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**HOUSE BILL NO. 618**

Offered January 12, 2022

Prefiled January 11, 2022

*A BILL to amend and reenact §§ 19.2-392.02, 37.2-314, 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 possession of controlled substances; barrier crimes.*

Patron—Hudson

Committee Referral Pending

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-392.02, 37.2-314, 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)~~ (v) any other felony not included in clause (i), (ii), (iii), or (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.

INTRODUCED

HB618

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), (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.

### **§ 37.2-416. 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 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) 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) new employment in any mental health or developmental services direct care position in another office or program of the same licensee

182 licensed pursuant to this article for which the person has previously worked in an adult substance abuse  
183 treatment position.

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

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

200 1. Hire for compensated employment any person who has been convicted of ~~(i) any offense set forth~~  
201 ~~in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth~~  
202 ~~in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the~~  
203 ~~application date for employment or (b) if such person continues on probation or parole or has failed to~~  
204 ~~pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in~~  
205 ~~§ 19.2-392.02;~~

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

213 3. Permit to enter into a shared living arrangement with a person receiving medical assistance  
214 services pursuant to a waiver any person who has been convicted of ~~(i) any offense set forth in clause~~  
215 ~~(i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause~~  
216 ~~(iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a~~  
217 ~~shared living arrangement or (b) if such person continues on probation or parole or has failed to pay~~  
218 ~~required court costs for such offense set forth in clause (iv) of the definition of barrier crime in~~  
219 ~~§ 19.2-392.02; or~~

220 4. Allow any person under contract with the provider to serve in a direct care position who has been  
221 convicted of ~~(i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in~~  
222 ~~§ 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in~~  
223 ~~§ 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person~~  
224 ~~continues on probation or parole or has failed to pay required court costs for such offense set forth in~~  
225 ~~clause (iv) of the definition of barrier crime in § 19.2-392.02.~~

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

234 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
235 or permit any person under contract with the provider to serve in a direct care position or permit any  
236 person employed by a temporary agency that has entered into a contract with the provider to provide  
237 direct care services on behalf of the provider at adult substance abuse or adult mental health treatment  
238 programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of  
239 § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of §  
240 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of  
241 § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier  
242 crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any  
243 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 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. 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. 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 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 sponsored residential service provider, or to enter into a shared living arrangement with a person

305 receiving medical assistance services pursuant to a waiver.

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

309 1. A criminal history records check through the Central Criminal Records Exchange pursuant to  
310 § 19.2-389; and

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

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

321 **§ 37.2-506. Background checks required.**

322 A. As used in this section:

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

326 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse  
327 or adult mental health treatment position to another such position within the same community services  
328 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in  
329 another office or program of the same community services board if the person employed prior to July 1,  
330 1999, had no convictions in the five years prior to the application date for employment. "Hire for  
331 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment  
332 position to any mental health or developmental services direct care position within the same community  
333 services board or (b) new employment in any mental health or developmental services direct care  
334 position in another office or program of the same community services board for which the person has  
335 previously worked in an adult substance abuse treatment position.

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

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

361 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
362 record exists, shall submit a report to the requesting executive director or personnel director of the  
363 community services board. If any applicant is denied employment because of information appearing on  
364 his criminal history record and the applicant disputes the information upon which the denial was based,  
365 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the  
366 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. 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

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 cost.

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

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

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

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

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

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

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

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

A. Upon application for licensure as a child-placing agency or independent foster home, (i) all applicants and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child-placing agency or independent foster home or who are or will be alone with, in control of, or supervising one or more of the children shall undergo a background check pursuant to

subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to subsection A require:

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, F, or 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. H.* 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.

*J. I.* Further dissemination of the background check information is prohibited other than to the Commissioner'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.

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

A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted living facility, or adult day care center and a child-placing agency may revoke the approval of a foster home if the assisted living facility, adult day care center, child welfare agency, or foster home has knowledge that a person specified in § 63.2-1720 or 63.2-1721 required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) in the case of a child welfare agency or foster home, 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 the exceptions in subsection B of § 63.2-1720 or subsection E, F, or G; ~~or H~~ of § 63.2-1721, and the facility, center, or agency refuses to separate such person from employment or service or allows the household member to continue to reside in the home.

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

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

A. 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 Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility, (ii) is 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 applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant 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 applicant's eligibility to have responsibility for the safety and well-being of children. The applicant 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 Commonwealth. The results of the criminal history background check must be received prior to permitting an applicant to work in the children's residential facility.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant'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 children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for ~~(a) any offense set forth in clause (i), (ii), (iii), or (iv) 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, to be a volunteer, or to provide contractual services or (2) 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 provisions of this section also shall apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision and to local secure detention facilities, provided, however, that the provisions of

674 this section related to local secure detention facilities shall only apply to an individual who, on or after  
675 July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such  
676 local secure detention facility on a regular basis and will be alone with a juvenile in the performance of  
677 his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a  
678 regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal  
679 Records Exchange and the state or local agency that regulates or operates the local secure detention  
680 facility shall process the criminal history record information regarding such applicant in accordance with  
681 this subsection and subsection B.

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

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

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

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