

22100413D

**SENATE BILL NO. 425**

Senate Amendments in [ ] - February 4, 2022

Prefiled January 11, 2022

*A BILL to amend and reenact §§ 19.2-389, 19.2-392.02, 22.1-289.035 through 22.1-289.040, 22.1-296.1, 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1601.1, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, and 63.2-1726 of the Code of Virginia, relating to barrier crimes.*

Patrons Prior to Engrossment—Senators Edwards (By Request) and Morrissey

Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 19.2-389, 19.2-392.02, 22.1-289.035 through 22.1-289.040, 22.1-296.1, 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1601.1, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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

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

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

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

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

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

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a

ENGROSSED

SB425E

59 position of employment whenever, in the interest of public welfare or safety and as authorized in the  
60 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
61 with a conviction record would be compatible with the nature of the employment under consideration;

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

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

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

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

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

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

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

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

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

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

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

112 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
113 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
114 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

121 services;

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

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

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

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

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

143 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
144 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
145 permission to enter into a shared living arrangement with a person receiving medical assistance services  
146 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to  
147 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and  
148 37.2-607;

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

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

160 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
161 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
162 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

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

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

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

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

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

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

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

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

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

198 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
199 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment  
200 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11  
201 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

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

208 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of  
209 a juvenile's household when completing a predispositional or postdispositional report required by  
210 § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

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

213 46. Administrators and board presidents of and applicants for licensure or registration as a child day  
214 program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the  
215 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of  
216 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034  
217 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the  
218 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's  
219 representative, or a federal or state authority or court as may be required to comply with an express  
220 requirement of law for such further dissemination; however, nothing in this subdivision shall be  
221 construed to prohibit the Superintendent of Public Instruction's representative from issuing written  
222 certifications regarding the results of prior background checks in accordance with subsection J 1 of  
223 § 22.1-289.035 or § 22.1-289.039; and

224 47. *The Department of Health for the purpose of determining whether an individual has been*  
225 *convicted of a barrier crime as defined in § 19.2-392.02 or for the purpose of conducting an*  
226 *investigation pursuant to the provisions of the Department of Health's waiver process for individuals*  
227 *who have been convicted of a barrier crime and who are seeking employment opportunities; and*

228 48. Other entities as otherwise provided by law.

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

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

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

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

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

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

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

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

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

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

**§ 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 any violation of 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; any violation of subsection A or B of § 18.2-47; any violation of subsection B of § 18.2-361; any felony violation of § 16.1-253.2, 18.2-46.2, 18.2-46.3, 18.2-46.3:1, 18.2-46.3:3, 18.2-56.1, 18.2-57, 18.2-57.02, 18.2-60, 18.2-60.3, 18.2-60.4, 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, [ 18.2-287 18.2-287.2 ] , 18.2-346.01, 18.2-348, 18.2-349, 18.2-405, or 18.2-406; 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) any other felony not included in clause (i), (ii), (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.

"Department" means the Department of State Police.

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

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

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

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

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

1. Been fingerprinted; and

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

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

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

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

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

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

H. The State Board of Behavioral Health and Developmental Services, the Board of Education, the State Board of Health, and the State Board of Social Services shall each adopt regulations that develop and implement a waiver process for individuals who have been convicted of a barrier crime pursuant to subsection A and who serve in a position or seek to serve in a position with any qualified entity subject to the regulations of the board. The regulations setting out the process by which a barrier crime may be waived shall include the following information: (i) if applicable, which barrier crimes are eligible to be waived; (ii) whether there is a requirement regarding how much time has elapsed since the conviction; (iii) if an individual is granted a waiver, procedures governing how such information shall be documented within the individual's record of employment or volunteer service and disseminated to the individual and appropriate persons with the Department of Behavioral Health and Developmental Services, Education, Health, or Social Services, as may be appropriate; (iv) criteria used to review an individual's waiver; and (v) any other factors the board deems necessary for consideration. The Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services shall each publish information about the agency's waiver process in an easily accessible format on a website maintained by the department. If an individual is granted a waiver, the department that granted such waiver shall notify the Department no later than 10 business days after the department has issued to such individual in writing the decision about the waiver. If an individual granted a waiver pursuant to this section is convicted of a separate and subsequent barrier crime after receiving such waiver, he shall notify the department of such conviction no later than 10 business days after conviction. Any subsequent conviction of a barrier crime shall require a separate waiver. A waiver granted to an individual by one department shall not be transferrable to a position under another department, but proof of receipt of a waiver from one department shall be considered positively by another department when reviewing an application for a waiver. Upon request, a department shall assist an individual with submitting proof of receipt of a waiver by the department in a timely manner when such individual is applying for a waiver from another department. If an individual's application for a waiver is denied, the department shall state the basis for denial in writing and provide such explanation to the individual.

If an individual applies for and is denied a waiver pursuant to this subsection, he may request an informal fact-finding proceeding pursuant to § 2.2-4019. If an individual does not request such proceeding, the initial denial of the waiver becomes final after 30 days. If an individual remains aggrieved by a case decision after an informal fact-finding proceeding, he may seek review of the case decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act. An individual who remains aggrieved by (i) an initial denial of a waiver after 30 days, (ii) an informal fact-finding decision, or (iii) by a court decision, may reapply for a waiver from the department that denied his waiver application upon a showing that there has been a material change in circumstances, as that term is defined by each board in its regulations.

I. If an individual is granted a waiver pursuant to subsection H, no business screening service as defined in § 19.2-392.16 shall disseminate information regarding the barrier crime conviction that was the subject of such waiver unless a business screening service indicates clearly that a waiver was granted by any of the state boards listed in subsection H. Any business screening service that violates this subsection shall be subject to the penalty provisions in subsection G of § 19.2-392.16.

J. If an individual is granted a waiver pursuant to subsection H, a qualified entity shall not discharge or in any other manner discriminate against an individual for any reason concerning solely a conviction of a barrier crime that was subject to a waiver. Any individual who is discharged or in any other manner discriminated against in a manner prohibited by this subsection may initiate a claim against such qualified entity for not more than 12 months of lost wages, plus costs and reasonable attorney fees.

K. Except for (i) an application cover sheet containing only the name of the applicant, the date the application was submitted to the Department of Behavioral Health and Developmental Services,

428 *Education, Health, or Social Services, and, if applicable, the position for which the individual is*  
429 *applying or has applied and (ii) whether such waiver has been granted or denied or if such application*  
430 *is pending, an individual's application for a waiver, any documents related to such application, and any*  
431 *written basis for a decision about such waiver shall be exempt from the provisions of the Virginia*  
432 *Freedom of Information Act (§ 2.2-3700 et seq.), shall be considered confidential, and shall not be*  
433 *disclosed unless specifically authorized by another provision of law, except that access shall not be*  
434 *denied to the person who is subject thereof.*

435 **§ 22.1-289.035. Licensed child day centers, family day homes, and family day systems;**  
436 **employment for compensation or use as volunteers of persons convicted of or found to have**  
437 **committed certain offenses prohibited; national background check required; penalty.**

438 A. No child day center, family day home, or family day system licensed in accordance with the  
439 provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered  
440 family day home, family day home approved by a family day system, or child day center, family day  
441 home, or child day program that enters into a contract with the Department or its agents or designees to  
442 provide child care services funded by the Child Care and Development Block Grant shall hire for  
443 compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with,  
444 in control of, or supervising children any person who (i) has been convicted of any barrier crime as  
445 defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or  
446 outside the Commonwealth. *However, the Board shall adopt regulations that establish a waiver process*  
447 *pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite*  
448 *convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is*  
449 *granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall*  
450 *apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* All  
451 applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a  
452 background check in accordance with subsection B prior to employment or beginning to serve as a  
453 volunteer and every five years thereafter.

454 B. Any individual required to undergo a background check in accordance with subsection A shall:

455 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is  
456 the subject of pending charges for any offense within or outside the Commonwealth and whether he has  
457 been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;  
458 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2  
459 of § 19.2-392.02;

460 3. Authorize the child day center, family day home, or family day system described in subsection A  
461 to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 for  
462 any founded complaint of child abuse or neglect against him; and

463 4. Authorize the child day center, family day home, or family day system described in subsection A  
464 to obtain a copy of the results of a criminal history record information check, a sex offender registry  
465 check, and a search of the child abuse and neglect registry or equivalent registry from any state in  
466 which the individual has resided in the preceding five years.

467 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2  
468 shall be forwarded by the Department or its designee or, in the case of a child day program operated by  
469 a local government, may be forwarded by the local law-enforcement agency through the Central  
470 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national  
471 criminal history record information regarding such applicant. Upon receipt of an applicant's record or  
472 notification that no record exists, the Central Criminal Records Exchange shall forward the information  
473 to the Department or its designee, and the Department or its designee shall report to the child day center  
474 or family day home whether the applicant is eligible to have responsibility for the safety and well-being  
475 of children. In cases in which the record forwarded to the Department or its designee is lacking  
476 disposition data, the Department or its designee shall conduct research in whatever state and local  
477 recordkeeping systems are available in order to obtain complete data before reporting to the child day  
478 center, family day home, or family day system.

479 C. The child day center, family day home, or family day system described in subsection A shall  
480 inform every individual required to undergo a background check pursuant to this section that he is  
481 entitled to obtain a copy of any background check report and to challenge the accuracy and  
482 completeness of any such report and obtain a prompt resolution before a final determination is made of  
483 the individual's eligibility to have responsibility for the safety and well-being of children.

484 D. Any person making a materially false statement regarding the sworn statement or affirmation  
485 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

486 E. Further dissemination of the background check information is prohibited (i) other than to the  
487 Superintendent's representative or a federal or state authority or court as may be required to comply with  
488 an express requirement of law for such further dissemination or (ii) except as provided in subsection J.

489 F. A person who complies in good faith with the provisions of this section shall not be liable for any



civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

H. Fees charged for the processing and administration of background checks pursuant to this section shall not exceed the actual cost to the state or the local law-enforcement agency of such processing and administration.

I. H. Any individual required to undergo a background check pursuant to subsection A who is (i) convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day center, family day home, or family day system described in subsection A of such conviction or finding.

J. I. Notwithstanding the provisions of subsection A, a background check shall not be required for any individual who has completed a background check under the provisions of this section within the previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the results of such background check indicated that the individual had not been convicted of any barrier crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and (iii) the individual is currently or has been, within the previous 180 days, employed by or a volunteer at a child day center, family day home, family day system, or child day program described in subsection A. Prior to hiring or allowing to volunteer any individual required to undergo a background check pursuant to subsection A without the completion of a background check under the provisions of subsection B, the child day center, family day home, family day system, or child day program shall, upon the individual's written consent, obtain written certification from the Department or its designee that such individual satisfies all requirements set forth in this subsection and is eligible to serve as an employee or volunteer. If the individual meets all requirements set forth in this subsection and is eligible to serve as an employee or volunteer at the child day center, family day home, family day system, or child day program, the written certification shall also state the next date by which another background check for such person shall be completed in accordance with subsection B. Such written certifications shall not reveal the nature of any disqualifying barrier crime or founded complaint of child abuse or neglect or any other information about the individual.

**§ 22.1-289.036. Background check upon application for licensure, registration, or approval as child day center, family day home, or family day system; penalty.**

A. Every (i) applicant for licensure as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system; (ii) agent of an applicant for licensure as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system at the time of application who is or will be involved in the day-to-day operations of the child day center, family day home, or family day system or who is or will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in such child day center or family day home shall undergo a background check in accordance with subsection B prior to issuance of a license as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system and every five years thereafter.

B. Every person required to undergo a background check pursuant to subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of any pending criminal charges for any offense within or outside the Commonwealth and whether or not he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02;

3. Authorize the child day center, family day home, or family day system specified in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect against him; and

4. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a criminal history record information check, a sex offender registry check, and a search of the child abuse and neglect registry or equivalent registry from any state in which the individual has resided in the preceding five years.

Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded by the Department or its designee or, in the case of a child day program operated by a local government, may be forwarded by the local law-enforcement agency through the Central Criminal

Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding the individual. Upon receipt of an individual's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department or its designee. The Department or its designee shall report to the child day center, family day home, or family day system described in subsection A as to whether the individual is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department or its designee is lacking disposition data, the Department or its designee shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data.

C. If any person specified in subsection A 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 (a) granted a waiver by the Superintendent pursuant to § 22.1-289.038 or (b) granted a waiver pursuant to subsection A of § 22.1-289.035, no license as a child day center, family day home, or family day system or registration as a family day home shall be granted by the Superintendent and no approval as a family day home shall be granted by the family day system.

D. Information from a search of the central registry maintained pursuant to § 63.2-1515 and any child abuse and neglect registry or equivalent registry maintained by any other state in which the applicant, agent, or adult has resided in the preceding five years, authorized in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system.

E. No person specified in subsection A shall be involved in the day-to-day operations of the child day center, family day home, or family day system, or shall be alone with, in control of, or supervising one or more children, without first having completed any required background check pursuant to subsection B.

F. 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.

G. If an individual is denied licensure, registration, or approval because of information from the central registry or any child abuse and neglect registry or equivalent registry maintained by any other state, or convictions appearing on his criminal history record, the Superintendent shall provide a copy of the information obtained from the central registry, any child abuse and neglect registry or equivalent registry maintained by any other state, or the Central Criminal Records Exchange to the individual.

H. Further dissemination of the background check information is prohibited other than to the Superintendent'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.

I. Fees charged for the processing and administration of background checks pursuant to this section shall not exceed the actual cost to the state or the local law-enforcement agency of such processing and administration.

J. For the purposes of this section, "agent" means a person who is authorized to act on behalf of the applicant or licensee.

**§ 22.1-289.037. Revocation or denial of renewal based on background checks; failure to obtain background check.**

A. The Superintendent may revoke or deny renewal of a license or registration of a child day program or family day system, and a family day system may revoke the approval of a family day home, if the child day program, family day system, or approved family day home has knowledge that a person specified in § 22.1-289.035 or 22.1-289.036 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 (a) granted a waiver by the Superintendent pursuant to § 22.1-289.038 or is not subject to the exceptions in subsection G (b) granted a waiver pursuant to subsection A of § 22.1-289.035, and the agency or home 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 §§ 22.1-289.035 and 22.1-289.036 shall be grounds for denial, revocation, or termination of a license, registration, or approval or any contract with the Department or its agents or designees or a local department of social services to provide child care services to clients of the Department or its agents or designees or the local department of social services. No violation shall occur if the family day system, family day home, or child day center 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.

**§ 22.1-289.038. Child day programs and family day systems; criminal conviction and waiver.**

A. Any person who seeks to operate, volunteer, or work at a child day program or family day system

and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to § 22.1-289.035, 22.1-289.036, or 22.1-289.039, *and such person has not received a waiver pursuant to subsection A of § 22.1-289.035*, he may apply in writing for a waiver from the Superintendent. The Superintendent may grant a waiver if the Superintendent determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Superintendent shall not grant a waiver to any person who has been convicted of any barrier crime as defined in § 19.2-392.02. However, the Superintendent may grant a waiver to a family day home licensed or registered by the Department if any other adult living in the home of the applicant or provider 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, provided that (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction. Any waiver granted under this section shall be available for inspection by the public. The child day program or family day system shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, or volunteers. *Waivers for any barrier crime as defined in § 19.2-392.02 are regulated by subsection A of § 22.1-289.035.*

B. The Board shall adopt regulations to implement the provisions of this section.

**§ 22.1-289.039. Records check by unlicensed child day center; penalty.**

Any child day center that is exempt from licensure pursuant to § 22.1-289.031 shall require all applicants for employment, employees, applicants to serve as volunteers, and volunteers and any other person who is expected to be alone with one or more children enrolled in the child day center to obtain a background check in accordance with § 22.1-289.035. A child day center that is exempt from licensure pursuant to § 22.1-289.031 shall refuse employment or service to any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 *unless such person has been granted a waiver pursuant to subsection A of § 22.1-289.035* or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Further dissemination of the information provided to the facility is prohibited, except as otherwise provided in subsection *I* of § 22.1-289.035.

**§ 22.1-289.040. Child day centers and family day homes receiving federal, state, or local child care funds; eligibility requirements.**

A. Whenever any child day center or family day home that has not met the requirements of §§ 22.1-289.035, 22.1-289.036, and 22.1-289.039 applies to enter into a contract with the Department or its agents or designees to provide child care services to clients of the Department or its agents or designees, the Department or its agents or designees shall require a background check, at the time of application to enter into a contract and every five years thereafter, of (i) the applicant; any agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home pursuant to § 22.1-289.036; and (ii) all applicants for employment, employees, applicants to serve as volunteers, and volunteers pursuant to § 22.1-289.035. The child day center or family day home shall not be permitted to enter into a contract with the Department or its agents or designees for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home ~~(i)~~ (a) has been convicted of any barrier crime as defined in § 19.2-392.02 *unless such applicant, employee, prospective employee, volunteer, agent involved in the day-to-day operation, agent alone with, in control of, or supervising one or more children, or any other adult living in a family day home has been granted a waiver pursuant to subsection A of § 22.1-289.035* or ~~(ii)~~ (b) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Further dissemination of the information provided to the facility, beyond dissemination to the Department or its agents or designees is prohibited.

B. Every child day center or family day home that enters into a contract with the Department or its agents or designees to provide child care services to clients of the Department or its agents or designees that is funded, in whole or in part, by the Child Care and Development Block Grant, shall comply with all requirements established by federal law and regulations.

**§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required; penalty.**

A. As a condition of employment for all of its public school employees, whether full-time or part-time, permanent, or temporary, every school board shall require on its application for employment certification of whether the applicant has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude. Any individual making a materially false statement regarding any such offense is guilty of a Class 1 misdemeanor and, in the case of a teacher, upon conviction, the fact of such conviction is grounds for the Board to revoke his license to teach.

B. No school board shall employ any individual who has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.

C. Any school board may employ any individual who has been convicted of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection A of § 19.2-392.02 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights restored by the Governor. *The waiver process and other requirements set out in subsections H, I, J, and K of §19.2-392.02 shall not apply to this section or school boards in any manner.*

D. Every school board shall also require on its application for employment, as a condition of employment requiring direct contact with students, whether full-time or part-time, permanent, or temporary, certification that the applicant has not been the subject of a founded case of child abuse and neglect. Any person making a materially false statement regarding a finding of child abuse and neglect is guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction is grounds for the Board of Education to revoke such person's license to teach.

E. As a condition of awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the school board shall require the contractor to provide certification of whether any individual who will provide such services has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude.

Any individual making a materially false statement regarding any such offense is guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction is grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. School boards shall not be liable for materially false statements regarding the certifications required by this subsection.

This subsection shall not apply to a contractor or his employees providing services to a school division in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees will have no direct contact with students.

F. No school board shall award a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities when any individual who provides such services has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.

G. Any school board may award a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities when any individual who provides such services has been convicted of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection A of § 19.2-392.02 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights restored by the Governor.

**§ 32.1-126.01. Employment for compensation of persons convicted of barrier crimes prohibited; criminal records check required; suspension or revocation of license.**

A. A licensed nursing home shall not hire for compensated employment persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. However, a licensed nursing home may hire an applicant who has been convicted of one such offense punishable as a misdemeanor that does not involve abuse or neglect if five years have elapsed following the conviction *the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such*

waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or outside the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense is guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. However, no employee shall be permitted to work in a position that involves direct contact with a patient until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. 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.

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

**§ 32.1-162.9:1. Employment for compensation of persons convicted of barrier crimes prohibited; criminal records check required; drug testing; suspension or revocation of license.**

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment; persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

However, a home care organization or hospice may hire an applicant who has been convicted of one such offense punishable as a misdemeanor that does not involve abuse or neglect if five years have elapsed since the conviction the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or outside the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense is guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. However, no employee shall be permitted to work in a position that involves direct contact with a patient until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

797 B. Notwithstanding any other provision of law, a licensed home care agency, a home care  
798 organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8, or any licensed hospice  
799 as defined in § 32.1-162.1 that provides services to individuals receiving services under the state plan for  
800 medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance  
801 Services (i) whether a criminal history background check has been performed on an employee of the  
802 home care agency in accordance with this section and (ii) whether such person is eligible for  
803 employment.

804 C. A licensed home care organization as defined in § 32.1-162.7 or any home care organization  
805 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining  
806 a drug-free workplace, which may include drug testing when the employer has cause to believe that the  
807 person has engaged in the use of illegal drugs and periodically during the course of employment. All  
808 positive results from drug testing administered pursuant to this section shall be reported to the health  
809 regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

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

813 E. A licensed home care organization or hospice shall notify and provide all students a copy of the  
814 provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such  
815 home care organization or hospice.

816 **§ 37.2-314. Background check required.**

817 A. As a condition of employment, the Department shall require any applicant who (i) accepts a  
818 position of employment at a state facility and was not employed by that state facility prior to July 1,  
819 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the  
820 Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to  
821 fingerprinting and provide personal descriptive information to be forwarded along with the applicant's  
822 fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)  
823 for the purpose of obtaining national criminal history record information regarding the applicant.

824 B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated  
825 employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of  
826 the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the  
827 definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for  
828 employment or (b) if such person continues on probation or parole or has failed to pay required court  
829 costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.  
830 *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of*  
831 *§ 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in*  
832 *clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted*  
833 *pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All*  
834 *waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.*

835 C. Notwithstanding the provisions of subsection B, the Department may hire for compensated  
836 employment at an adult substance abuse or adult mental health treatment program a person who was  
837 convicted of any violation of ~~§ 18.2-51.3~~; any misdemeanor violation of ~~§ 18.2-56 or 18.2-56.1 or~~  
838 ~~subsection A of § 18.2-57~~; any first offense misdemeanor violation of ~~§ 18.2-57.2~~; any violation of  
839 ~~§ 18.2-60, 18.2-89, 18.2-92, or 18.2-94~~; any misdemeanor violation of ~~§ 18.2-282, 18.2-346, or~~  
840 ~~18.2-346.01~~; any offense set forth in clause (iii) of the definition of barrier crime in ~~§ 19.2-392.02~~,  
841 except an offense pursuant to subsection H1 or H2 of ~~§ 18.2-248~~; or any substantially similar offense  
842 under the laws of another jurisdiction, if the Department determines, based upon a screening assessment,  
843 that the criminal behavior was substantially related to the applicant's substance abuse or mental illness  
844 and that the person has been successfully rehabilitated and is not a risk to individuals receiving services  
845 based on his criminal history background and his substance abuse or mental illness history.

846 D. The Department and a screening contractor designated by the Department shall screen applicants  
847 who meet the criteria set forth in subsection C to assess whether the applicants have been rehabilitated  
848 successfully and are not a risk to individuals receiving services based on their criminal history  
849 backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the  
850 applicant shall have completed all prison or jail terms; shall not be under probation or parole  
851 supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and  
852 court costs for any prior convictions; and shall have been free of parole or probation for at least five  
853 years for all convictions. In addition to any supplementary information the Department or screening  
854 contractor may require of the applicant may wish to present, the applicant shall provide to the screening  
855 contractor a statement from his most recent probation or parole officer, if any, outlining his period of  
856 supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony  
857 conviction. The cost of this screening shall be paid by the applicant, unless the Department decides to  
858 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. D. 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. E. 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 Commonwealth. The results of the criminal history background check must be received prior to permitting a person to work in the children's residential facility.

The Central Criminal Records Exchange, upon receipt of a person's record or notification that no record exists, shall forward it to the state agency that operates or regulates the children's residential facility with which the person is affiliated. The state agency shall, upon receipt of a person'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 person 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 Department 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 (v) 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. *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment or to volunteer or provide contractual services despite convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, 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.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes 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 such offense in the scope of his employment, volunteer, or contractual services.

If the person is denied employment, or the opportunity to volunteer or provide services, at a

920 children's residential facility because of information appearing on his criminal history record, and the  
921 person disputes the information upon which the denial was based, upon written request of the person the  
922 state agency shall furnish the person the procedures for obtaining his criminal history record from the  
923 Federal Bureau of Investigation. The information provided to the children's residential facility shall not  
924 be disseminated except as provided in this section.

925 C. Those persons listed in clauses (i) through (iv) of subsection A also shall authorize the children's  
926 residential facility to obtain a copy of information from the central registry maintained pursuant to  
927 § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide  
928 the children's residential facility with a written statement or affirmation disclosing whether he has ever  
929 been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The  
930 children's residential facility shall receive the results of the central registry search prior to permitting a  
931 person to work. Children's residential facilities regulated or operated by the Department shall not hire for  
932 compensated employment, or allow to volunteer or provide contractual services, persons who have a  
933 founded case of child abuse or neglect.

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

936 **§ 37.2-416. Background checks required.**

937 A. As used in this section:

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

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

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

957 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts  
958 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service  
959 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential  
960 service provider, (iv) any person employed by a sponsored residential service provider to provide  
961 services in the home, (v) any person who enters into a shared living arrangement with a person  
962 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract with the  
963 provider to serve in a direct care position to submit to fingerprinting and provide personal descriptive  
964 information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of  
965 Investigation (FBI) for the purpose of obtaining national criminal history record information regarding  
966 the applicant. ~~Except as otherwise provided in subsection C, D, or F, The Board shall adopt regulations~~  
967 ~~that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby such persons may~~  
968 ~~apply for employment, for approval as a sponsored residential service provider, to enter into a shared~~  
969 ~~living arrangement, or to serve in a direct care position under contract with a provider pursuant to this~~  
970 ~~subsection despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If~~  
971 ~~a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of~~  
972 ~~§ 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of~~  
973 ~~§ 19.2-392.02. Unless an applicant has received such a waiver pursuant to this subsection, no provider~~  
974 ~~licensed pursuant to this article shall:~~

975 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth  
976 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth  
977 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the  
978 application date for employment or (b) if such person continues on probation or parole or has failed to  
979 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
980 § 19.2-392.02;

981 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), (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), (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), (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 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. D. 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. E. 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. F. 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 receiving medical assistance services pursuant to a waiver.

K. G. Any person employed by a temporary agency that has entered into a contract with the provider and who will serve in a direct care position on behalf of the provider licensed pursuant to this article 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, Unless an applicant has received a waiver pursuant to subsection B, 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), (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~~ 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), (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. *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment, for approval as a sponsored residential service provider, to enter into a shared living arrangement, or to serve in a direct care position on behalf of the community services board pursuant to this subsection despite convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 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 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

1166 compensated employment or permit any person under contract to serve in a direct care position on  
1167 behalf of the community services board or permit any person employed by a temporary agency that has  
1168 entered into a contract with the community services board to provide direct care services on behalf of  
1169 the community services board at adult substance abuse treatment programs a person who has been  
1170 convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar  
1171 offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the  
1172 offense was a felony committed in Virginia, or the equivalent if the person was convicted under the  
1173 laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the  
1174 hiring community services board determines, based upon a screening assessment, that the criminal  
1175 behavior was substantially related to the applicant's substance abuse and that the person has been  
1176 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history  
1177 background and his substance abuse history.

1178 E. The community services board and a screening contractor designated by the Department shall  
1179 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants  
1180 have been rehabilitated successfully and are not a risk to individuals receiving services based on their  
1181 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such  
1182 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or  
1183 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution,  
1184 and court costs for any prior convictions, and shall have been free of parole or probation for at least  
1185 five years for all convictions. In addition to any supplementary information the community services  
1186 board or screening contractor may require or the applicant may wish to present, the applicant shall  
1187 provide to the screening contractor a statement from his most recent probation or parole officer, if any,  
1188 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in  
1189 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless  
1190 the board decides to pay the cost.

1191 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for  
1192 compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter  
1193 into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care  
1194 position on behalf of the community services board or permit any person employed by a temporary  
1195 agency that has entered into a contract with the community services board to provide direct care services  
1196 on behalf of the community services board persons who have been convicted of not more than one  
1197 misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of  
1198 another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the  
1199 offense while employed in a direct care position. A community services board may also approve a  
1200 person as a sponsored residential service provider if (a) any adult living in the home of an applicant or  
1201 (b) any person employed by the applicant to provide services in the home in which sponsored residential  
1202 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or  
1203 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have  
1204 elapsed following the conviction, unless the person committed the offense while employed in a direct  
1205 care position.

1206 G. Community services boards also shall require, as a condition of employment, approval as a  
1207 sponsored residential service provider, permission to enter into a shared living arrangement with a  
1208 person receiving medical assistance services pursuant to a waiver, or permission for any person under  
1209 contract to serve in a direct care position on behalf of the community services board, written consent  
1210 and personal information necessary to obtain a search of the registry of founded complaints of child  
1211 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

1212 H. D. The cost of obtaining the criminal history record and search of the child abuse and neglect  
1213 registry record shall be borne by the applicant, unless the community services board decides to pay the  
1214 cost.

1215 I. E. Notwithstanding any other provision of law, a community services board that provides services  
1216 to individuals receiving services under the state plan for medical assistance services or any waiver  
1217 thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history  
1218 background check has been completed for a person described in subsection B for whom a criminal  
1219 history background check is required and (ii) whether the person described in subsection B is eligible  
1220 for employment, to provide sponsored residential services, to provide services in the home of a  
1221 sponsored residential service provider, or to enter into a shared living arrangement with a person  
1222 receiving medical assistance services pursuant to a waiver.

1223 J. F. A person who complies in good faith with the provisions of this section shall not be liable for  
1224 any civil damages for any act or omission in the performance of duties under this section unless the act  
1225 or omission was the result of gross negligence or willful misconduct.

1226 K. G. Any person employed by a temporary agency that has entered into a contract with a  
1227 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~~ *Unless an applicant has received a waiver pursuant subsection B*, 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~~ *defined described* in § ~~19.2-392.02~~ *subsection E*. 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 listed under 42 U.S.C. § 671(a)(20) or regulations adopted thereunder~~ 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. [ 34 ] U.S.C. § [ 16901 20901 ] 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.

#### **§ 63.2-1601.1. Criminal history check for agency approved providers of services to adults.**

A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange of any individual the local board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on all adult household members residing in the home of the individual with whom the adult is to be placed. The local board shall not hire for compensated employment any persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 and a local board may hire persons who have received such waivers from the Department. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* If approval as an agency approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the criminal history record information is prohibited.

B. In emergency circumstances, each local board may obtain from a criminal justice agency the criminal history record information from the Central Criminal Records Exchange for the criminal records search authorized by this section. The provision of home-based services shall be immediately terminated or the adult shall be removed from the home immediately, if any adult resident has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 *unless such adult*

resident has received a waiver pursuant to subsection A.

**§ 63.2-1720. Assisted living facilities and adult day care centers.**

A. No assisted living facility or adult day care center shall hire for compensated employment or continue to employ persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. A child-placing agency or independent foster home licensed in accordance with the provisions of this chapter shall not hire for compensated employment or continue to employ persons who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) are the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* All applicants for employment shall undergo background checks pursuant to subsection C B.

B. A licensed assisted living facility or adult day care center may hire an applicant or continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any substantially similar offense under the laws of another jurisdiction, if five years have elapsed following the conviction.

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

~~D. C.~~ Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C B 1 is guilty of a Class 1 misdemeanor.

~~E. D.~~ A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, or licensed independent foster home shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for 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 and (ii) in the case of licensed child-placing agencies or independent foster homes, (a) 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 and (b) a copy of the information from the central registry for any compensated employee within 30 days of employment. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult day care center, child-placing agency, or independent foster home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

~~F. E.~~ No volunteer who (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 shall be permitted to serve in a licensed child-placing agency or independent foster home. *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby volunteers may apply to volunteer despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* Any person desiring to volunteer at a licensed child-placing agency or independent foster home shall provide the agency, system, or home with a sworn statement or affirmation pursuant to subdivision C B 1. Such licensed child-placing agency or independent foster home shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (a) the information from the central registry and (b) 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. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C B 1 is guilty of a Class 1 misdemeanor. If a



volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such licensed child-placing agency or independent foster home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency or independent foster home, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

~~G. F.~~ No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

~~H. G.~~ 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.

~~I. H.~~ Notwithstanding any other provision of law, a licensed adult day care center 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 an employee in accordance with this section and (ii) whether such employee is eligible for employment.

~~J. I.~~ A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

~~K. 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.

**§ 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. *The Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby such applicants and agents may apply for employment despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* 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 *or foster or adoptive parents*, 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 *or*



*foster or adoptive parents*, 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, G, or H (a); has not been granted a waiver pursuant to subsection 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 ~~and has not been granted a waiver pursuant to subsection A~~, 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.

J. *F.* 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 ~~and has not been granted a waiver pursuant to subsection H of § 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, 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.

**§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.**

A. Any person who seeks to operate or volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction pursuant to §§ 63.2-1720 and 63.2-1721; *and has not received a waiver pursuant to subsection A of § 63.2-1720 or subsection A of § 63.2-1721* may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. ~~The Commissioner shall not grant a waiver to any person who has been convicted of any barrier crime as defined in § 19.2-392.02.~~ The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, or volunteers.

B. The Board shall adopt regulations to implement the provisions of this section.

**§ 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~~ *that* 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 (v) 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. *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment or to volunteer or provide contractual services despite convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 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 this section related to local secure detention facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state

or local agency that regulates or operates the local secure detention facility shall process the criminal history record information regarding such applicant in accordance with this subsection and subsection B.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes 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 such offense in the scope of his employment, volunteer, or contractual services.

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

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

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

**2. That the provisions of the first enactment of this act shall become effective on the earlier of (i) the first day of the fourth month following notification of the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by the Superintendent of State Police that the Department of State Police has implemented the necessary system upgrades as required by this act or (ii) July 1, 2025, except that provisions in §§ 63.2-901.1 and 63.2-1721 of the Code of Virginia, as amended by this act, relating to foster and adoptive parents shall become effective in due course. The Boards of Behavioral Health and Developmental Services, Education, Health, and Social Services shall promulgate regulations to implement the provisions of this act by December 1, 2024, to be effective by the effective date of the first enactment of this act.**

**3. That any individual with a barrier crime conviction serving in a position pursuant to a current exception, waiver, or screening process as set out in §§ 22.1-289.035, 22.1-289.038, 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-1720, and 63.2-1726 of the Code of Virginia, as amended by this act, up until the first date of enactment of this act when the waiver process becomes effective, shall continue to be subject to such exception, waiver, or screening process and shall not be terminated upon enactment of this law or required to apply for a barrier crime conviction waiver so long as he continues to be employed by the same employer. In its regulations, the Boards of Behavioral Health and Developmental Services, Education, Health, and Social Services shall specify what occurs in situations when there is a change in ownership of the employer. In its regulations, the Boards of Behavioral Health and Developmental Services, Education, Health, and Social Services may require that an individual subject to such waiver, exception, or screening process shall have one year after the effective date of the first enactment of this act when the waiver process becomes effective, to file an application for a new waiver pursuant to the regulations set out by each board and that such individual shall not be terminated for lacking such waiver while such application is pending.**

**4. That, upon the effective date of the first enactment of this act when the waiver process becomes effective, the Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services shall begin accepting at least some or all applications for waivers as directed in subsection H of § 19.2-392.02 of the Code of Virginia, as amended by this act, pursuant to the**

1658 regulations set out by the Boards of Behavioral Health and Developmental Services, Education,  
1659 Health, and Social Services as directed in § 19.2-392.02 of the Code of Virginia, as amended by  
1660 this act. However, if necessary, to prevent overwhelming department resources for receiving  
1661 applications and to ensure that applications are answered in a timely manner, in its regulations  
1662 each board may set out a phased implementation of such regulations that shall not exceed a period  
1663 of two years after the date of enactment of this act before the waiver application process under  
1664 each department shall be fully functioning.

1665 5. That the Secretaries of Education, Health and Human Resources, and Labor (the Secretaries)  
1666 shall provide recommendations to the Chairmen of the House Committees on Labor and  
1667 Commerce, Education, and Health, Welfare and Institutions and the Senate Committees on  
1668 Commerce and Labor, Education and Health, and Rehabilitation and Social Services on the  
1669 development of a navigation system for assisting applicants in navigating the waiver processes  
1670 across each department no later than July 1, 2024. Such recommendations may include a  
1671 recommendation for a third party or state agency that may oversee the navigation system, how  
1672 such system may function, procurement for the system, the assessment that a navigation system is  
1673 unnecessary, and any other information determined by the Secretaries.

1674 6. That the Department of State Police shall implement any necessary enhancements to the  
1675 Criminal History and Rap Back Information System, including the ability to add or remove  
1676 barrier crime conviction waivers, by the effective date of the first enactment of this act.