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SENATE BILL NO. 689

Offered January 20, 2022

A *BILL to amend and reenact § 63.2-901.1 of the Code of Virginia, relating to foster care; barrier crimes.*

Patron—Mason

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That § 63.2-901.1 of the Code of Virginia is amended and reenacted as follows:****§ 63.2-901.1. Criminal history and central registry check for placements of children.**

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

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

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

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

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

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59 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints
60 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
61 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed
62 from the home immediately if any adult resident fails to provide such fingerprints and written
63 permission to perform a criminal history record check when requested.

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

72 E. The child-placing agency shall not approve a foster or adoptive home if any individual has been
73 convicted of any ~~barrier~~ crime as defined in ~~§ 19.2-392.02~~ listed under 42 U.S.C. § 671(a)(20) or
74 regulations adopted thereunder or is the subject of a founded complaint of abuse or neglect as
75 maintained in registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 34 U.S.C. § 20901 et seq. A
76 child-placing agency may approve as a foster parent an applicant who has been convicted of not more
77 than one misdemeanor as set out in ~~§ 18.2-57~~, or any substantially similar offense under the laws of
78 another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10
79 years have elapsed following the conviction.

80 F. A local board or child-placing agency may approve as a kinship foster care parent an applicant
81 who has been convicted of the following offenses, provided that 10 years have elapsed from the date of
82 the conviction and the local board or child-placing agency makes a specific finding that approving the
83 kinship foster care placement would not adversely affect the safety and well-being of the child: (i) any
84 offense set forth in clause (iv) of the definition of barrier crime in ~~§ 19.2-392.02~~ or (ii) any
85 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
86 substantially similar offense under the laws of another jurisdiction.

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