

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 40

An Act to amend and reenact § 52-46 of the Code of Virginia, relating to Applicant Fingerprint Database; participation in FBI Next Generation Identification Rap Back Service, through Virginia Rap Back Service, for fingerprint-based criminal history record monitoring; penalty.

[H 1859]

Approved March 17, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 52-46 of the Code of Virginia is amended and reenacted as follows:

§ 52-46. Virginia Rap Back Service; criminal history record monitoring; maintenance; dissemination; penalty.

A. The Department of State Police, *through the Virginia Record of Arrest and Prosecution (Rap) Back Service*, shall keep and maintain an Applicant Fingerprint Database separate and apart from all other records maintained by the Department participate in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) Rap Back Service. The purpose of the database Virginia Rap Back Service shall be to allow those agencies and governmental entities who that require a fingerprint-based criminal background check as a condition of (i) providing care to (a) children, (b) the disabled, or (c) the elderly or (ii) (a) licensure, (b) certification, (c) employment, or (d) volunteer service to be advised when an individual subject to such screening is arrested for, or convicted of, a criminal offense which would disqualify that individual from licensure, certification, employment or volunteer service with that entity. The Department is authorized to submit fingerprints and accompanying records to the Federal Bureau of Investigation (FBI) to be retained in and advised through the FBI's Next Generation Identification NGI Rap Back service Service when an enrolled individual subject to a criminal background check is arrested for, or convicted of, a criminal offense not reported to the Department which would disqualify that individual from licensure, certification, employment, or volunteer service with that entity. Fingerprints submitted to the FBI may be used for future searches, including latent searches.

B. As used in this section:

"Individual" means any person who has submitted to a fingerprint-based background check in order to (i) care for (a) children, (b) the disabled, or (c) the elderly or (ii) (a) be licensed, (b) be certified, (c) be employed, or (d) perform volunteer service with a participating entity and who has been enrolled by that participating entity in the Virginia Rap Back Service.

"Participating entity" means an agency or organization a governmental entity that requires a fingerprint fingerprint-based background check as a condition of (i) caring for (a) children, (b) the disabled, or (c) the elderly or (ii) (a) licensure, (b) certification, (c) employment, or (d) volunteer service; and that has elected to participate enroll individuals in the database Virginia Rap Back Service.

"Individual" means any person who has submitted fingerprints to a participating entity in order to be licensed, certified, employed, or to perform volunteer service with that entity.

C. The Department of State Police shall ~~notify~~ ensure that notification is made forthwith to the participating entity that employs, certifies, licenses, or accepts the volunteer services of enrolls an individual whose prints are maintained in the database upon receipt of a in the Virginia Rap Back Service when an FBI Rap Back report that the individual has been arrested for or convicted of an offense that would disqualify that individual from licensure, certification, employment or volunteer service with that entity is received. The information contained in the notification shall be used by the participating entity for purposes of determining the eligibility of the continued service of the individual and shall not be further disseminated.

D. Use of the information contained in the database or received from the database submitted to the Virginia Rap Back Service for purposes not authorized by this section is prohibited, and a willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 1 misdemeanor.

E. No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.

F. The Department of State Police shall promulgate regulations governing the operation and maintenance of the database Virginia Rap Back Service and the expungement removal and destruction of records on persons individuals who are deceased, or who are no longer employed, licensed, certified, or in volunteer service for the entity that submitted the fingerprints individuals as defined in this section. Such regulations shall provide that a participating entity shall disenroll any individual who is deceased or is no longer an individual as defined in this section within 30 days of death or such event that no

longer requires such individual to be enrolled in the Virginia Rap Back Service, in order to ensure the prompt removal and destruction of records from the Virginia Rap Back Service.

G. The Department of State Police may charge an annual fee not to exceed ~~\$10~~ \$12 per individual ~~entered into~~ *enrolled in the database Virginia Rap Back Service*. The fee shall be paid ~~no later than July 15 of each year by the~~ *any participating entity or entities submitting fingerprints to the database or by the entity or entities requesting notification regarding an individual enrolling an individual in the Virginia Rap Back Service*. An individual ~~whose licensure, certification, employment, or volunteer service~~ *who moves from one participating entity to another* need not be reprinted. When more than one participating entity ~~licenses, certifies, employs, or accepts the volunteer services of an~~ *enrolls the same* individual in the ~~database Virginia Rap Back Service~~, both *participating* entities shall be responsible for paying the full cost for maintenance and notification. Any fees collected shall be deposited in a special account to be used to offset the costs of ~~enhancing and administering~~ *subscription fees, maintenance fees, and enhancements related to the database Criminal and Rap Back Information System*.

H. The Department of State Police shall make the ~~database Virginia Rap Back Service~~ available no later than ~~January~~ *July 1, 2005* 2025, unless funds necessary to develop and operate the ~~database Virginia Rap Back Service~~ are unavailable.

I. No *participating* entity authorized to submit fingerprints shall be considered negligent per se in a civil action solely because the entity elected not to ~~submit enroll an individual's fingerprints to individual in the database Virginia Rap Back Service~~ pursuant to this section.