

SENATE BILL NO. 141
INTRODUCED BY J. LASLOVICH
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WHEN PHOTOGRAPHS AND FINGERPRINTS TAKEN IN CRIMINAL CASES MUST BE RETURNED TO THE INDIVIDUAL FROM WHOM THEY WERE TAKEN; AND AMENDING SECTION 44-5-202, MCA."

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

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

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

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

(b) the department of corrections; and

(c) the department of justice.

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

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

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

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

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

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

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if the accused has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless the individual is incarcerated.

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

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

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

- (a) upon order of the court that had jurisdiction; or
- (b) upon the request of the individual ~~when the individual was released without the filing of charges or when the charges did not result in a conviction.~~

- END -