

1 SENATE BILL NO. 139

2 INTRODUCED BY G. PERRY

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PHOTOGRAPHING AND FINGERPRINTING OF
6 DEFENDANTS WHO COMMIT CERTAIN MISDEMEANOR OFFENSES; AMENDING SECTION 44-5-202, MCA;
7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 44-5-202, MCA, is amended to read:

12 **"44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections
13 (2) through (5), collect, process, and preserve photographs and fingerprints:

14 (a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's
15 office, or both;

16 (b) the department of corrections; and

17 (c) the department of justice.

18 (2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the
19 division of corrections or its successor.

20 (3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person
21 who has been arrested or noticed or summoned to appear to answer an information or indictment if:

22 (a) the charge is the commission of a felony;

23 (b) the charge is the commission of a violation of 45-5-206, 45-5-220, 45-5-626, 61-8-401, or 61-8-406;

24 ~~(b)~~(c) the identification of an accused is in issue; or

25 ~~(c)~~(d) it is required to do so by court order.

26 (4) Whenever a person charged with the commission of a felony is not arrested, the person shall appear
27 before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial
28 appearance in court to answer the information or indictment against the person.

29 (5) ~~(a)~~ Except as provided in subsection (5)(b), a criminal justice agency described in subsection (1)(a)
30 may photograph and fingerprint an accused if the accused has been arrested for the commission of a

1 misdemeanor, ~~except that,~~

2 **(b)** Subject to subsection (3)(b), an individual arrested for a traffic, regulatory, or fish and game offense
3 may not be photographed or fingerprinted unless the individual is incarcerated.

4 (6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken
5 on a completed form provided by the state repository.

6 (7) The state repository shall compare the fingerprints received with those already on file in the state
7 repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall
8 at once inform the originating agency. If it is determined that the individual has a criminal record, the state
9 repository shall send the originating agency a copy of the individual's complete criminal history record.

10 (8) If an individual is released without the filing of charges, if the charges did not result in a conviction,
11 or if a conviction is later invalidated, photographs and fingerprints taken must be returned by the state repository
12 to the originating agency, which shall return all copies to the individual from whom they were taken, in the
13 following circumstances:

14 (a) upon order of the court that had jurisdiction; or

15 (b) upon the request of the individual."

16

17 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

18

- END -