

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 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,
2 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,
3 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, and 63.2-1726 of the Code of Virginia, relating to
4 barrier crimes.

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

6 **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-**
7 **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-**
8 **1722, 63.2-1723, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:**

9 **§ 19.2-389. Dissemination of criminal history record information.**

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

12 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
13 purposes of the administration of criminal justice and the screening of an employment application or
14 review of employment by a criminal justice agency with respect to its own employees or applicants, and
15 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-
16 responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and
17 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of
18 this subdivision, criminal history record information includes information sent to the Central Criminal
19 Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-
20 time employee of the State Police, a police department or sheriff's office that is a part of or administered
21 by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and
22 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for
23 the purposes of the administration of criminal justice;

24 2. Such other individuals and agencies that require criminal history record information to
25 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 position of employment whenever, in the interest of public welfare or safety and as authorized in the

Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

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

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

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

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

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall

not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' 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; however, nothing in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative from issuing written certifications regarding the results of a background check that was conducted before July 1, 2021, in accordance with subsection ~~J~~I of § 22.1-289.035 or § 22.1-289.039;

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

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

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

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

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

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

104 19. The Commissioner of Behavioral Health and Developmental Services for those individuals
105 who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
106 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

110 21. Residential facilities for juveniles regulated or operated by the Department of Social Services,
111 the Department of Education, or the Department of Behavioral Health and Developmental Services for
112 the purpose of determining applicants' fitness for employment or for providing volunteer or contractual
113 services;

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

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

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

123 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-
124 79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution
125 of higher education, for the purpose of assessing or intervening with an individual whose behavior may
126 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
127 history record information obtained pursuant to this section or otherwise use any record of an individual
128 beyond the purpose that such disclosure was made to the threat assessment team;

129 26. Executive directors of community services boards or the personnel director serving the
130 community services board for the purpose of determining an individual's fitness for 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 community services board to serve in a direct care position on behalf of the community services board pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for 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 behavioral health authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and 37.2-607;

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

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests 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 has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

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

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

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

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

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

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

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

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

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on

185 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of
186 Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the
187 applicant or its designee;

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

190 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
191 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and
192 for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§
193 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

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

200 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members
201 of a juvenile's household when completing a predispositional or postdispositional report required by §
202 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

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

205 46. Administrators and board presidents of and applicants for licensure or registration as a child
206 day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the
207 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
208 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
209 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the
210 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's
211 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; however, nothing in this subdivision shall be construed to prohibit the Superintendent of Public Instruction's representative from issuing written certifications regarding the results of prior background checks in accordance with subsection ~~J~~I of § 22.1-289.035 or § 22.1-289.039; and

47. Other entities as otherwise provided by law.

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

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

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further, 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.

266 A. For purposes of this section:

267 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
268 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
269 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,
270 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-
271 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-
272 52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, or 18.2-55.1, ~~18.2-56;~~ any felony
273 violation of § 18.2-56.1; any violation of § 18.2-56.2; or 18.2-57, ~~18.2-57.01;~~ any felony violation of §
274 18.2-57.02; any violation of § 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59; any felony violation of 18.2-60, ~~or~~
275 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,
276 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-
277 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,
278 18.2-85, 18.2-86, or 18.2-87, ~~18.2-87.1, or 18.2-88;~~ any felony violation of § 18.2-279, 18.2-280, 18.2-
279 281, 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,
280 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 §
281 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
282 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-
283 370.6, 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;
284 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,
285 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-
286 477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any
287 substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-
288 90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another
289 jurisdiction; (iii) any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03,
290 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,
291 or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony
292 violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any

293 offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and
294 Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty
295 by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set
296 forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes
297 Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another
298 jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is
299 required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not
300 included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

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

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

309 "Department" means the Department of State Police.

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

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

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

320 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or
321 operate a qualified entity.

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

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

328 1. Been fingerprinted; and

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

340 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
341 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection
342 B, the Department shall make a determination whether the provider has been convicted of or is the subject
343 of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime
344 information, the Department shall access the national criminal history background check system, which
345 is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of
346 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 Department of Behavioral Health and Developmental Services, the Department of Education, the Department of Health, and the Department of Social Services shall each develop and implement a waiver process for individuals who are employed by or volunteer with, or who seek to be employed by or to volunteer with, the qualified entities that each agency oversees and who have been convicted of a barrier crime pursuant to subsection A. The process by which a barrier crime may be waived shall be made available to the public and set out on each department's website in a visible location that is easily accessible and shall include the following: (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 for how such information is documented within an individual's record of employment or volunteer service and disseminated to the appropriate persons within

the department; and (iv) any other factors the department deems necessary for consideration. 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.

I. If an individual has been granted a waiver pursuant to subsection H, a qualified entity or business screening service as defined in § 19.2-392.16 shall not discharge or in any other manner discriminate against such individual for any reason concerning solely the conviction that was subject to the waiver.

Any qualified entity or business screening service that violates this subsection is liable to the individual who is the subject of the criminal history record for a penalty of \$1,000 or actual damages caused by the violation, whichever is greater, plus costs and reasonable attorney fees. Within 10 days of service of any suit by such individual who is the subject of the criminal history record claiming to have suffered a loss as a result of a violation of this subsection, the qualified entity or business screening service may make a cure offer in writing to the individual claiming to have suffered a loss as a result of a violation of this subsection. Such offer shall be in writing and include one or more things of value, including the payment of money. A cure offer shall be reasonably calculated to remedy a loss claimed by the individual, as well as any attorney fees or other fees, expenses, or other costs of any kind that such individual may incur in relation to such loss. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is delivered by the qualified entity or business screening service to the individual claiming loss or to any attorney representing such individual prior to the filing of the qualified entity's or business screening service's initial responsive pleading in such proceeding. The qualified entity or business screening service shall not be liable for such individual's attorney fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorney fees and court costs, exceed the value of the cure offer.

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

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or its agents or designees to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person 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. However, the Department shall 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 subsection I of § 19.2-392.02 shall apply. All applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a background check in accordance with subsection B prior to employment or beginning to serve as a volunteer and every five years thereafter.

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

1. Provide a sworn 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 and whether 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 described 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.

427 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision
428 2 shall be forwarded by the Department or its designee or, in the case of a child day program operated by
429 a local government, may be forwarded by the local law-enforcement agency through the Central Criminal
430 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal
431 history record information regarding such applicant. Upon receipt of an applicant's record or notification
432 that no record exists, the Central Criminal Records Exchange shall forward the information to the
433 Department or its designee, and the Department or its designee shall report to the child day center or
434 family day home whether the applicant is eligible to have responsibility for the safety and well-being of
435 children. In cases in which the record forwarded to the Department or its designee is lacking disposition
436 data, the Department or its designee shall conduct research in whatever state and local recordkeeping
437 systems are available in order to obtain complete data before reporting to the child day center, family day
438 home, or family day system.

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

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

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

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

452 G. ~~Notwithstanding the provisions of subsection A, a child day center may hire for compensated~~
453 ~~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 by the Department 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 of § 22.1-289.035~~ (b) granted a waiver by the Department 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 ~~F~~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;

614 and any other adult living in a family day home pursuant to § 22.1-289.036; and (ii) all applicants for
615 employment, employees, applicants to serve as volunteers, and volunteers pursuant to § 22.1-289.035.
616 The child day center or family day home shall not be permitted to enter into a contract with the Department
617 or its agents or designees for child care services when an applicant; any employee; a prospective employee;
618 a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or
619 supervising one or more children; or any other adult living in a family day home ~~(i)~~ (a) has been convicted
620 of any barrier crime as defined in § 19.2-392.02 unless such applicant, employee, prospective employee,
621 volunteer, agent involved in the day-to-day operation, agent alone with, in control of, or supervising one
622 or more children, or any other adult living in a family day home has been granted a waiver pursuant to
623 subsection A of § 22.1-289.035 or ~~(ii)~~ (b) is the subject of a founded complaint of child abuse or neglect
624 within or outside the Commonwealth. Further dissemination of the information provided to the facility,
625 beyond dissemination to the Department or its agents or designees is prohibited.

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

630 **§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required;**
631 **penalty.**

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

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

642 C. Any school board may employ any individual who has been convicted of any felony or crime
643 of moral turpitude that is not set forth in the definition of barrier crime in subsection A of § 19.2-392.02
644 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in
645 the case of a felony conviction, such individual has had his civil rights restored by the Governor. However,
646 the Department shall establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby
647 individuals may apply for employment despite convictions of offenses set forth in the definition of barrier
648 crime in subsection A of § 19.2-392.02, so long as such waiver process does not permit waivers for violent
649 felonies or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child as
650 described in this subsection. If a waiver is granted pursuant to such waiver process, the provisions of
651 subsection I of § 19.2-392.02 shall apply.

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

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

664 Any individual making a materially false statement regarding any such offense is guilty of a Class
665 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 Department shall 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

693 of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions
694 of subsection I of § 19.2-392.02 shall apply.

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

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

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

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

717 C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this
718 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 Department shall 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 subsection I of § 19.2-392.02 shall apply.

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

746 background check has been completed in accordance with the requirements of this section. The provisions
747 of this section shall be enforced by the Commissioner. If an applicant is denied employment because of
748 convictions appearing on his criminal history record, the home care organization or hospice shall provide
749 a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

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

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

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

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

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

770 **§ 37.2-314. Background check required.**

771 A. As a condition of employment, the Department shall require any applicant who (i) accepts a
772 position of employment at a state facility and was not employed by that state facility prior to July 1, 1996,

or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and 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 (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 ~~(a) in the five years prior to the application date for employment or (b) or~~ 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 Department shall 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 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 subsection I of § 19.2-392.02 shall apply.

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

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

~~E.~~ The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

~~F.~~ 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~~

853 ~~provide contractual services or (2) or if~~ such person continues on probation or parole or has failed to pay
854 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-
855 392.02. However, the Department shall establish a waiver process pursuant to subsection H of § 19.2-
856 392.02 whereby persons may apply for employment or to volunteer or provide contractual services despite
857 convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in §
858 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsection I of §
859 19.2-392.02 shall apply. The provisions of this section also shall apply to structured residential programs,
860 excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a
861 complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of
862 services or supervision.

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

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

875 C. Those persons listed in clauses (i) through (iv) of subsection A also shall authorize the children's
876 residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-
877 1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide the
878 children's residential facility with a written statement or affirmation disclosing whether he has ever been
879 the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's

880 residential facility shall receive the results of the central registry search prior to permitting a person to
881 work. Children's residential facilities regulated or operated by the Department shall not hire for
882 compensated employment, or allow to volunteer or provide contractual services, persons who have a
883 founded case of child abuse or neglect.

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

886 **§ 37.2-416. Background checks required.**

887 A. As used in this section:

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

891 "Hire for compensated employment" does not include (i) a promotion from one adult substance
892 abuse or adult mental health treatment position to another such position within the same licensee licensed
893 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment
894 position in another office or program licensed pursuant to this article if the person employed prior to July
895 1, 1999, in a licensed program had no convictions in the five years prior to the application date for
896 employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult
897 substance abuse treatment position to any mental health or developmental services direct care position
898 within the same licensee licensed pursuant to this article or (b) new employment in any mental health or
899 developmental services direct care position in another office or program of the same licensee licensed
900 pursuant to this article for which the person has previously worked in an adult substance abuse treatment
901 position.

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

907 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts
908 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service
909 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service
910 provider, (iv) any person employed by a sponsored residential service provider to provide services in the
911 home, (v) any person who enters into a shared living arrangement with a person receiving medical
912 assistance services pursuant to a waiver, and (vi) any person under contract with the provider to serve in
913 a direct care position to submit to fingerprinting and provide personal descriptive information to be
914 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)
915 for the purpose of obtaining national criminal history record information regarding the applicant. ~~Except~~
916 ~~as otherwise provided in subsection C, D, or F, The Department shall establish a waiver process pursuant~~
917 ~~to subsection H of § 19.2-392.02 whereby such persons may apply for employment, for approval as a~~
918 ~~sponsored residential service provider, to enter into a shared living arrangement, or to serve in a direct~~
919 ~~care position under contract with a provider pursuant to this subsection despite convictions of offenses set~~
920 ~~forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver~~
921 ~~process, the provisions of subsection I of § 19.2-392.02 shall apply. Unless an applicant has received such~~
922 ~~a waiver pursuant to this subsection,~~ no provider licensed pursuant to this article shall:

923 1. Hire for compensated employment any person who has been convicted of (i) any offense set
924 forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set
925 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 ~~(a) in the five years prior to the~~
926 ~~application date for employment or (b)~~ if such person continues on probation or parole or has failed to pay
927 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-
928 392.02;

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

934 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the
935 definition of barrier crime in § 19.2-392.02;

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

942 4. Allow any person under contract with the provider to serve in a direct care position who has
943 been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §
944 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02
945 ~~(a) in the five years prior to the application date for employment~~ or ~~(b)~~ if such person continues on
946 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the
947 definition of barrier crime in § 19.2-392.02.

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

956 C. ~~Notwithstanding the provisions of subsection B, a provider may hire for compensated~~
957 ~~employment or permit any person under contract with the provider to serve in a direct care position or~~
958 ~~permit any person employed by a temporary agency that has entered into a contract with the provider to~~
959 ~~provide direct care services on behalf of the provider at adult substance abuse or adult mental health~~
960 ~~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~~

988 ~~prior convictions, and shall have been free of parole or probation for at least five years for all convictions.~~
989 ~~In addition to any supplementary information the provider or screening contractor may require or the~~
990 ~~applicant may wish to present, the applicant shall provide to the screening contractor a statement from his~~
991 ~~most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-~~
992 ~~sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening~~
993 ~~shall be paid by the applicant, unless the licensed provider decides to pay the cost.~~

994 ~~F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated~~
995 ~~employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared~~
996 ~~living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care~~
997 ~~position on behalf of the provider or permit any person employed by a temporary agency that has entered~~
998 ~~into a contract with the provider to provide direct care services on behalf of the provider persons who have~~
999 ~~been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any~~
1000 ~~substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the~~
1001 ~~conviction, unless the person committed the offense while employed in a direct care position. A provider~~
1002 ~~may also approve a person as a sponsored residential service provider if (a) any adult living in the home~~
1003 ~~of an applicant or (b) any person employed by the applicant to provide services in the home in which~~
1004 ~~sponsored residential services are provided has been convicted of not more than one misdemeanor offense~~
1005 ~~under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,~~
1006 ~~if 10 years have elapsed following the conviction, unless the person committed the offense while employed~~
1007 ~~in a direct care position.~~

1008 ~~G.~~ Providers licensed pursuant to this article also shall require, as a condition of employment,
1009 approval as a sponsored residential service provider, permission to enter into a shared living arrangement
1010 with a person receiving medical assistance services pursuant to a waiver, or permission for any person
1011 under contract with the provider to serve in a direct care position, written consent and personal information
1012 necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is
1013 maintained by the Department of Social Services pursuant to § 63.2-1515.

1014 ~~H.D.~~ The cost of obtaining the criminal history record and search of the child abuse and neglect
1015 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides
1016 to pay the cost.

1017 ~~I.E.~~ A person who complies in good faith with the provisions of this section shall not be liable for
1018 any civil damages for any act or omission in the performance of duties under this section unless the act or
1019 omission was the result of gross negligence or willful misconduct.

1020 ~~J.F.~~ Notwithstanding any other provision of law, a provider licensed pursuant to this article that
1021 provides services to individuals receiving services under the state plan for medical assistance services or
1022 any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal
1023 history background check has been completed for a person described in subsection B for whom a criminal
1024 history background check is required and (ii) whether the person described in subsection B is eligible for
1025 employment, to provide sponsored residential services, to provide services in the home of a sponsored
1026 residential service provider, or to enter into a shared living arrangement with a person receiving medical
1027 assistance services pursuant to a waiver.

1028 ~~K.G.~~ Any person employed by a temporary agency that has entered into a contract with the
1029 provider and who will serve in a direct care position on behalf of the provider licensed pursuant to this
1030 article shall undergo a background check that shall include:

1031 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §
1032 19.2-389; and

1033 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint
1034 of child abuse and neglect.

1035 ~~Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article~~
1036 ~~shall permit any person employed by a temporary agency that has entered into a contract with the provider~~
1037 ~~to provide direct care services on behalf of the provider if that person has been convicted of (i) any offense~~
1038 ~~set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set~~
1039 ~~forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the~~
1040 ~~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

1068 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract to serve in
1069 a direct care position on behalf of the community services board to submit to fingerprinting and provide
1070 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the
1071 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record
1072 information regarding the applicant. ~~Except as otherwise provided in subsection C, D, or F, no~~ No
1073 community services board shall hire for compensated employment, approve as a sponsored residential
1074 service provider, permit to enter into a shared living arrangement with a person receiving medical
1075 assistance services pursuant to a waiver, or permit any person under contract to serve in a direct care
1076 position on behalf of the community services board persons who have been convicted of (a) any offense
1077 set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set
1078 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 ~~(1) in the five years prior to the~~
1079 ~~application date for employment, the application date to be a sponsored residential service provider, or~~
1080 ~~entering into a shared living arrangement~~ or ~~(2)~~ if such person continues on probation or parole or has
1081 failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime
1082 in § 19.2-392.02. However, the Department shall establish a waiver process pursuant to subsection H of
1083 § 19.2-392.02 whereby persons may apply for employment, for approval as a sponsored residential service
1084 provider, to enter into a shared living arrangement, or to serve in a direct care position on behalf of the
1085 community services board pursuant to this subsection despite convictions of offenses set forth in clauses
1086 (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to
1087 such waiver process, the provisions of subsection I of § 19.2-392.02 shall apply.

1088 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
1089 no record exists, shall submit a report to the requesting executive director or personnel director of the
1090 community services board. If any applicant is denied employment because of information appearing on
1091 his criminal history record and the applicant disputes the information upon which the denial was based,
1092 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures
1093 for obtaining a copy of the criminal history record from the FBI. The information provided to the executive

1094 director or personnel director of any community services board shall not be disseminated except as
1095 provided in this section.

1096 ~~C. Notwithstanding the provisions of subsection B, the community services board may hire for~~
1097 ~~compensated employment or permit any person under contract to serve in a direct care position on behalf~~
1098 ~~of the community services board or permit any person employed by a temporary agency that has entered~~
1099 ~~into a contract with the community services board to provide direct care services on behalf of the~~
1100 ~~community services board at adult substance abuse or adult mental health treatment programs a person~~
1101 ~~who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1,~~
1102 ~~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~~
1103 ~~misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the~~
1104 ~~definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-~~
1105 ~~248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community~~
1106 ~~services board determines, based upon a screening assessment, that the criminal behavior was substantially~~
1107 ~~related to the applicant's substance abuse or mental illness and that the person has been successfully~~
1108 ~~rehabilitated and is not a risk to individuals receiving services based on his criminal history background~~
1109 ~~and his substance abuse or mental illness history.~~

1110 ~~D. Notwithstanding the provisions of subsection B, the community services board may hire for~~
1111 ~~compensated employment or permit any person under contract to serve in a direct care position on behalf~~
1112 ~~of the community services board or permit any person employed by a temporary agency that has entered~~
1113 ~~into a contract with the community services board to provide direct care services on behalf of the~~
1114 ~~community services board at adult substance abuse treatment programs a person who has been convicted~~
1115 ~~of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under~~
1116 ~~the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a~~
1117 ~~felony committed in Virginia, or the equivalent if the person was convicted under the laws of another~~
1118 ~~jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community~~
1119 ~~services board determines, based upon a screening assessment, that the criminal behavior was substantially~~
1120 ~~related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not~~

~~a risk to individuals receiving services based on his criminal history background and his substance abuse history.~~

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

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

~~any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.~~

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

~~H-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 community services board decides to pay the cost.

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

~~J-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.

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

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

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

~~Except as otherwise provided in subsection C, D, or F~~ 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 crime as defined in § 19.2-392.02~~ criteria determined by the state agency. 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~~ crime 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.~~ U.S.C. § 16901 et seq. ~~A child-placing agency may approve as a foster parent an applicant who has been convicted of not more than one misdemeanor as set out in § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving~~

~~the abuse, neglect, or moral turpitude of a minor, provided that 10 years have elapsed following the conviction.~~

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

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

§ 63.2-1601.1. 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 Department shall

1281 establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for
1282 employment despite convictions of offenses set forth in clause (i) of the definition of barrier crime in §
1283 19.2-392.02 and a local board may hire persons who have received such waivers from the Department. If
1284 a waiver is granted pursuant to such waiver process, the provisions of subsection I of § 19.2-392.02 shall
1285 apply. If approval as an agency approved provider is denied because of information obtained through a
1286 Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the
1287 information obtained to the individual who is the subject of the search. Further dissemination of the
1288 criminal history record information is prohibited.

1289 B. In emergency circumstances, each local board may obtain from a criminal justice agency the
1290 criminal history record information from the Central Criminal Records Exchange for the criminal records
1291 search authorized by this section. The provision of home-based services shall be immediately terminated
1292 or the adult shall be removed from the home immediately, if any adult resident has been convicted of any
1293 offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 unless such adult resident
1294 has received a waiver pursuant to subsection A.

1295 **§ 63.2-1720. Assisted living facilities and adult day care centers.**

1296 A. No assisted living facility or adult day care center shall hire for compensated employment or
1297 continue to employ persons who have been convicted of any offense set forth in clause (i) of the definition
1298 of barrier crime in § 19.2-392.02. A child-placing agency or independent foster home licensed in
1299 accordance with the provisions of this chapter shall not hire for compensated employment or continue to
1300 employ persons who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) are
1301 the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.
1302 However, the Department shall establish a waiver process pursuant to subsection H of § 19.2-392.02
1303 whereby persons may apply for employment despite convictions of offenses set forth in the definition of
1304 barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of
1305 subsection I of § 19.2-392.02 shall apply. All applicants for employment shall undergo background checks
1306 pursuant to subsection ~~C~~ B.

1307 B. ~~A licensed assisted living facility or adult day care center may hire an applicant or continue to~~
1308 ~~employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any~~
1309 ~~substantially similar offense under the laws of another jurisdiction, if five years have elapsed following~~
1310 ~~the conviction.~~

1311 ~~C.~~ Background checks pursuant to subsection A require:

1312 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is
1313 the subject of any pending criminal charges within or outside the Commonwealth and, in the case of
1314 licensed child-placing agencies or independent foster homes, whether or not the person has been the
1315 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

1316 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §
1317 19.2-389; and

1318 3. In the case of licensed child-placing agencies or independent foster homes, a search of the central
1319 registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

1320 ~~D.~~ C. Any person making a materially false statement regarding the sworn statement or affirmation
1321 provided pursuant to subdivision ~~C~~ B 1 is guilty of a Class 1 misdemeanor.

1322 ~~E.~~ D. A licensed assisted living facility, licensed adult day care center, licensed child-placing
1323 agency, or licensed independent foster home shall obtain for any compensated employees within 30 days
1324 of employment (i) an original criminal record clearance with respect to convictions for any offense set
1325 forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record
1326 from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies or
1327 independent foster homes, (a) an original criminal record clearance with respect to any barrier crime as
1328 defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
1329 Exchange and (b) a copy of the information from the central registry for any compensated employee within
1330 30 days of employment. However, no employee shall be permitted to work in a position that involves
1331 direct contact with a person or child receiving services until an original criminal record clearance or
1332 original criminal history record has been received, unless such person works under the direct supervision
1333 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 Department shall 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 subsection I of § 19.2-392.02 shall apply. 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 Department shall establish a waiver process pursuant to subsection H of §

1387 19.2-392.02 whereby such applicants and agents may apply for employment despite convictions of
1388 offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such
1389 waiver process, the provisions of subsection I of § 19.2-392.02 shall apply. In addition, foster or adoptive
1390 parents requesting approval by child-placing agencies shall undergo background checks pursuant to
1391 subsection B prior to their approval.

1392 B. Background checks pursuant to subsection A require:

1393 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is
1394 the subject of any pending criminal charges within or outside the Commonwealth and whether or not the
1395 person has been the subject of a founded complaint of child abuse or neglect within or outside the
1396 Commonwealth;

1397 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §
1398 19.2-389; and

1399 3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a
1400 search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse
1401 and neglect.

1402 C. The person required to have a background check pursuant to subsection A shall submit the
1403 background check information required in subsection B to the Commissioner's representative prior to
1404 issuance of a license, registration, or approval. The applicant, other than an applicant for licensure as an
1405 assisted living facility or foster or adoptive parents, shall provide an original criminal record clearance
1406 with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from
1407 the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall
1408 provide an original criminal record clearance with respect to any offense set forth in clause (i) of the
1409 definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal
1410 Records Exchange. Any person making a materially false statement regarding the sworn statement or
1411 affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person
1412 specified in subsection A, other than an applicant for licensure as an assisted living facility or foster or
1413 adoptive parents, required to have a background check (i) has been convicted of any barrier crime as

1414 defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or
1415 outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant
1416 to § 63.2-1723 or ~~is not subject to an exception in subsection E, F, G, or H (a),~~ has not been granted a
1417 waiver pursuant to subsection A, the Commissioner shall not issue a license to a child-placing agency or
1418 independent foster home ~~or (b) a child-placing agency shall not approve an adoptive or foster home.~~ If
1419 any applicant for licensure as an assisted living facility required to have a background check has been
1420 convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 and has
1421 not been granted a waiver pursuant to subsection A, the Commissioner shall not issue a license to an
1422 assisted living facility.

1423 D. ~~No person specified in subsection A shall be involved in the day-to-day operations of a licensed~~
1424 ~~child-placing agency or independent foster home; be alone with, in control of, or supervising one or more~~
1425 ~~children receiving services from a licensed child-placing agency or independent foster home; or be~~
1426 ~~permitted to work in a position that involves direct contact with a person receiving services without first~~
1427 ~~having completed background checks pursuant to subsection B unless such person is directly supervised~~
1428 ~~by another person for whom a background check has been completed in accordance with the requirements~~
1429 ~~of this section.~~

1430 E. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency~~
1431 ~~may approve as an adoptive or foster parent an applicant who has been convicted of not more than one~~
1432 ~~misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of another~~
1433 ~~jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed~~
1434 ~~following the conviction.~~

1435 F. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency~~
1436 ~~may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and~~
1437 ~~entering a dwelling home or other structure with intent to commit larceny, or any substantially similar~~
1438 ~~offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or~~
1439 ~~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.~~ E. 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

1467 ~~from the Department pursuant to subsection H of § 19.2-392.02~~ or (ii) in the case of a child welfare agency
1468 or foster home, is the subject of a founded complaint of child abuse or neglect within or outside the
1469 Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-
1470 1723 ~~or is not subject to the exceptions in subsection B of § 63.2-1720 or subsection E, F, G, or H of §~~
1471 ~~63.2-1721~~, and the facility, center, or agency refuses to separate such person from employment or service
1472 or allows the household member to continue to reside in the home.

1473 B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds
1474 for denial, revocation, or termination of a license, registration, or approval or any contract with the
1475 Department or a local department to provide child care services to clients of the Department or local
1476 department. No violation shall occur if the assisted living facility, adult day care center, child-placing
1477 agency, or independent foster home has applied for the background check timely and it has not been
1478 obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

1479 **§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.**

1480 A. Any person who seeks to operate or volunteer or work at a child welfare agency and who is
1481 disqualified because of a criminal conviction pursuant to §§ 63.2-1720 and 63.2-1721, and has not
1482 received a waiver pursuant to subsection A of § 63.2-1720 or subsection A of § 63.2-1721 may apply in
1483 writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner
1484 determines that (i) the person is of good moral character and reputation and (ii) the waiver would not
1485 adversely affect the safety and well-being of children in the person's care. ~~The Commissioner shall not~~
1486 ~~grant a waiver to any person who has been convicted of any barrier crime as defined in § 19.2-392.02.~~
1487 The child welfare agency shall notify in writing every parent and guardian of the children in its care of
1488 any waiver granted for its operators, employees, or volunteers.

1489 B. The Board shall adopt regulations to implement the provisions of this section.

1490 **§ 63.2-1726. Background check required; children's residential facilities.**

1491 A. As a condition of employment, volunteering, or providing services on a regular basis, every
1492 children's residential facility that is regulated or operated by the Departments of Social Services,
1493 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual

1494 who (i) accepts a position of employment at such a facility, (ii) is employed by such a facility, (iii)
1495 volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility
1496 to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with
1497 the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of
1498 Investigation for the purpose of obtaining criminal history record information regarding such applicant.
1499 The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any
1500 background check report and to challenge the accuracy and completeness of any such report and obtain a
1501 prompt resolution before a final determination is made of the applicant's eligibility to have responsibility
1502 for the safety and well-being of children. The applicant shall provide the children's residential facility with
1503 a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of
1504 pending charges for any offense within or outside the Commonwealth. The results of the criminal history
1505 background check must be received prior to permitting an applicant to work in the children's residential
1506 facility.

1507 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that
1508 no record exists, shall forward it to the state agency ~~which~~ that operates or regulates the children's
1509 residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an
1510 applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping
1511 systems are available in order to obtain complete data. The state agency shall report to the children's
1512 facility whether the applicant is eligible to have responsibility for the safety and well-being of children.
1513 Except as otherwise provided in subsection B, no children's residential facility regulated or operated by
1514 the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social
1515 Services shall hire for compensated employment or allow to volunteer or provide contractual services
1516 persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in
1517 clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in
1518 clause (iv) of the definition of barrier crime in § 19.2-392.02 ~~(1) in the five years prior to the application~~
1519 ~~date for employment, to be a volunteer, or to provide contractual services or (2) if~~ such person continues
1520 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 Department shall 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 subsection I of § 19.2-392.02 shall apply. 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 this act that apply to the Department of Health in §§ 19.2-392.02, 32.1-126.01, and 32.1-162.9:1 of the Code of Virginia, as amended by this act, shall become effective on July 1, 2024.

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