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]

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

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

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

(c) The Criminal Identification Bureau may furnish fingerprints, photographs, records, or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States, and of the State of West Virginia upon proper request stating that the fingerprints, photographs, records, or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

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

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

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

(g) Members of the Department of Public Safety, and all other state law-enforcement officials, sheriffs, deputy sheriffs, and each and every peace officer in this state, shall take or cause to be taken the fingerprints and description of all persons arrested or detained by them, charged with any crime or offense in this state, in which the penalty provided therefor is confinement in any penal or correctional institution, or of any person who they have reason to believe is a fugitive from justice or a habitual criminal, and furnish the same in duplicate to the Criminal Identification Bureau of the Department of Public Safety on forms approved by the superintendent of said department. All such officials as herein named may, when possible to do so, furnish to the Criminal Identification Bureau photographs of such persons so fingerprinted. For the purpose of obtaining data for the preparation and submission to the Governor and the Legislature by the Department of Public Safety of an annual statistical report on crime conditions in the state, the clerk of any court of record, the magistrate of any magistrate court and the mayor or clerk of any municipal court before which a person appears on any criminal charge shall report to the Criminal Identification Bureau the sentence of the court or other disposition of the charge and the prosecuting attorney of every county shall report to the Criminal Identification Bureau such additional information as the bureau may require for such purpose, and all such reports shall be on forms prepared and distributed by the Department of Public Safety, shall be submitted monthly and shall cover the period of the preceding month.

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

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

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

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

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

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

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

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

As used in this section, “emergency placement” refers to those limited instances when the DHHR/CPS is placing a child in the home of private individuals, including neighbors, friends, or 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.