingerprints were submitted to CJIC.

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### 3. Reporting Cases When Fingerprints Are Submitted Electronically

Cases for which fingerprints have been submitted electronically via live-scan and which do not have a Criminal Tracking Number (CTN) assigned by the county prosecutor require two data elements to match the court disposition to the fingerprint record at CJIC.

- the police report number or incident number, also known as the Originating Charging Agency (OCA) number
- the TCN which is assigned by the live-scan terminal at the time the fingerprints are electronically transmitted.

Whenever a court record has both a CTN assigned by the county prosecutor and a TCN assigned through the electronic transmission process, the CTN should be used for reporting purposes.

Modifications to the MSP-CJIC electronic reporting program to use OCA and TCN will not be completed by April 1, 2002. Dispositions for cases when fingerprints were submitted electronically must be reported by paper until CJIC programming to accept the TCN is completed, unless the court also has a CTN for the case.

Court case management software must be modified to capture the OCA and TCN information if the court receives petitions, complaints, or Uniform Traffic Citations with a TCN rather than a CTN. Specifications regarding electronic transmission of the TCN and OCA must be obtained from MSP-CJIC. Paper reporting will allow the TCN to be placed in the CTN field.

### E. Destruction of Fingerprints

Effective April 1, 2002, upon notification to MSP-CJIC and/or the agency holding the fingerprints and arrest card that a juvenile is adjudicated and found not to be within the provisions of MCL 712A.2, or that an accused is found not guilty of the offense, the fingerprints and arrest card shall be destroyed by the official holding the information. [MCL 28.243(8); 2001 PA 187] 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 and arrest card shall immediately destroy the fingerprints and arrest card. [MCL 28.243(7), 2001 PA 187]

The requirement to destroy fingerprints does not apply to a person arraigned in circuit court or the family division of circuit court for any of the following: [MCL 28.243(12); 2001 PA 187]

- the commission or attempted commission of a crime with or against a child under 16 years of age
- rape
- criminal sexual conduct in any degree

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- sodomy
  - gross indecency
  - indecent liberties
  - child abusive commercial activities

The destruction requirement also does not apply to :

- 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, orders by express order on the record, the destruction, or return of the fingerprints; or
- a juvenile arrested and charged with an offense that would constitute the commission or attempted commission of any of the above listed crimes if committed by an adult.

#### **F. Order for Return of Fingerprint Information**

Effective April 1, 2002, if a juvenile is adjudicated and found not to be within the provisions of MCL 712A.2, or if an accused is found not guilty of the offense, and if the fingerprints and arrest card are not destroyed within 60 days, the juvenile or accused may obtain an order from the court having jurisdiction over the case for the return of the information. [MCL 28.243(8); 2001 PA 187]

#### **G. Refused Taking of Fingerprints**

Effective April 1, 2002, a person who refuses to allow or resists the taking of his or her fingerprints, if authorized or required pursuant to the Bureau of Criminal Identification and Records Act, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, a fine of not more than \$500, or both. [MCL 28.243a(2); 2001 PA 187]

Effective April 1, 2002 if a juvenile is found responsible for having resisted or refused to provide fingerprints, the juvenile is open to the dispositional options available under the Juvenile Code. [See MCL 712A.2(a)(1) and 712A.18]

#### **H. Michigan Court Rules**

Through the Family Division Joint Rules Committee, relevant court rules are being identified for amendment to implement statutory changes affecting fingerprinting, criminal history reporting, and other aspects of the domestic violence package.

## I. Forms

The following forms will be modified to include notice to CJIC to destroy the fingerprint information when applicable:

- MC 207, Commitment Order, Not Guilty by Reason of Insanity
- MC 262, Order of Acquittal
- MC 263, Motion and Order of Nolle Prosequi
- JC 14, Order of Disposition (Delinquency Proceedings)

With these changes to the above forms MC 235, Motion and Order for the return of Fingerprints, Arrest Card, and Description, will be necessary only if the accused believes the fingerprint information has not been destroyed pursuant to law.

To assist with reporting dispositions of cases for which fingerprints were submitted electronically, relevant SCAO approved forms will be modified to add the police report number (OCA) and to designate the CTN field for TCN as well. Revised forms will be distributed.

Questions regarding reporting may be referred to George Strander, SCAO Management Analyst, 517-373-4845; e-mail: [stranderg@jud.state.mi.us](mailto:stranderg@jud.state.mi.us) .

Specifications to report OCA and TCN data electronically must be obtained from MSP-CJIC.