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HOUSE BILL NO. 807

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 19.2-389, 37.2-203.1, 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-416.1 and 37.2-506.1, relating to criminal history background checks.

Patron—Price

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 37.2-203.1, 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 37.2-416.1 and 37.2-506.1 as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the

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59 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
60 with a conviction record would be compatible with the nature of the employment under consideration;

61 8. Public or private agencies when authorized or required by federal or state law or interstate
62 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
63 adult members of that individual's household, with whom the agency is considering placing a child or
64 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
65 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
66 the data shall not be further disseminated to any party other than a federal or state authority or court as
67 may be required to comply with an express requirement of law;

68 9. To the extent permitted by federal law or regulation, public service companies as defined in
69 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
70 personal contact with the public or when past criminal conduct of an applicant would be incompatible
71 with the nature of the employment under consideration;

72 10. The appropriate authority for purposes of granting citizenship and for purposes of international
73 travel, including, but not limited to, issuing visas and passports;

74 11. A person requesting a copy of his own criminal history record information as defined in
75 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
76 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
77 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
78 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
79 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
80 Solvers or Crime Line program as defined in § 15.2-1713.1;

81 12. Administrators and board presidents of and applicants for licensure or registration as a child
82 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
83 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
84 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing
85 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data
86 shall not be further disseminated by the facility or agency to any party other than the data subject, the
87 Commissioner of Social Services' representative or a federal or state authority or court as may be
88 required to comply with an express requirement of law for such further dissemination; however, nothing
89 in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative
90 from issuing written certifications regarding the results of a background check that was conducted before
91 July 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

92 13. The school boards of the Commonwealth for the purpose of screening individuals who are
93 offered or who accept public school employment and those current school board employees for whom a
94 report of arrest has been made pursuant to § 19.2-83.1;

95 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
96 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,
97 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth
98 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

99 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
100 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
101 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject
102 to the limitations set out in subsection E;

103 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
104 investigations of applicants for compensated employment in licensed assisted living facilities and
105 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

106 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth
107 in § 4.1-103.1;

108 18. The State Board of Elections and authorized officers and employees thereof and general registrars
109 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
110 voter registration, limited to any record of felony convictions;

111 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
112 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
113 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

114 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
115 Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders
116 under § 18.2-51.4, 18.2-266, or 18.2-266.1;

117 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
118 Department of Education, or the Department of Behavioral Health and Developmental Services for the
119 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
120 services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the community services board to serve in a direct care position on behalf of the community services board pursuant to §§ 37.2-506, 37.2-506.1, and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the behavioral health authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506, 37.2-506.1, and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-416.1, 37.2-506, 37.2-506.1, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House Committee for Courts of Justice for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other

than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Education or its agents or designees for the purpose of screening individuals seeking to enter into a contract with the Department of Education or its agents or designees for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Superintendent of Public Instruction's representative, or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination; however, nothing in this subdivision shall be construed to prohibit the Superintendent of Public Instruction's representative from issuing written certifications regarding the results of prior background checks in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039; and

47. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further, except as otherwise provided in subdivision A 46.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be

reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

§ 37.2-203.1. Licensed provider; statement to prospective employer.

The Board of Behavioral Health and Developmental Services shall amend regulations governing licensed providers to require that every licensed provider provide a statement regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 ~~or~~, 37.2-416.1, 37.2-506, or 37.2-506.1, to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 ~~or~~, 37.2-416.1, 37.2-506, or 37.2-506.1. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon receipt of a request for such information from the other licensed provider and written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 ~~or~~, 37.2-416.1, 37.2-506, or 37.2-506.1. Nothing in the amended regulations shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 or federal law.

§ 37.2-416. Background checks required; developmental services and services for children.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services in any program providing mental health or substance abuse services for any individual who is younger than 18 years of age or developmental services for any individual regardless of age or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) (i) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) (ii) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

305 *"Provider" means a provider, as defined in § 37.2-403, who is licensed pursuant to this article and*
306 *who provides (i) mental health or substance abuse services to individuals who are younger than 18*
307 *years of age or (ii) developmental services to any individual regardless of age.*

308 *"Shared living" means an arrangement in which the Commonwealth's program of medical assistance*
309 *pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and*
310 *providing companionship, support, and other limited, basic assistance to a person with developmental*
311 *disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal*
312 *responsibility.*

313 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts
314 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service
315 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential
316 service provider, (iv) any person employed by a sponsored residential service provider to provide
317 services in the home, (v) any person who enters into a shared living arrangement with a person
318 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract with the
319 provider to serve in a direct care position to submit to fingerprinting and provide personal descriptive
320 information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of
321 Investigation (FBI) for the purpose of obtaining national criminal history record information regarding
322 the applicant. Except as otherwise provided in subsection C, ~~D, E, or F~~, no provider licensed pursuant to
323 this article shall:

324 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
325 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
326 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
327 application date for employment or (b) if such person continues on probation or parole or has failed to
328 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §
329 19.2-392.02;

330 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
331 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
332 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
333 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
334 years prior to the application date to be a sponsored residential service provider or (b) if such applicant
335 continues on probation or parole or has failed to pay required court costs for such offense set forth in
336 clause (iv) of the definition of barrier crime in § 19.2-392.02;

337 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
338 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause
339 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause
340 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a
341 shared living arrangement or (b) if such person continues on probation or parole or has failed to pay
342 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
343 § 19.2-392.02; or

344 4. Allow any person under contract with the provider to serve in a direct care position who has been
345 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §
346 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02
347 (a) in the five years prior to the application date for employment or (b) if such person continues on
348 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of
349 the definition of barrier crime in § 19.2-392.02.

350 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no
351 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed
352 pursuant to this article. If any applicant is denied employment because of information appearing on the
353 criminal history record and the applicant disputes the information upon which the denial was based, the
354 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures
355 for obtaining a copy of the criminal history record from the FBI. The information provided to the
356 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated
357 except as provided in this section.

358 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
359 or permit any person under contract with the provider to serve in a direct care position or permit any
360 person employed by a temporary agency that has entered into a contract with the provider to provide
361 direct care services on behalf of the provider at adult substance abuse or adult mental health treatment
362 programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of
363 § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of
364 § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of
365 § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier
366 crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any

substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse treatment facilities a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia; or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms; shall not be under probation or parole supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and court costs for any prior convictions; and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care position on behalf of the provider or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also D. Every provider shall require, as a condition of employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. E. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. F. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

J. G. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a

428 sponsored residential service provider, or to enter into a shared living arrangement with a person
429 receiving medical assistance services pursuant to a waiver.

430 ~~K. H.~~ Any person employed by a temporary agency that has entered into a contract with the a
431 provider and who will serve in a direct care position on behalf of the such provider licensed pursuant to
432 this article shall undergo a background check that shall include:

433 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
434 § 19.2-389; and

435 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
436 child abuse and neglect.

437 Except as otherwise provided in subsection C, ~~D~~, or ~~F~~, no provider licensed pursuant to this article
438 shall permit any person employed by a temporary agency that has entered into a contract with the
439 provider to provide direct care services on behalf of the provider if that person has been convicted of (i)
440 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
441 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
442 years prior to the application date for employment or (b) if such person continues on probation or parole
443 or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of
444 barrier crime in § 19.2-392.02.

445 **§ 37.2-416.1. Background checks required; adult substance abuse and mental health services.**

446 A. As used in this section:

447 "Direct care position" means any position that includes responsibility for (i) treatment, case
448 management, health, safety, development, or well-being of an adult receiving substance abuse or mental
449 health services or (ii) immediately supervising a person in a position with this responsibility.

450 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
451 or adult mental health treatment position to another such position within the same licensee licensed
452 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health
453 treatment position in another office or program licensed pursuant to this article if the person employed
454 prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the
455 application date for employment. "Hire for compensated employment" includes (a) a promotion or
456 transfer from an adult substance abuse treatment position to any mental health services direct care
457 position within the same licensee licensed pursuant to this article or (b) new employment in any mental
458 health services direct care position in another office or program of the same licensee licensed pursuant
459 to this article for which the person has previously worked in an adult substance abuse treatment
460 position.

461 "Provider" means a provider, as defined in § 37.2-403, who is licensed pursuant to this article and
462 who provides substance abuse or mental health services to adults.

463 B. Every provider shall require (i) any applicant who accepts employment in any direct care position
464 and (ii) any person under contract with the provider to serve in a direct care position to submit to
465 fingerprinting and provide personal descriptive information to be forwarded through the Central
466 Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining
467 national criminal history record information regarding the applicant. Except as otherwise provided in
468 subsection C, D, or F, no provider shall:

469 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
470 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
471 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
472 application date for employment or (b) if such person continues on probation or parole or has failed to
473 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
474 § 19.2-392.02; or

475 2. Allow any person under contract with the provider to serve in a direct care position who has been
476 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in
477 § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in §
478 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person
479 continues on probation or parole or has failed to pay required court costs for such offense set forth in
480 clause (iv) of the definition of barrier crime in § 19.2-392.02.

481 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
482 no record exists, shall submit a report to the requesting authorized officer or director of a provider. If
483 any applicant is denied employment because of information appearing on the criminal history record
484 and the applicant disputes the information upon which the denial was based, the Central Criminal
485 Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a
486 copy of the criminal history record from the FBI. The information provided to the authorized officer or
487 director of a provider shall not be disseminated except as provided in this section.

488 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
489 or permit any person under contract with the provider to serve in a direct care position or permit any

person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at an adult substance abuse treatment facility a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment or (ii) permit any person under contract with the provider to serve in a direct care position on behalf of the provider or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment or permission for any person under contract with the provider to serve in a direct care position, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

J. Notwithstanding any other provision of law, a provider that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment.

K. Any person employed by a temporary agency that has entered into a contract with a provider and

551 *who will serve in a direct care position on behalf of the provider shall undergo a background check*
552 *that shall include:*

553 *1. A criminal history records check through the Central Criminal Records Exchange pursuant to §*
554 *19.2-389; and*

555 *2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of*
556 *child abuse and neglect.*

557 *Except as otherwise provided in subsection C, D, or F, no provider shall permit any person*
558 *employed by a temporary agency that has entered into a contract with the provider to provide direct*
559 *care services on behalf of the provider if that person has been convicted of (i) any offense set forth in*
560 *clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in*
561 *clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the*
562 *application date for employment or (b) if such person continues on probation or parole or has failed to*
563 *pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §*
564 *19.2-392.02.*

565 **§ 37.2-506. Background checks required; developmental services and services for children.**

566 A. As used in this section:

567 "Direct care position" means any position that includes responsibility for (i) treatment, case
568 management, health, safety, development, or well-being of an individual receiving services in any
569 program providing mental health or substance abuse services for any individual who is younger than 18
570 years of age or developmental services for any individual regardless of age or (ii) immediately
571 supervising a person in a position with this responsibility.

572 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
573 or adult mental health treatment position to another such position within the same community services
574 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
575 another office or program of the same community services board if the person employed prior to July 1,
576 1999, had no convictions in the five years prior to the application date for employment. "Hire for
577 compensated employment" includes (a) (i) a promotion or transfer from an adult substance abuse
578 treatment position to any mental health or developmental services direct care position within the same
579 community services board or (b) (ii) new employment in any mental health or developmental services
580 direct care position in another office or program of the same community services board for which the
581 person has previously worked in an adult substance abuse treatment position.

582 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance
583 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and
584 providing companionship, support, and other limited, basic assistance to a person with developmental
585 disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal
586 responsibility.

587 B. Every community services board shall require (i) any applicant who accepts employment in any
588 direct care position with the community services board, (ii) any applicant for approval as a sponsored
589 residential service provider, (iii) any adult living in the home of an applicant for approval as a
590 sponsored residential service provider, (iv) any person employed by a sponsored residential service
591 provider to provide services in the home, (v) any person who enters into a shared living arrangement
592 with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under
593 contract to serve in a direct care position on behalf of the community services board to submit to
594 fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal
595 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national
596 criminal history record information regarding the applicant. Except as otherwise provided in subsection
597 C, D, or F, no community services board shall hire for compensated employment, approve as a
598 sponsored residential service provider, permit to enter into a shared living arrangement with a person
599 receiving medical assistance services pursuant to a waiver, or permit any person under contract to serve
600 in a direct care position on behalf of the community services board persons who have been convicted of
601 (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or
602 (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five
603 years prior to the application date for employment, the application date to be a sponsored residential
604 service provider, or entering into a shared living arrangement or (2) if such person continues on
605 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of
606 the definition of barrier crime in § 19.2-392.02.

607 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no
608 record exists, shall submit a report to the requesting executive director or personnel director of the
609 community services board. If any applicant is denied employment because of information appearing on
610 his criminal history record and the applicant disputes the information upon which the denial was based,
611 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the
612 procedures for obtaining a copy of the criminal history record from the FBI. The information provided

to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A community services board may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. D. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract to serve in a direct care position on behalf of the community services board, written consent

674 and personal information necessary to obtain a search of the registry of founded complaints of child
675 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

676 H. E. The cost of obtaining the criminal history record and search of the child abuse and neglect
677 registry record shall be borne by the applicant, unless the community services board decides to pay the
678 cost.

679 I. F. Notwithstanding any other provision of law, a community services board that provides services
680 to individuals receiving services under the state plan for medical assistance services or any waiver
681 thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history
682 background check has been completed for a person described in subsection B for whom a criminal
683 history background check is required and (ii) whether the person described in subsection B is eligible
684 for employment, to provide sponsored residential services, to provide services in the home of a
685 sponsored residential service provider, or to enter into a shared living arrangement with a person
686 receiving medical assistance services pursuant to a waiver.

687 J. G. A person who complies in good faith with the provisions of this section shall not be liable for
688 any civil damages for any act or omission in the performance of duties under this section unless the act
689 or omission was the result of gross negligence or willful misconduct.

690 K. H. Any person employed by a temporary agency that has entered into a contract with a
691 community services board and who will serve in a direct care position on behalf of the ~~the~~ such community
692 services board shall undergo a background check that shall include:

693 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
694 § 19.2-389; and

695 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
696 child abuse and neglect.

697 Except as otherwise provided in subsection C, ~~D~~, ~~or~~ F, no community services board shall permit
698 any person employed by a temporary agency that has entered into a contract with the community
699 services board to provide direct care services on behalf of the community services board if that person
700 has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime
701 in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in
702 § 19.2-392.02 (a) in the five years prior to the application date for employment, the application date to
703 be a sponsored residential service provider, or entering into a shared living arrangement or (b) if such
704 person continues on probation or parole or has failed to pay required court costs for such offense set
705 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

706 **§ 37.2-506.1. Background checks required; adult substance abuse and mental health services.**

707 A. As used in this section:

708 "Direct care position" means any position that includes responsibility for (i) treatment, case
709 management, health, safety, development, or well-being of an adult receiving substance abuse or mental
710 health services or (ii) immediately supervising a person in a position with this responsibility.

711 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
712 or adult mental health treatment position to another such position within the same community services
713 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
714 another office or program of the same community services board if the person employed prior to July 1,
715 1999, had no convictions in the five years prior to the application date for employment. "Hire for
716 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
717 position to any mental health services direct care position within the same community services board or
718 (b) new employment in any mental health services direct care position in another office or program of
719 the same community services board for which the person has previously worked in an adult substance
720 abuse treatment position.

721 B. Every community services board shall require (i) any applicant who accepts employment in any
722 direct care position with the community services board and (ii) any person under contract to serve in a
723 direct care position on behalf of the community services board to submit to fingerprinting and provide
724 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the
725 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record
726 information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no
727 community services board shall hire for compensated employment or permit any person under contract
728 to serve in a direct care position on behalf of the community services board persons who have been
729 convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in
730 § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in §
731 19.2-392.02 (1) in the five years prior to the application date for employment or (2) if such person
732 continues on probation or parole or has failed to pay required court costs for such offense set forth in
733 clause (iv) of the definition of barrier crime in § 19.2-392.02.

734 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
735 no record exists, shall submit a report to the requesting executive director or personnel director of the

community services board. If any applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at an adult substance abuse treatment program a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, or (ii) permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position

G. Community services boards also shall require, as a condition of employment or permission for any person under contract to serve in a direct care position on behalf of the community services board, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the

797 cost.

798 *I. Notwithstanding any other provision of law, a community services board that provides services to*
799 *individuals receiving services under the state plan for medical assistance services or any waiver thereto*
800 *may disclose to the Department of Medical Assistance Services (i) whether a criminal history*
801 *background check has been completed for a person described in subsection B for whom a criminal*
802 *history background check is required and (ii) whether the person described in subsection B is eligible*
803 *for employment.*

804 *J. A person who complies in good faith with the provisions of this section shall not be liable for any*
805 *civil damages for any act or omission in the performance of duties under this section unless the act or*
806 *omission was the result of gross negligence or willful misconduct.*

807 *K. Any person employed by a temporary agency that has entered into a contract with a community*
808 *services board and who will serve in a direct care position on behalf of such community services board*
809 *shall undergo a background check that shall include:*

810 *1. A criminal history records check through the Central Criminal Records Exchange pursuant to §*
811 *19.2-389; and*

812 *2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of*
813 *child abuse and neglect.*

814 *Except as otherwise provided in subsection C, D, or F, no community services board shall permit*
815 *any person employed by a temporary agency that has entered into a contract with the community*
816 *services board to provide direct care services on behalf of the community services board if that person*
817 *has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime*
818 *in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in*
819 *§ 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person*
820 *continues on probation or parole or has failed to pay required court costs for such offense set forth in*
821 *clause (iv) of the definition of barrier crime in § 19.2-392.02.*

822 **§ 37.2-607. Background check required.**

823 A behavioral health authority shall fulfill the duties of and be subject to the employee background
824 check requirements that are applicable to community services boards, as set forth in § §§ 37.2-506 and
825 37.2-506.1.