

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: HB1859ER

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Webert

3. Committee: Passed both Houses

4. Title: Applicant Fingerprint Database; participation in FBI Next Generation Identification Rap Back Serv.

5. Summary: Requires the Department of State Police (VSP), through the Virginia Record of Arrest Prosecution (Rap) Back Service, to participate in the FBI's Next Generation Identification (NGI) Rap Back Service. The purpose of the system is to allow governmental entities that require a fingerprint-based criminal background check as a condition of licensure, certification, employment, or volunteer service for providing care to children, the disabled, or the elderly to be advised when an individual subject to screening is arrested for or convicted of a criminal offense. The bill authorizes VSP to submit fingerprints and records to the FBI to be retained in and advised through the FBI's Rap Back service, and allows fingerprints submitted to the FBI to be used for future searches, including latent searches. The bill provides that it is a Class 1 misdemeanor to use information in the database for unauthorized purposes. The bill requires VSP to promulgate regulations related to the operation and maintenance of the service, and the removal and destruction of records. The regulations shall provide that a participating entity shall disenroll any individual who is deceased or is no longer an individual as defined in the section within 30 days of death or such event that no longer requires the person to be enrolled in the service, in order to ensure the prompt removal and destruction of records. It allows VSP to charge an annual fee not to exceed \$12 for this service. Under the provisions of the bill, VSP is required to make the service available no later than July 1, 2025, unless funds to develop and operate the service are unavailable.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Final. See Item 8 below.

8. Fiscal Implications: The Department of State Police (VSP) received \$13,019,984 in funding for software and hardware modifications and analyst positions to implement the FBI's Rap Back program and other systems to establish an automatic expungement process with the passage of SB1339/HB2113 during the 2021 Special Session I of the General Assembly. Rap Back alerts agencies that have enrolled their employees in the system when an employee is charged or convicted of a crime. According to VSP, that funding is sufficient to implement

Rap Back. The proposed legislation is required to meet the FBI's specifications before it will allow VSP to operate the system in the Commonwealth.

The bill also allows VSP to charge participating entities a reasonable fee for their use of the Rap Back system. Any potential revenues from these fees, and their fiscal impact on VSP or the Commonwealth, is indeterminate at this time.

The bill also provides that it is a Class 1 misdemeanor to use information included in the Rap Back system for unauthorized purposes. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

9. Specific Agency or Political Subdivisions Affected: Department of State Police.

10. Technical Amendment Necessary: No.

11. Other Comments: None.