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## SENATE BILL NO. 728

Offered January 21, 2022

A *BILL to amend and reenact §§ 37.2-408.1 and 63.2-1726 of the Code of Virginia, relating to criminal history background checks; children's residential facilities.*

Patron—Ruff

Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 37.2-408.1 and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:**  
**§ 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. 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 children's residential facility because of information appearing on his criminal history record, and the person disputes the information upon which the denial was based, upon written request of the person the state agency shall furnish the person 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 persons 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 person shall provide

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59 the children's residential facility with a written statement or affirmation disclosing whether he has ever  
60 been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. ~~The~~  
61 ~~children's residential facility shall receive the results of the central registry search prior to permitting a~~  
62 ~~person to work.~~ Children's residential facilities regulated or operated by the Department shall not hire for  
63 compensated employment, or allow to volunteer or provide contractual services, persons who have a  
64 founded case of child abuse or neglect.

65 *D. Notwithstanding the provisions of subsection A, a person specified in subsection A may be hired*  
66 *for and may begin compensated employment at a children's residential facility prior to receipt of the*  
67 *results of the criminal history background check and check of the central registry of records maintained*  
68 *pursuant to § 63.2-1515 required by this section. However, no person specified in subsection A shall be*  
69 *alone with, in control of, or supervising one or more children until such time as the criminal history*  
70 *background check and the check of the central registry of records maintained pursuant to § 63.2-1515*  
71 *have been completed.*

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

74 **§ 63.2-1726. Background check required; children's residential facilities.**

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

91 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
92 record exists, shall forward it to the state agency which operates or regulates the children's residential  
93 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's  
94 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are  
95 available in order to obtain complete data. The state agency shall report to the children's facility whether  
96 the applicant is eligible to have responsibility for the safety and well-being of children. Except as  
97 otherwise provided in subsection B, no children's residential facility regulated or operated by the  
98 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social  
99 Services shall hire for compensated employment or allow to volunteer or provide contractual services  
100 persons who have been convicted of or are the subject of pending charges for (a) any offense set forth  
101 in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set  
102 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the  
103 application date for employment, to be a volunteer, or to provide contractual services or (2) such person  
104 continues on probation or parole or has failed to pay required court costs for such offense set forth in  
105 clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of this section also shall  
106 apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a  
107 complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of  
108 services or supervision and to local secure detention facilities, provided, however, that the provisions of  
109 this section related to local secure detention facilities shall only apply to an individual who, on or after  
110 July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such  
111 local secure detention facility on a regular basis and will be alone with a juvenile in the performance of  
112 his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a  
113 regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal  
114 Records Exchange and the state or local agency that regulates or operates the local secure detention  
115 facility shall process the criminal history record information regarding such applicant in accordance with  
116 this subsection and subsection B.

117 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for  
118 compensated employment or for volunteer or contractual service purposes persons who have been  
119 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially  
120 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,

121 unless the person committed such offense in the scope of his employment, volunteer, or contractual  
122 services.

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

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

141 D. *Notwithstanding the provisions of subsection A, a person specified in subsection A may be hired*  
142 *for and may begin compensated employment at a children's residential facility prior to receipt of the*  
143 *results of the criminal history background check and check of the central registry of records maintained*  
144 *pursuant to § 63.2-1515 required by this section. However, no person specified in subsection A shall be*  
145 *alone with, in control of, or supervising one or more children until such time as the criminal history*  
146 *background check and the check of the central registry of records maintained pursuant to § 63.2-1515*  
147 *have been completed.*

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