

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 828

02/21/2013 Authored by Lesch
The bill was read for the first time and referred to the Committee on Civil Law
03/13/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Public Safety Finance and Policy
03/20/2013 Adoption of Report: Pass and Read Second Time

1.1 A bill for an act
1.2 relating to public safety; authorizing and modifying access to secure
1.3 communications network; providing minimum standards; clarifying use of
1.4 network; amending Minnesota Statutes 2012, sections 299C.11, subdivision
1.5 1; 299C.46, subdivisions 1, 2, 2a, 3; 299F.035, subdivisions 1, 2; 299F.77;
1.6 340A.301, subdivision 2; 340A.402; proposing coding for new law in Minnesota
1.7 Statutes, chapter 299C; repealing Minnesota Statutes 2012, section 299A.28.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2012, section 299C.11, subdivision 1, is amended to read:

1.10 Subdivision 1. **Identification data other than DNA.** (a) Each sheriff and chief of
1.11 police shall furnish the bureau, upon such form as the superintendent shall prescribe, with
1.12 such finger and thumb prints, photographs, distinctive physical mark identification data,
1.13 information on known aliases and street names, and other identification data as may be
1.14 requested or required by the superintendent of the bureau, which must be taken under the
1.15 provisions of section 299C.10. In addition, sheriffs and chiefs of police shall furnish this
1.16 identification data to the bureau for individuals found to have been convicted of a felony,
1.17 gross misdemeanor, or targeted misdemeanor, within the ten years immediately preceding
1.18 their arrest. When the bureau learns that an individual who is the subject of a background
1.19 check has used, or is using, identifying information, including, but not limited to, name
1.20 and date of birth, other than those listed on the criminal history, the bureau may add the
1.21 new identifying information to the criminal history when supported by fingerprints.

1.22 (b) No petition under chapter 609A is required if the person has not been convicted
1.23 of any felony or gross misdemeanor, either within or without the state, within the period
1.24 of ten years immediately preceding the determination of all pending criminal actions or
1.25 proceedings in favor of the arrested person, and either of the following occurred:

- 2.1 (1) all charges were dismissed prior to a determination of probable cause; or
 2.2 (2) the prosecuting authority declined to file any charges and a grand jury did not
 2.3 return an indictment.

2.4 Where these conditions are met, the bureau or agency shall, upon demand, ~~return to~~
 2.5 destroy the arrested person finger and thumb prints, photographs, distinctive physical mark
 2.6 identification data, information on known aliases and street names, and other identification
 2.7 data, and all copies and duplicates of them.

2.8 (c) Except as otherwise provided in paragraph (b), upon the determination of all
 2.9 pending criminal actions or proceedings in favor of the arrested person, and the granting
 2.10 of the petition of the arrested person under chapter 609A, the bureau shall seal finger and
 2.11 thumb prints, photographs, distinctive physical mark identification data, information on
 2.12 known aliases and street names, and other identification data, and all copies and duplicates
 2.13 of them if the arrested person has not been convicted of any felony or gross misdemeanor,
 2.14 either within or without the state, within the period of ten years immediately preceding
 2.15 such determination.

2.16 Sec. 2. Minnesota Statutes 2012, section 299C.46, subdivision 1, is amended to read:

2.17 Subdivision 1. **Establishment; interconnection.** The commissioner of public safety
 2.18 shall establish a criminal justice data communications network ~~which that~~ will enable the
 2.19 ~~interconnection of the criminal justice agencies within the state~~ provide secure access to
 2.20 systems and services available from or through the Bureau of Criminal Apprehension. The
 2.21 commissioner of public safety is authorized to lease or purchase facilities and equipment
 2.22 as may be necessary to establish and maintain the data communications network.

2.23 Sec. 3. Minnesota Statutes 2012, section 299C.46, subdivision 2, is amended to read:

2.24 Subd. 2. **Criminal justice agency defined.** For the purposes of sections 299C.46
 2.25 to 299C.49, "criminal justice agency" means an agency of the state or ~~an agency of a~~
 2.26 political subdivision or the federal government charged with detection, enforcement,
 2.27 prosecution, adjudication or incarceration in respect to the criminal or traffic laws of this
 2.28 state. This definition also includes all sites identified and licensed as a detention facility
 2.29 by the commissioner of corrections under section 241.021 and those federal agencies that
 2.30 serve part or all of the state from an office located outside the state.

2.31 Sec. 4. Minnesota Statutes 2012, section 299C.46, subdivision 2a, is amended to read:

2.32 Subd. 2a. **Noncriminal justice agency defined.** For the purposes of sections
 2.33 299C.46 to 299C.49, "noncriminal justice agency" means an agency of a the state or an

3.1 ~~agency of~~ a political subdivision of a the state charged with the responsibility of performing
3.2 checks of state databases connected to the criminal justice data communications network.

3.3 Sec. 5. Minnesota Statutes 2012, section 299C.46, subdivision 3, is amended to read:

3.4 Subd. 3. **Authorized use, fee.** (a) The criminal justice data communications
3.5 network shall be used exclusively by:

3.6 (1) criminal justice agencies in connection with the performance of duties required
3.7 by law;

3.8 (2) agencies investigating federal security clearances of individuals for assignment
3.9 or retention in federal employment with duties related to national security, as required by
3.10 ~~Public Law 99-169~~ United States Code, title 5, section 9101;

3.11 (3) other agencies to the extent necessary to provide for protection of the public or
3.12 property in ~~an~~ a declared emergency or disaster situation;

3.13 (4) noncriminal justice agencies statutorily mandated, by state or national law, to
3.14 conduct checks into state databases prior to disbursing licenses or providing benefits;

3.15 (5) the public authority responsible for child support enforcement in connection
3.16 with the performance of its duties;

3.17 (6) the public defender, as provided in section 611.272; ~~and~~

3.18 (7) a county attorney or the attorney general, as the county attorney's designee, for
3.19 the purpose of determining whether a petition for the civil commitment of a proposed
3.20 patient as a sexual psychopathic personality or as a sexually dangerous person should be
3.21 filed, and during the pendency of the commitment proceedings;

3.22 (8) an agency of the state or a political subdivision whose access to systems or
3.23 services provided from or through the bureau is specifically authorized by federal law
3.24 or regulation or state statute; and

3.25 (9) by a court for access to data as authorized by federal law or regulation or state
3.26 statute and related to the disposition of a pending case.

3.27 (b) The commissioner of public safety shall establish a monthly network access
3.28 charge to be paid by each participating criminal justice agency. The network access
3.29 charge shall be a standard fee established for each terminal, computer, or other equipment
3.30 directly addressable by the data communications network, as follows: January 1, 1984
3.31 to December 31, 1984, \$40 connect fee per month; January 1, 1985 and thereafter, \$50
3.32 connect fee per month.

3.33 (c) The commissioner of public safety is authorized to arrange for the connection
3.34 of the data communications network with the criminal justice information system of
3.35 the federal government, any ~~adjacent~~ state, or Canada country for the secure exchange

4.1 of information for any of the purposes authorized in paragraph (a), clauses (1), (2), (3),
4.2 (8), and (9).

4.3 (d) Prior to establishing a secure connection, a criminal justice agency must:

4.4 (1) agree to comply with all applicable policies governing access to, submission of,
4.5 or use of the data;

4.6 (2) meet the bureau's security requirements;

4.7 (3) agree to pay any required fees; and

4.8 (4) conduct fingerprint-based state and national background checks on the agency's
4.9 employees and contractors as required by the Federal Bureau of Investigation.

4.10 (e) Prior to establishing a secure connection, a noncriminal justice agency must:

4.11 (1) agree to comply with all applicable policies governing access to, submission of,
4.12 or use of the data;

4.13 (2) meet the bureau's security requirements;

4.14 (3) agree to pay any required fees; and

4.15 (4) conduct fingerprint-based state and national background checks on the agency's
4.16 employees and contractors.

4.17 (f) Those noncriminal justice agencies that do not have a secure network connection
4.18 yet receive data either retrieved over the secure network by an authorized criminal justice
4.19 agency or as a result of a state or federal criminal history records check shall conduct a
4.20 background check as provided in paragraph (g) of those individuals who receive and
4.21 review the data to determine another individual's eligibility for employment, housing, a
4.22 license, or another legal right dependent on a statutorily mandated background check.

4.23 (g) The background check required by paragraph (e) or (f) is accomplished by
4.24 submitting a request to the superintendent of the Bureau of Criminal Apprehension
4.25 that includes a signed, written consent for the Minnesota and national criminal history
4.26 records check, fingerprints, and the required fee. The superintendent may exchange
4.27 the fingerprints with the Federal Bureau of Investigation for purposes of obtaining the
4.28 individual's national criminal history record information.

4.29 The superintendent shall return the results of the national criminal history records check to
4.30 the noncriminal justice agency to determine if the individual is qualified to have access to
4.31 state and federal criminal history record information or the secure network. An individual
4.32 is disqualified when the state and federal criminal history record information show any of
4.33 the disqualifiers that the individual will apply to the records of others.

4.34 When the individual is to have access to the secure network, the noncriminal justice
4.35 agency shall review the criminal history of each employee or contractor with the Criminal
4.36 Justice Information Services systems officer at the bureau, or the systems officer's

5.1 designee, to determine if the employee or contractor qualifies for access to the secure
5.2 network. The Criminal Justice Information Services systems officer or the designee shall
5.3 make the access determination based on Federal Bureau of Investigation policy and
5.4 Bureau of Criminal Apprehension policy.

5.5 **Sec. 6. [299C.72] MINNESOTA CRIMINAL HISTORY CHECKS.**

5.6 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms in this
5.7 subdivision have the meanings given them.

5.8 (b) "Applicant for employment" means an individual who seeks either county or city
5.9 employment or has applied to serve as a volunteer in the county or city.

5.10 (c) "Applicant for licensure" means the individual seeks a license issued by the
5.11 county or city which is not subject to a federal or state-mandated background check.

5.12 (d) "Authorized law enforcement agency" means the county sheriff for checks
5.13 conducted for county purposes, the police department for checks conducted for city
5.14 purposes, or the county sheriff for checks conducted for city purposes where there is no
5.15 police department.

5.16 (e) "Criminal history check" means retrieval of criminal history data via the secure
5.17 network described in section 299C.46.

5.18 (f) "Criminal history data" means adult convictions and adult open arrests less than
5.19 one year old found in the Minnesota computerized criminal history repository.

5.20 (g) "Informed consent" has the meaning given in section 13.05, subdivision 4,
5.21 paragraph (d).

5.22 Subd. 2. **Criminal history check authorized.** (a) The criminal history check
5.23 authorized by this section may not be used in place of a statutorily mandated or authorized
5.24 background check.

5.25 (b) An authorized law enforcement agency may conduct a criminal history check
5.26 of an individual who is an applicant for employment or applicant for licensure. Prior
5.27 to conducting the criminal history check, the authorized law enforcement agency must
5.28 receive the informed consent of the individual.

5.29 (c) The authorized law enforcement agency may not disseminate criminal history data
5.30 and must maintain it securely with the agency's office. The authorized law enforcement
5.31 agency may indicate whether the applicant for employment or applicant for licensure has a
5.32 criminal history that would prevent hire, acceptance as a volunteer to a hiring authority, or
5.33 would prevent the issuance of a license to the department that issues the license.

5.34 Sec. 7. Minnesota Statutes 2012, section 299F.035, subdivision 1, is amended to read:

6.1 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this
6.2 section.

6.3 (b) "Minnesota criminal history data" has the meaning given in section 13.87 means
6.4 adult convictions and juvenile adjudications.

6.5 (e) "Criminal justice agency" has the meaning given in section 299C.46, subdivision
6.6 2.

6.7 (d) (c) "Fire department" has the meaning given in section 299N.01, subdivision 2.

6.8 (e) (d) "Private data" has the meaning given in section 13.02, subdivision 12.

6.9 Sec. 8. Minnesota Statutes 2012, section 299F.035, subdivision 2, is amended to read:

6.10 Subd. 2. **Plan for Access to data.** (a) ~~The superintendent of the Bureau of Criminal~~
6.11 ~~Apprehension, in consultation with the state fire marshal, shall develop and implement~~
6.12 ~~a plan for fire departments to have access to criminal history data. A background check~~
6.13 ~~must be conducted on all applicants for employment and may be conducted on current~~
6.14 ~~employees at a fire department. The fire chief must conduct a Minnesota criminal history~~
6.15 ~~record check. For applicants for employment who have lived in Minnesota for less than~~
6.16 ~~five years, or on the request of the fire chief, a national criminal history record check~~
6.17 ~~must also be conducted.~~

6.18 (b) ~~The plan must include:~~

6.19 (1) ~~security procedures to prevent unauthorized use or disclosure of private data; and~~

6.20 (2) ~~a procedure for the hiring or employing authority in each fire department to~~
6.21 ~~fingerprint job applicants or employees, submit requests to the Bureau of Criminal~~
6.22 ~~Apprehension, and obtain state and federal criminal history data reports for a nominal fee.~~

6.23 (b) For a Minnesota criminal history record check, the fire chief must either (1)
6.24 submit the signed informed consent of the applicant or employee and the required fee to
6.25 the superintendent, or (2) submit the signed informed consent to the chief of police. The
6.26 superintendent or chief must retrieve Minnesota criminal history data and provide it to
6.27 the fire chief for review.

6.28 (c) For a national criminal history record check, the fire chief must submit the
6.29 signed informed consent and fingerprints of the applicant or employee, and the required
6.30 fee to the superintendent. The superintendent may exchange the fingerprints with the
6.31 Federal Bureau of Investigation to obtain the individual's national criminal history record
6.32 information. The superintendent must return the results of the national criminal history
6.33 record check to the fire chief for the purpose of determining if the applicant is qualified to
6.34 be employed or if a current employee is able to retain the employee's position.

7.1 Sec. 9. Minnesota Statutes 2012, section 299F.77, is amended to read:

7.2 **299F.77 ISSUANCE TO CERTAIN PERSONS PROHIBITED.**

7.3 Subdivision 1. Disqualifiers. The following persons shall not be entitled to receive
7.4 an explosives license or permit:

7.5 (1) a person under the age of 18 years;

7.6 (2) a person who has been convicted in this state or elsewhere of a crime of violence,
7.7 as defined in section 299F.72, subdivision 1b, unless ten years have elapsed since the
7.8 person's civil rights have been restored or the sentence has expired, whichever occurs first,
7.9 and during that time the person has not been convicted of any other crime of violence. For
7.10 purposes of this section, crime of violence includes crimes in other states or jurisdictions
7.11 that would have been crimes of violence if they had been committed in this state;

7.12 (3) a person who is or has ever been confined or committed in Minnesota or
7.13 elsewhere as a person who is mentally ill, developmentally disabled, or mentally ill and
7.14 dangerous to the public, as defined in section 253B.02, to a treatment facility, unless the
7.15 person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or
7.16 other satisfactory proof, that the person is no longer suffering from this disability;

7.17 (4) a person who has been convicted in Minnesota or elsewhere for the unlawful
7.18 use, possession, or sale of a controlled substance other than conviction for possession of
7.19 a small amount of marijuana, as defined in section 152.01, subdivision 16, or who is or
7.20 has ever been hospitalized or committed for treatment for the habitual use of a controlled
7.21 substance or marijuana, as defined in sections 152.01 and 152.02, unless the person
7.22 possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other
7.23 satisfactory proof, that the person has not abused a controlled substance or marijuana
7.24 during the previous two years; and

7.25 (5) a person who has been confined or committed to a treatment facility in Minnesota
7.26 or elsewhere as chemically dependent, as defined in section 253B.02, unless the person
7.27 has completed treatment.

7.28 Subd. 2. Background check. (a) For licenses issued by the commissioner under
7.29 section 299F.73, the applicant for licensure must provide the commissioner with all of
7.30 the information required by Code of Federal Regulations, title 28, section 25.7. The
7.31 commissioner shall forward the information to the superintendent of the Bureau of
7.32 Criminal Apprehension so that criminal records, histories, and warrant information on
7.33 the applicant may be retrieved from the Minnesota Crime Information System and the
7.34 National Instant Criminal Background Check System as well as the civil commitment
7.35 records maintained by the Department of Human Services. The results must be returned to
7.36 the commissioner to determine if the individual applicant is qualified to receive a license.

8.1 (b) For permits issued by a county sheriff or chief of police under section 299F.75,
8.2 the applicant for a permit must provide the county sheriff or chief of police with all of
8.3 the information required by Code of Federal Regulations, title 28, section 25.7. The
8.4 county sheriff or chief of police must check, by means of electronic data transfer, criminal
8.5 records, histories, and warrant information on each applicant through the Minnesota Crime
8.6 Information System and the National Instant Criminal Background Check System as well
8.7 as the civil commitment records maintained by the Department of Human Services. The
8.8 county sheriff or chief of police shall use the results of the query to determine if the
8.9 individual applicant is qualified to receive a permit.

8.10 Sec. 10. Minnesota Statutes 2012, section 340A.301, subdivision 2, is amended to read:

8.11 Subd. 2. **Persons eligible.** (a) Licenses under this section may be issued only to
8.12 a person who:

8.13 (1) is of good moral character and repute;

8.14 (2) is 21 years of age or older;

8.15 (3) has not had a license issued under this chapter revoked within five years of the
8.16 date of license application, or to any person who at the time of the violation owns any
8.17 interest, whether as a holder of more than five percent of the capital stock of a corporation
8.18 licensee, as a partner or otherwise, in the premises or in the business conducted thereon,
8.19 or to a corporation, partnership, association, enterprise, business, or firm in which any
8.20 such person is in any manner interested; and

8.21 (4) has not been convicted within five years of the date of license application of a
8.22 felony, or of a willful violation of a federal or state law, or local ordinance governing
8.23 the manufacture, sale, distribution, or possession for sale or distribution of alcoholic
8.24 beverages. The Alcohol and Gambling Enforcement Division may require that fingerprints
8.25 be taken and may forward the fingerprints to the Federal Bureau of Investigation for
8.26 purposes of a criminal history check.

8.27 (b) In order to determine if an individual has a felony or willful violation of federal
8.28 or state law governing the manufacture, sale, distribution, or possession for sale or
8.29 distribution of an alcoholic beverage, the applicant for a license to manufacture or sell at
8.30 wholesale must provide the commissioner with the applicant's signed, written informed
8.31 consent to conduct a background check. The commissioner may query the Minnesota
8.32 Criminal History Repository for records on the applicant. If the commissioner conducts a
8.33 national criminal history record check, the commissioner must obtain fingerprints from
8.34 the applicant and forward them and the required fee to the superintendent of the Bureau
8.35 of Criminal Apprehension. The superintendent may exchange the fingerprints with the

9.1 Federal Bureau of Investigation for purposes of obtaining the applicant's national criminal
9.2 history record information. The superintendent shall return the results of the national
9.3 criminal history records check to the commissioner for the purpose of determining if the
9.4 applicant is qualified to receive a license.

9.5 Sec. 11. Minnesota Statutes 2012, section 340A.402, is amended to read:

9.6 **340A.402 PERSONS ELIGIBLE.**

9.7 Subdivision 1. Disqualifiers. No retail license may be issued to:

9.8 (1) a person under 21 years of age;

9.9 (2) a person who has had an intoxicating liquor or 3.2 percent malt liquor license
9.10 revoked within five years of the license application, or to any person who at the time of
9.11 the violation owns any interest, whether as a holder of more than five percent of the capital
9.12 stock of a corporation licensee, as a partner or otherwise, in the premises or in the business
9.13 conducted thereon, or to a corporation, partnership, association, enterprise, business, or
9.14 firm in which any such person is in any manner interested;

9.15 (3) a person not of good moral character and repute; or

9.16 (4) a person who has a direct or indirect interest in a manufacturer, brewer, or
9.17 wholesaler.

9.18 In addition, no new retail license may be issued to, and the governing body of a
9.19 municipality may refuse to renew the license of, a person who, within five years of the
9.20 license application, has been convicted of a felony or a willful violation of a federal or
9.21 state law or local ordinance governing the manufacture, sale, distribution, or possession
9.22 for sale or distribution of an alcoholic beverage. The Alcohol and Gambling Enforcement
9.23 Division or licensing authority may require that fingerprints be taken and forwarded to the
9.24 Federal Bureau of Investigation for purposes of a criminal history check.

9.25 Subd. 2. Background check. (a) A retail liquor license may be issued by a city,
9.26 a county, or the commissioner. The chief of police is responsible for the background
9.27 checks prior to a city issuing a retail liquor license. A county sheriff is responsible for the
9.28 background checks prior to the county issuing a retail liquor license and for those cities
9.29 that do not have a police department. The commissioner is responsible for the background
9.30 checks prior to the state issuing a retail liquor license.

9.31 (b) The applicant for a retail license must provide the appropriate authority with
9.32 the applicant's signed, written informed consent to conduct a background check. The
9.33 appropriate authority is authorized to query the Minnesota Criminal History Repository
9.34 for records on the applicant. If the appropriate authority conducts a national criminal
9.35 history record check, the appropriate authority must obtain fingerprints from the applicant

10.1 and forward them and the required fee to the superintendent of the Bureau of Criminal
10.2 Apprehension. The superintendent may exchange the fingerprints with the Federal Bureau
10.3 of Investigation for purposes of obtaining the applicant's national criminal history record
10.4 information. The superintendent shall return the results of the national criminal history
10.5 records check to the appropriate authority for the purpose of determining if the applicant
10.6 is qualified to receive a license.

10.7 Sec. 12. **REPEALER.**

10.8 Minnesota Statutes 2012, section 299A.28, is repealed.

299A.28 MCGRUFF SAFE HOUSE PROGRAM.

Subdivision 1. **Symbol.** The symbol of "McGruff" with the phrase "McGruff House" is the symbol to designate a house in this state where a child may seek help when threatened.

Subd. 2. **Duties of commissioner.** The commissioner of public safety shall:

(1) design or adopt a standard symbol to designate a safe house that is the "McGruff" symbol used in other states;

(2) make available written information about the safe house program and "McGruff" symbols to school districts and law enforcement agencies;

(3) publicize the safe house program in as many ways as is reasonably practical;

(4) require the appropriate local law enforcement agency to maintain a register of safe houses;

(5) either directly or through cooperation with the appropriate law enforcement agencies conduct background checks on persons who apply to have their house be a safe house.

Subd. 3. **Display of symbol.** A person displaying the "McGruff" symbol so that it is visible from the outside of their house must be approved as a safe house by the appropriate local law enforcement agency. The appropriate law enforcement agency must supply the symbol to the person. The symbol is the property of the law enforcement agency, and a person must return the symbol to the law enforcement agency if the agency determines that the house no longer qualifies as a "McGruff" house. Violation of this subdivision is a misdemeanor.

Subd. 4. **Safe houses; requirements.** The appropriate law enforcement agency must provide "McGruff" symbols to persons who apply for symbols if they agree in writing to follow the terms of the safe house program and pass a background check by the appropriate local law enforcement agency.

Subd. 5. **Exclusive symbol.** The safe house symbol provided by this section is the exclusive symbol for safe houses in this state.

Subd. 6. **Rules.** The commissioner of public safety may adopt rules necessary to implement this section.