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HOUSE BILL NO. 343

Offered January 12, 2022

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A BILL to amend and reenact §§ 19.2-392.02, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1721, 63.2-1722, and 63.2-1726 of the Code of Virginia, relating to barrier crimes; removing offenses involving possession, use, manufacturing, etc., of controlled substances.

Patron—Subramanyam

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.02, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1721, 63.2-1722, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) ~~any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction;~~ (iv) ~~any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction;~~ (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or ~~(vi)~~ (iv) any other felony not included in clause (i), (ii), or (iii); ~~(iv); or (v)~~ unless five years have elapsed from the date of the conviction.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children or the elderly or disabled.

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59 "Department" means the Department of State Police.

60 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or
61 seeks to volunteer for a qualified entity.

62 "Identification document" means a document made or issued by or under the authority of the United
63 States government, a state, a political subdivision of a state, a foreign government, political subdivision
64 of a foreign government, an international governmental or an international quasi-governmental
65 organization that, when completed with information concerning a particular individual, is of a type
66 intended or commonly accepted for the purpose of identification of individuals.

67 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may
68 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity
69 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised
70 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or
71 operate a qualified entity.

72 "Qualified entity" means a business or organization that provides care to children or the elderly or
73 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt
74 pursuant to subdivision A 7 of § 22.1-289.030.

75 B. A qualified entity may request the Department of State Police to conduct a national criminal
76 background check on any provider who is employed by such entity. No qualified entity may request a
77 national criminal background check on a provider until such provider has:

78 1. Been fingerprinted; and

79 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and
80 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
81 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
82 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
83 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a
84 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background
85 check report, to challenge the accuracy and completeness of any information contained in any such
86 report, and to obtain a prompt determination as to the validity of such challenge before a final
87 determination is made by the Department; and (v) a notice to the provider that prior to the completion
88 of the background check the qualified entity may choose to deny the provider unsupervised access to
89 children or the elderly or disabled for whom the qualified entity provides care.

90 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
91 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in
92 subsection B, the Department shall make a determination whether the provider has been convicted of or
93 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
94 crime information, the Department shall access the national criminal history background check system,
95 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
96 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
97 Department. If the Department receives a background report lacking disposition data, the Department
98 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
99 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
100 within 15 business days.

101 D. Any background check conducted pursuant to this section for a provider employed by a private
102 entity shall be screened by the Department of State Police. If the provider has been convicted of or is
103 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not
104 qualified to work or volunteer in a position that involves unsupervised access to children or the elderly
105 or disabled.

106 E. Any background check conducted pursuant to this section for a provider employed by a
107 governmental entity shall be provided to that entity.

108 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
109 national criminal background check, the Department and the Federal Bureau of Investigation may each
110 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
111 with the fingerprints.

112 G. The failure to request a criminal background check pursuant to subsection B shall not be
113 considered negligence per se in any civil action.

114 **§ 37.2-314. Background check required.**

115 A. As a condition of employment, the Department shall require any applicant who (i) accepts a
116 position of employment at a state facility and was not employed by that state facility prior to July 1,
117 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the
118 Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to
119 fingerprinting and provide personal descriptive information to be forwarded along with the applicant's
120 fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)

for the purpose of obtaining national criminal history record information regarding the applicant.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of ~~(i) any offense set forth in clause (i); or (ii); or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02~~ (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment 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 subsection H1 or H2 of § 18.2-248; or any substantially similar offense~~ under the laws of another jurisdiction, if the Department 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. The Department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C 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 Department 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 Department decides to pay the cost.

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an 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 state facility or Department shall not be disseminated except as provided in this section.

F. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on them.

G. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department or state facility decides to pay the cost.

§ 37.2-408.1. Background check required; children's residential facilities.

A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department shall require any person who (i) accepts a position of employment at such a facility, (ii) is currently employed by such a facility, (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the person's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the person. The children's residential facility shall inform the person that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the person's eligibility to have responsibility for the safety and well-being of children. The person shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the

182 Commonwealth. The results of the criminal history background check must be received prior to
183 permitting a person to work in the children's residential facility.

184 The Central Criminal Records Exchange, upon receipt of a person's record or notification that no
185 record exists, shall forward it to the state agency that operates or regulates the children's residential
186 facility with which the person is affiliated. The state agency shall, upon receipt of a person's record
187 lacking disposition data, conduct research in whatever state and local recordkeeping systems are
188 available in order to obtain complete data. The state agency shall report to the children's facility whether
189 the person is eligible to have responsibility for the safety and well-being of children. Except as
190 otherwise provided in subsection B, no children's residential facility regulated or operated by the
191 Department shall hire for compensated employment or allow to volunteer or provide contractual services
192 persons who have been convicted of or are the subject of pending charges for ~~(a) any offense set forth~~
193 ~~in clause (i), (ii), or (iii); or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set~~
194 ~~forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the~~
195 ~~application date for employment; to be a volunteer; or to provide contractual services or (2) such person~~
196 ~~continues on probation or parole or has failed to pay required court costs for such offense set forth in~~
197 ~~clause (iv) of the definition of barrier crime in § 19.2-392.02.~~ The provisions of this section also shall
198 apply to structured residential programs, excluding secure detention facilities, established pursuant to §
199 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that
200 alleges the juvenile is delinquent or in need of services or supervision.

201 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for
202 compensated employment or for volunteer or contractual service purposes persons who have been
203 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
204 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
205 unless the person committed such offense in the scope of his employment, volunteer, or contractual
206 services.

207 If the person is denied employment, or the opportunity to volunteer or provide services, at a
208 children's residential facility because of information appearing on his criminal history record, and the
209 person disputes the information upon which the denial was based, upon written request of the person the
210 state agency shall furnish the person the procedures for obtaining his criminal history record from the
211 Federal Bureau of Investigation. The information provided to the children's residential facility shall not
212 be disseminated except as provided in this section.

213 C. Those persons listed in clauses (i) through (iv) of subsection A also shall authorize the children's
214 residential facility to obtain a copy of information from the central registry maintained pursuant to §
215 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide
216 the children's residential facility with a written statement or affirmation disclosing whether he has ever
217 been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The
218 children's residential facility shall receive the results of the central registry search prior to permitting a
219 person to work. Children's residential facilities regulated or operated by the Department shall not hire for
220 compensated employment, or allow to volunteer or provide contractual services, persons who have a
221 founded case of child abuse or neglect.

222 D. The cost of obtaining the criminal history record and the central registry information shall be
223 borne by the person unless the children's residential facility, at its option, decides to pay the cost.

224 **§ 37.2-416. Background checks required.**

225 A. As used in this section:

226 "Direct care position" means any position that includes responsibility for (i) treatment, case
227 management, health, safety, development, or well-being of an individual receiving services or (ii)
228 immediately supervising a person in a position with this responsibility.

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

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

responsibility.

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

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

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

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

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

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the 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 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. 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 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 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 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

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

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

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

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

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

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

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

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

365 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
366 § 19.2-389; and

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

Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall 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 if that person has been convicted of (i) any offense set forth in clause (i); *or* (ii); ~~or (iii)~~ of the definition of barrier crime in § 19.2-392.02 ~~or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02~~ (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

§ 37.2-506. Background checks required.

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 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 community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

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

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

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that 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

428 entered into a contract with the community services board to provide direct care services on behalf of
429 the community services board at adult substance abuse or adult mental health treatment programs a
430 person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or
431 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
432 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in
433 clause (iii) of the definition of barrier crime in § 19.2-392.02; except an offense pursuant to subsection
434 H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if
435 the hiring community services board determines, based upon a screening assessment, that the criminal
436 behavior was substantially related to the applicant's substance abuse or mental illness and that the person
437 has been successfully rehabilitated and is not a risk to individuals receiving services based on his
438 criminal history background and his substance abuse or mental illness history.

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

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

465 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
466 compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter
467 into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care
468 position on behalf of the community services board or permit any person employed by a temporary
469 agency that has entered into a contract with the community services board to provide direct care services
470 on behalf of the community services board persons who have been convicted of not more than one
471 misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of
472 another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the
473 offense while employed in a direct care position. A community services board may also approve a
474 person as a sponsored residential service provider if (a) any adult living in the home of an applicant or
475 (b) any person employed by the applicant to provide services in the home in which sponsored residential
476 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or
477 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
478 elapsed following the conviction, unless the person committed the offense while employed in a direct
479 care position.

480 G. Community services boards also shall require, as a condition of employment, approval as a
481 sponsored residential service provider, permission to enter into a shared living arrangement with a
482 person receiving medical assistance services pursuant to a waiver, or permission for any person under
483 contract to serve in a direct care position on behalf of the community services board, written consent
484 and personal information necessary to obtain a search of the registry of founded complaints of child
485 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

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

489 I. Notwithstanding any other provision of law, a community services board 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 sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

J. 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.

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

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

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

Except as otherwise provided in subsection C, D, or F, no community services board shall 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 if that person has been convicted of ~~(i) any offense set forth in clause (i); or (ii); or (iii)~~ of the definition of barrier crime in § 19.2-392.02 ~~or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.~~

§ 63.2-901.1. Criminal history and central registry check for placements of children.

A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry of any individual with whom the local board or licensed child-placing agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such background checks on all adult household members residing in the home of the individual with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be at no cost to the individual. The local board or licensed child-placing agency shall pay for the national fingerprint criminal history record check or may require such individual to pay the cost of the fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for responding to requests required by this section.

B. Background checks pursuant to this section require the following:

1. A sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the individual has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. That the individual submit to fingerprinting and provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final decision is made of the individual's fitness to have responsibility for the safety and well-being of children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an individual's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the local board or licensed child-placing agency whether the individual meets the criteria for having responsibility for the safety and well-being of children based on whether or not the individual has ever been convicted of

551 or is the subject of pending charges for any barrier crime as defined in § 19.2-392.02. Copies of any
552 information received by a local board or licensed child-placing agency pursuant to this section shall be
553 available to the state agency that regulates or operates such a child-placing agency but shall not be
554 disseminated further; and

555 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
556 child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any
557 other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in
558 which a prospective parent or other adult in the home has resided in the preceding five years.

559 C. In emergency circumstances, each local board may obtain, from a criminal justice agency,
560 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau
561 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records
562 search authorized by this section. Within three days of placing a child, the local board shall require the
563 individual for whom a criminal history record information check was requested to submit to
564 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints
565 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
566 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed
567 from the home immediately if any adult resident fails to provide such fingerprints and written
568 permission to perform a criminal history record check when requested.

569 D. Any individual with whom the local board is considering placing a child on an emergency basis
570 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh
571 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or
572 neglect. The search of the central registry must occur prior to emergency placement. Such central
573 registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall
574 provide a written statement of affirmation disclosing whether he has ever been the subject of a founded
575 case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not
576 approve individuals with a founded complaint of child abuse as foster or adoptive parents.

577 E. The child-placing agency shall not approve a foster or adoptive home if any individual has been
578 convicted of any barrier crime as defined in § 19.2-392.02 or is the subject of a founded complaint of
579 abuse or neglect as maintained in registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 et seq. A
580 child-placing agency may approve as a foster parent an applicant who has been convicted of not more
581 than one misdemeanor as set out in § 18.2-57, or any substantially similar offense under the laws of
582 another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10
583 years have elapsed following the conviction.

584 F. A local board or child-placing agency may approve as a kinship foster care parent an applicant
585 who has been convicted of the following offenses, provided that 10 years have elapsed from the date of
586 the conviction and the local board or child-placing agency makes a specific finding that approving the
587 kinship foster care placement would not adversely affect the safety and well-being of the child: ~~(i) any~~
588 ~~offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 or~~ (ii) any
589 misdemeanor offense under § 18.2-80, 18.2-81, 18.2-83, 18.2-87, 18.2-87.1, or 18.2-88 or any
590 substantially similar offense under the laws of another jurisdiction.

591 G. Any individual participating in the Fostering Futures program, which allows local departments to
592 continue to provide foster care services to individuals who are 18 years of age or older but have not
593 reached 21 years of age, who is placed in a foster home shall be subject to the background check
594 requirements set forth in subsection B. The results of such background check shall be used for the sole
595 purpose of determining whether other children should be placed or remain in the same foster home as
596 the individual subject to the background check. The results of the background check shall not be used to
597 terminate or suspend the approval of the foster home pursuant to subsection E. For purposes of this
598 subsection, "individual participating in the Fostering Futures program" means a person who is 18 years
599 of age or older but has not reached 21 years of age and is receiving foster care services through the
600 Fostering Futures program.

601 **§ 63.2-1721. Background check upon application for licensure as a child-placing agency, etc.;**
602 **penalty.**

603 A. Upon application for licensure as a child-placing agency or independent foster home, (i) all
604 applicants and (ii) agents at the time of application who are or will be involved in the day-to-day
605 operations of the child-placing agency or independent foster home or who are or will be alone with, in
606 control of, or supervising one or more of the children shall undergo a background check pursuant to
607 subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a
608 background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval
609 by child-placing agencies shall undergo background checks pursuant to subsection B prior to their
610 approval.

611 B. Background checks pursuant to subsection A require:

612 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the

subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

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

3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The person required to have a background check pursuant to subsection A shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an assisted living facility, shall provide an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, *or F, G, or H*, (a) the Commissioner shall not issue a license to a child-placing agency or independent foster home or (b) a child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency or independent foster home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency or independent foster home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant who has been convicted of not more than one misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, or any substantially similar offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the definition of barrier crime in ~~§ 19.2-392.02~~ who has had his civil rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, or eight years have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test administered by a laboratory or medical professional within 90 days prior to being approved, and such test returned with a negative result; and (iv) complies with any other obligations as determined by the Department.

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii) of the definition of barrier crime in ~~§ 19.2-392.02~~ who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

I. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

674 J. H. Further dissemination of the background check information is prohibited other than to the
675 Commissioner's representative or a federal or state authority or court as may be required to comply with
676 an express requirement of law for such further dissemination.

677 **§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain**
678 **background check.**

679 A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted
680 living facility, or adult day care center and a child-placing agency may revoke the approval of a foster
681 home if the assisted living facility, adult day care center, child welfare agency, or foster home has
682 knowledge that a person specified in § 63.2-1720 or 63.2-1721 required to have a background check (i)
683 has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) in the case of a child welfare
684 agency or foster home, is the subject of a founded complaint of child abuse or neglect within or outside
685 the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to
686 § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720 or subsection E, ~~or F, G,~~
687 ~~or H~~ of § 63.2-1721, and the facility, center, or agency refuses to separate such person from
688 employment or service or allows the household member to continue to reside in the home.

689 B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for
690 denial, revocation, or termination of a license, registration, or approval or any contract with the
691 Department or a local department to provide child care services to clients of the Department or local
692 department. No violation shall occur if the assisted living facility, adult day care center, child-placing
693 agency, or independent foster home has applied for the background check timely and it has not been
694 obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

695 **§ 63.2-1726. Background check required; children's residential facilities.**

696 A. As a condition of employment, volunteering, or providing services on a regular basis, every
697 children's residential facility that is regulated or operated by the Departments of Social Services,
698 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any
699 individual who (i) accepts a position of employment at such a facility, (ii) is employed by such a
700 facility, (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for
701 such a facility to submit to fingerprinting and to provide personal descriptive information, to be
702 forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the
703 Federal Bureau of Investigation for the purpose of obtaining criminal history record information
704 regarding such applicant. The children's residential facility shall inform the applicant that he is entitled
705 to obtain a copy of any background check report and to challenge the accuracy and completeness of any
706 such report and obtain a prompt resolution before a final determination is made of the applicant's
707 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the
708 children's residential facility with a written statement or affirmation disclosing whether he has ever been
709 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth.
710 The results of the criminal history background check must be received prior to permitting an applicant
711 to work in the children's residential facility.

712 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
713 record exists, shall forward it to the state agency which operates or regulates the children's residential
714 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
715 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are
716 available in order to obtain complete data. The state agency shall report to the children's facility whether
717 the applicant is eligible to have responsibility for the safety and well-being of children. Except as
718 otherwise provided in subsection B, no children's residential facility regulated or operated by the
719 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social
720 Services shall hire for compensated employment or allow to volunteer or provide contractual services
721 persons who have been convicted of or are the subject of pending charges for ~~(a) any offense set forth~~
722 ~~in clause (i), (ii), or (iii); or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set~~
723 ~~forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the~~
724 ~~application date for employment; to be a volunteer; or to provide contractual services or (2) such person~~
725 ~~continues on probation or parole or has failed to pay required court costs for such offense set forth in~~
726 ~~clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of this section also shall~~
727 ~~apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a~~
728 ~~complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of~~
729 ~~services or supervision and to local secure detention facilities, provided, however, that the provisions of~~
730 ~~this section related to local secure detention facilities shall only apply to an individual who, on or after~~
731 ~~July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such~~
732 ~~local secure detention facility on a regular basis and will be alone with a juvenile in the performance of~~
733 ~~his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a~~
734 ~~regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal~~
735 ~~Records Exchange and the state or local agency that regulates or operates the local secure detention~~

736 facility shall process the criminal history record information regarding such applicant in accordance with
737 this subsection and subsection B.

738 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for
739 compensated employment or for volunteer or contractual service purposes persons who have been
740 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
741 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
742 unless the person committed such offense in the scope of his employment, volunteer, or contractual
743 services.

744 If the applicant is denied employment or the opportunity to volunteer or provide services at a
745 children's residential facility because of information appearing on his criminal history record, and the
746 applicant disputes the information upon which the denial was based, upon written request of the
747 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
748 record from the Federal Bureau of Investigation. The information provided to the children's residential
749 facility shall not be disseminated except as provided in this section.

750 C. Those individuals listed in clauses (i) through (iv) of subsection A also shall authorize the
751 children's residential facility to obtain a copy of information from the central registry maintained
752 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant
753 shall provide the children's residential facility with a written statement or affirmation disclosing whether
754 he has ever been the subject of a founded case of child abuse or neglect within or outside the
755 Commonwealth. The children's residential facility shall receive the results of the central registry search
756 prior to permitting an applicant to work. Children's residential facilities regulated or operated by the
757 Departments of Education; Behavioral Health and Developmental Services; Military Affairs; and Social
758 Services shall not hire for compensated employment or allow to volunteer or provide contractual
759 services, persons who have a founded case of child abuse or neglect. Every residential facility for
760 juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to
761 obtain a copy of the information from the central registry.

762 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and
763 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with
764 the provisions of this section. Copies of any information received by a children's residential facility
765 pursuant to this section shall be available to the agency that regulates or operates such facility but shall
766 not be disseminated further. The cost of obtaining the criminal history record and the central registry
767 information shall be borne by the employee or volunteer unless the children's residential facility, at its
768 option, decides to pay the cost.