

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 312

BY SENATORS WELD, TRUMP, IHLENFELD, ROBERTS, AND

WOELFEL

[Introduced February 17, 2021; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §15-2-24 of the Code of West Virginia, 1931, as amended, relating
 2 to allowing a name-based state and federal criminal history record check of each adult
 3 residing in a residence when, due to emergency, a minor child must be placed in home
 4 care due to the absence of parents or custodians.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24. Criminal Identification Bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; criminal history record check for emergency child placements; offenses and penalties.

1 (a) The superintendent of the department shall establish, equip, and maintain at the
 2 departmental headquarters a Criminal Identification Bureau, for the purpose of receiving and filing
 3 fingerprints, photographs, records, and other information pertaining to the investigation of crime
 4 and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or
 5 designate a supervisor to be in charge of the Criminal Identification Bureau and such supervisor
 6 shall be responsible to the superintendent for the affairs of the bureau. Members of the
 7 department assigned to the Criminal Identification Bureau shall carry out their duties and
 8 assignments in accordance with internal management rules and regulations pertaining thereto
 9 promulgated by the superintendent.

10 (b) The Criminal Identification Bureau shall cooperate with identification bureaus of other
 11 states and of the United States to develop and carry on a complete interstate, national, and
 12 international system of criminal identification.

13 (c) The Criminal Identification Bureau may furnish fingerprints, photographs, records, or
 14 other information to authorized law-enforcement and governmental agencies of the United States
 15 and its territories, of foreign countries duly authorized to receive the same, of other states within
 16 the United States, and of the State of West Virginia upon proper request stating that the

17 fingerprints, photographs, records, or other information requested are necessary in the interest of
18 and will be used solely in the administration of official duties and the criminal laws.

19 (d) The Criminal Identification Bureau may furnish, with the approval of the superintendent,
20 fingerprints, photographs, records, or other information to any private or public agency, person,
21 firm, association, corporation or other organization, other than a law-enforcement or governmental
22 agency as to which the provisions of subsection (c) of this section shall govern and control, but
23 all requests under the provisions of this subsection for such fingerprints, photographs, records, or
24 other information must be accompanied by a written authorization signed and acknowledged by
25 the person whose fingerprints, photographs, records or other information is to be released.

26 (e) The Criminal Identification Bureau may furnish fingerprints, photographs, records, and
27 other information of persons arrested or sought to be arrested in this state to the identification
28 bureau of the United States government and to other states for the purpose of aiding law
29 enforcement.

30 (f) Persons in charge of any penal or correctional institution, including any city or county
31 jail in this state, shall take, or cause to be taken, the fingerprints and description of all persons
32 lawfully committed thereto or confined therein and furnish the same in duplicate to the Criminal
33 Identification Bureau, Department of Public Safety. Such fingerprints shall be taken on forms
34 approved by the superintendent of the Department of Public Safety. All such officials as herein
35 named may, when possible to do so, furnish photographs to the Criminal Identification Bureau of
36 such persons so fingerprinted.

37 (g) Members of the Department of Public Safety, and all other state law-enforcement
38 officials, sheriffs, deputy sheriffs, and each and every peace officer in this state, shall take or
39 cause to be taken the fingerprints and description of all persons arrested or detained by them,
40 charged with any crime or offense in this state, in which the penalty provided therefor is
41 confinement in any penal or correctional institution, or of any person who they have reason to
42 believe is a fugitive from justice or a habitual criminal, and furnish the same in duplicate to the

43 Criminal Identification Bureau of the Department of Public Safety on forms approved by the
44 superintendent of said department. All such officials as herein named may, when possible to do
45 so, furnish to the Criminal Identification Bureau photographs of such persons so fingerprinted. For
46 the purpose of obtaining data for the preparation and submission to the Governor and the
47 Legislature by the Department of Public Safety of an annual statistical report on crime conditions
48 in the state, the clerk of any court of record, the magistrate of any magistrate court and the mayor
49 or clerk of any municipal court before which a person appears on any criminal charge shall report
50 to the Criminal Identification Bureau the sentence of the court or other disposition of the charge
51 and the prosecuting attorney of every county shall report to the Criminal Identification Bureau
52 such additional information as the bureau may require for such purpose, and all such reports shall
53 be on forms prepared and distributed by the Department of Public Safety, shall be submitted
54 monthly and shall cover the period of the preceding month.

55 (h) All persons arrested or detained pursuant to the requirements of this article shall give
56 fingerprints and information required by subsections (f) and (g) of this section. Any person who
57 has been fingerprinted or photographed in accordance with the provisions of this section who is
58 acquitted of the charges upon which he or she was arrested and who has no previous criminal
59 record may, upon the presentation of satisfactory proof to the department, have such fingerprints
60 or photographs, or both, returned to them.

61 (i) All state, county, and municipal law-enforcement agencies shall submit to the bureau
62 uniform crime reports setting forth their activities in connection with law enforcement. It shall be
63 the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general
64 content, time and manner of submission of such uniform crime reports. Willful or repeated failure
65 by any state, county, or municipal law-enforcement official to submit the uniform crime reports
66 required by this article shall constitute neglect of duty in public office. The bureau shall correlate
67 the reports submitted to it and shall compile and submit to the Governor and the Legislature
68 semiannual reports based on such reports. A copy of such reports shall be furnished to all

69 prosecuting attorneys and law-enforcement agencies.

70 (j) Neglect or refusal of any person mentioned in this section to make the report required
71 herein, or to do or perform any act on his or her part to be done or performed in connection with
72 the operation of this section, shall constitute a misdemeanor and, such person shall, upon
73 conviction thereof, be punished by a fine of not less than \$25 nor more than \$200, or by
74 imprisonment in ~~the county~~ jail for a period of not more than 60 days, or both. Such neglect shall
75 constitute misfeasance in office and subject such persons to removal from office. Any person who
76 willfully removes, destroys or mutilates any of the fingerprints, photographs, records, or other
77 information of the Department of Public Safety shall be guilty of a misdemeanor and, such person
78 shall, upon conviction thereof, be punished by a fine of not more than \$100, or by imprisonment
79 in ~~the county~~ jail for a period of not more than six months, or both.

80 (k) The Criminal Identification Bureau (CIB) and the Federal Bureau of Investigation (FBI)
81 shall retain applicant fingerprints for the purpose of participating in the Rap Back Program to
82 determine suitability or fitness for a permit, license, or employment. Agencies participating in the
83 program shall notify applicants and employees subject to a criminal history check that their
84 fingerprint shall be retained by the CIB and the FBI. Notification shall also be given to the applicant
85 and employee subject to the Rap Back Program.

86 (l) The State Police may assess a fee to applicants, covered providers, or covered
87 contractors for conducting the criminal background check and for collecting and retaining
88 fingerprints for Rap Back as authorized under article 49, chapter 16 of this code. The assessment
89 shall be deposited into a nonappropriated special revenue account within the State Treasurer's
90 Office to be known as the WVSP Criminal History Account. Expenditures from this account shall
91 be made by the superintendent for purposes set forth in this article and are authorized from
92 collections. The account shall be administered by the superintendent and may not be deemed a
93 part of the general revenue of the State.

94 (m) During an emergency situation when a child must be placed in home-care due to the

95 absence of parents or custodians, the West Virginia Department of Health and Human
96 Resources/Child Protective Services (“DHHR/CPS”) may request that a criminal justice agency
97 perform a federal name-based criminal history record check of each adult residing in the home.
98 Name-based check results may be provided to the DHHR/CPS, which shall then provide a
99 complete set of each adult resident’s fingerprints to the State Police central repository for the
100 immediate submission to the FBI within 15 calendar days from the date the name search was
101 conducted. The central repository shall either positively identify the fingerprint subject or forward
102 the fingerprints to the FBI within 15 calendar days from the date the name search was conducted.
103 The child shall be removed from the home immediately if any adult resident fails to provide such
104 fingerprints and written permission to perform a federal criminal history record check when
105 requested.

106 When placement of a child in a home is denied as a result of a name-based criminal history
107 record check of a resident, and the resident contests that denial, each such resident shall, within
108 15 calendar days, submit to the DHHR/CPS a complete set of the resident’s fingerprints with
109 written permission allowing the DHHR/CPS to forward the fingerprints to the State Police criminal
110 history record repository for submission to the FBI.

111 The State Police criminal history record repository and the FBI may each charge a
112 reasonable fee for processing a fingerprint-based criminal history record check.

113 As used in this section, “emergency placement” refers to those limited instances when the
114 DHHR/CPS is placing a child in the home of private individuals, including neighbors, friends, or
115 relatives, as a result of a sudden unavailability of the child’s primary caretaker.

NOTE: The purpose of this bill is to allow a name-based state and federal criminal history record check of each adult residing in a residence when, due to an emergency, a minor child must be placed in home-care due to the absence of parents or custodians.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.