

# VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

## CHAPTER 41

*An Act to amend and reenact § 52-46 of the Code of Virginia, relating to Virginia Rap Back Service; criminal history record monitoring.*

[H 444]

Approved March 8, 2024

**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 participate in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) Rap Back Service. The purpose of the Virginia Rap Back Service shall be to allow governmental entities 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 *the subject of a Rap Back notification event including being* arrested for, or convicted of, a criminal offense. The Department is authorized to submit fingerprints and accompanying records to the FBI to be retained in and advised through the FBI's NGI Rap Back Service ~~when an enrolled individual is arrested for, or convicted of, a criminal offense.~~ 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 a governmental entity that requires a 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 enroll individuals in the Virginia Rap Back Service.

C. The Department of State Police shall ensure that notification is made forthwith to the participating entity that enrolls an individual in the Virginia Rap Back Service when an FBI Rap Back ~~report~~ *notification* 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 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 Virginia Rap Back Service and the removal and destruction of records on individuals who are deceased or who are no longer 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~~ *five business* 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 \$12 per individual enrolled in the Virginia Rap Back Service. The fee shall be paid by any participating entity enrolling an individual in the Virginia Rap Back Service. ~~An individual who moves from one participating entity to another need not be reprinted.~~ When more than one participating entity enrolls the same individual in the 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 subscription fees, maintenance fees, and enhancements related to the Criminal and Rap Back Information System.

H. The Department of State Police shall make the Virginia Rap Back Service available no later than July 1, 2025, unless funds necessary to develop and operate the 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 enroll an individual in the Virginia Rap Back Service pursuant to this section.