

**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

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

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

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

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

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

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

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

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

46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, 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 Superintendent of Public Instruction'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; 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. The Department of Health for the purpose of determining whether an individual has been convicted of a barrier crime as defined in § 19.2-392.02 or for the purpose of conducting an investigation pursuant to the provisions of the Department of Health's waiver process for individuals who have been convicted of a barrier crime and who are seeking employment opportunities; and

48. 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.

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

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

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

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

257 H. Upon receipt of a written request from an employer or prospective employer, the Central  
258 Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported  
259 to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named  
260 in the request to the employer or prospective employer making the request, provided that the person on  
261 whom the data is being obtained has consented in writing to the making of such request and has presented  
262 a photo-identification to the employer or prospective employer. In the event no conviction data is  
263 maintained on the person named in the request, the requesting employer or prospective employer shall be

furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

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

**§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.**

A. For purposes of this section:

"Barrier crime" means (i) ~~a felony violation of § 16.1-253.2;~~ any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, ~~or 18.2-42;~~ ~~any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3;~~ any violation of § 18.2-46.5, 18.2-46.6, ~~or 18.2-46.7;~~ ~~any violation of subsection A or B of § 18.2-47;~~ any violation of § 18.2-48, 18.2-49, ~~or 18.2-50.3;~~ ~~any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or any violation of 18.2-60.1;~~ ~~any felony violation of § 18.2-60.3 or 18.2-60.4;~~ any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, ~~18.2-87.1, or 18.2-88;~~ any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, ~~or 18.2-314;~~ ~~any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349;~~ any violation of § 18.2-355, 18.2-356, 18.2-357, ~~or 18.2-357.1;~~ ~~any violation of subsection B of § 18.2-361;~~ any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, ~~or 18.2-386.2;~~ ~~any felony violation of § 18.2-405 or 18.2-406;~~ any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; any violation of subsection A or B of § 18.2-47; any violation of subsection B of § 18.2-361; any felony violation of § 16.1-253.2, 18.2-46.2,

291 [18.2-46.3, 18.2-46.3:1, 18.2-46.3:3, 18.2-56.1, 18.2-57, 18.2-57.02, 18.2-60, 18.2-60.3, 18.2-60.4, 18.2-](#)  
292 [279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, 18.2-287, 18.2-346.01, 18.2-348, 18.2-349,](#)  
293 [18.2-405, or 18.2-406;](#) or any substantially similar offense under the laws of another jurisdiction; (ii) any  
294 violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense  
295 under the laws of another jurisdiction; (iii) any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01,  
296 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-  
297 258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another  
298 jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of  
299 another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register  
300 with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding  
301 that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of  
302 Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the  
303 Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense  
304 under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes  
305 against minors registry is required under the laws of the jurisdiction where the offender was convicted; or  
306 (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from  
307 the date of the conviction.

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

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

316 "Department" means the Department of State Police.

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

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

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

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

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

- 335 1. Been fingerprinted; and
- 336 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address,  
337 and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the  
338 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or  
339 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime  
340 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background  
341 check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to  
342 challenge the accuracy and completeness of any information contained in any such report, and to obtain a  
343 prompt determination as to the validity of such challenge before a final determination is made by the

Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled for whom the qualified entity provides care.

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

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

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

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

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

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

If an individual applies for and does not receive a waiver pursuant to this subsection, he may request an informal fact-finding proceeding pursuant to § 2.2-4019. If an individual does not request such proceeding, the initial rejection of the waiver becomes final after 30 days. If an individual remains aggrieved by a case decision after an informal fact-finding proceeding, he may seek review of the case decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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

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

K. Except for (i) an application cover sheet containing only the name of the applicant, the date the application was submitted to the Department of Behavioral Health and Developmental Services, Education, Health, or Social Services, and, if applicable, the position for which the individual is applying or has applied and (ii) whether such waiver has been granted or denied or if such application is pending, an individual's application for a waiver, any documents related to such application, and any written basis for a decision about such waiver shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), shall be considered confidential, and shall not be disclosed unless specifically authorized by another provision of law, except that access shall not be denied to the person who is subject thereof.

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

The applicant's 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 such applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department or its designee, and the Department or its designee shall report to the child day center or family day home whether the applicant 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 before reporting to the child day center, family day home, or family day system.

C. The child day center, family day home, or family day system described in subsection A shall inform every individual required to undergo a background check pursuant to this section 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 individual's eligibility to have responsibility for the safety and well-being of children.

D. 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.

E. Further dissemination of the background check information is prohibited (i) 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 or (ii) except as provided in subsection 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.

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

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

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

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

background check for such person shall be completed in accordance with subsection B. Such written certifications shall not reveal the nature of any disqualifying barrier crime or founded complaint of child abuse or neglect or any other information about the individual.

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

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

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

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

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

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

4. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a criminal history record information check, a sex offender registry

check, and a search of the child abuse and neglect registry or equivalent registry from any state in which the individual has resided in the preceding five years.

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

C. If any person specified in subsection A required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been (a) granted a waiver by the Superintendent pursuant to § 22.1-289.038 or (b) granted a waiver pursuant to subsection A of § 22.1-289.035, no license as a child day center, family day home, or family day system or registration as a family day home shall be granted by the Superintendent and no approval as a family day home shall be granted by the family day system.

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

E. No person specified in subsection A shall be involved in the day-to-day operations of the child day center, family day home, or family day system, or shall be alone with, in control of, or supervising

one or more children, without first having completed any required background check pursuant to subsection B.

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

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

H. Further dissemination of the background check information is prohibited other than to the Superintendent's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

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

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

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

A. The Superintendent may revoke or deny renewal of a license or registration of a child day program or family day system, and a family day system may revoke the approval of a family day home, if the child day program, family day system, or approved family day home has knowledge that a person specified in § 22.1-289.035 or 22.1-289.036 required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been (a) granted a waiver by the Superintendent pursuant to § 22.1-289.038 or ~~is not subject to the exceptions in subsection G~~ (b) granted

585 a waiver pursuant to subsection A of § 22.1-289.035, and the agency or home refuses to separate such  
586 person from employment or service or allows the household member to continue to reside in the home.

587 B. Failure to obtain background checks pursuant to §§ 22.1-289.035 and 22.1-289.036 shall be  
588 grounds for denial, revocation, or termination of a license, registration, or approval or any contract with  
589 the Department or its agents or designees or a local department of social services to provide child care  
590 services to clients of the Department or its agents or designees or the local department of social services.  
591 No violation shall occur if the family day system, family day home, or child day center has applied for the  
592 background check timely and it has not been obtained due to administrative delay. The provisions of this  
593 section shall be enforced by the Department.

594 **§ 22.1-289.038. Child day programs and family day systems; criminal conviction and waiver.**

595 A. Any person who seeks to operate, volunteer, or work at a child day program or family day  
596 system and who is disqualified because of a criminal conviction or a criminal conviction in the background  
597 check of any other adult living in a family day home regulated by the Department, pursuant to § 22.1-  
598 289.035, 22.1-289.036, or 22.1-289.039, and such person has not received a waiver pursuant to subsection  
599 A of § 22.1-289.035, he may apply in writing for a waiver from the Superintendent. The Superintendent  
600 may grant a waiver if the Superintendent determines that (i) the person is of good moral character and  
601 reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the  
602 person's care. ~~The Superintendent shall not grant a waiver to any person who has been convicted of any~~  
603 ~~barrier crime as defined in § 19.2-392.02. However, the Superintendent may grant a waiver to a family~~  
604 ~~day home licensed or registered by the Department if any other adult living in the home of the applicant~~  
605 ~~or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2,~~  
606 ~~or any substantially similar offense under the laws of another jurisdiction, provided that (a) five years have~~  
607 ~~elapsed following the conviction and (b) the Department has conducted a home study that includes, but is~~  
608 ~~not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that~~  
609 ~~the offender is now a person of good moral character and reputation. The waiver shall not be granted if~~  
610 ~~the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a~~  
611 ~~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;



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

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

655 **§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required;**  
656 **penalty.**

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

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

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

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

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

685 Any individual making a materially false statement regarding any such offense is guilty of a Class  
686 1 misdemeanor and, upon conviction, the fact of such conviction is grounds for the revocation of the  
687 contract to provide such services and, when relevant, the revocation of any license required to provide  
688 such services. School boards shall not be liable for materially false statements regarding the certifications  
689 required by this subsection.

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

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

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

706 **§ 32.1-126.01. Employment for compensation of persons convicted of barrier crimes**  
707 **prohibited; criminal records check required; suspension or revocation of license.**

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

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

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

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

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

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

741 **§ 32.1-162.9:1. Employment for compensation of persons convicted of barrier crimes**  
742 **prohibited; criminal records check required; drug testing; suspension or revocation of license.**

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

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

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

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

770 of this section shall be enforced by the Commissioner. If an applicant is denied employment because of  
771 convictions appearing on his criminal history record, the home care organization or hospice shall provide  
772 a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

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

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

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

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

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

793 **§ 37.2-314. Background check required.**

794 A. As a condition of employment, the Department shall require any applicant who (i) accepts a  
795 position of employment at a state facility and was not employed by that state facility prior to July 1, 1996,  
796 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) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.

~~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

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

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

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

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

904 the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's  
905 residential facility shall receive the results of the central registry search prior to permitting a person to  
906 work. Children's residential facilities regulated or operated by the Department shall not hire for  
907 compensated employment, or allow to volunteer or provide contractual services, persons who have a  
908 founded case of child abuse or neglect.

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

911 **§ 37.2-416. Background checks required.**

912 A. As used in this section:

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

916 "Hire for compensated employment" does not include (i) a promotion from one adult substance  
917 abuse or adult mental health treatment position to another such position within the same licensee licensed  
918 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment  
919 position in another office or program licensed pursuant to this article if the person employed prior to July  
920 1, 1999, in a licensed program had no convictions in the five years prior to the application date for  
921 employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult  
922 substance abuse treatment position to any mental health or developmental services direct care position  
923 within the same licensee licensed pursuant to this article or (b) new employment in any mental health or  
924 developmental services direct care position in another office or program of the same licensee licensed  
925 pursuant to this article for which the person has previously worked in an adult substance abuse treatment  
926 position.

927 "Shared living" means an arrangement in which the Commonwealth's program of medical  
928 assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing  
929 with and providing companionship, support, and other limited, basic assistance to a person with

930 developmental disabilities receiving medical assistance services in accordance with a waiver for whom he  
931 has no legal responsibility.

932 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts  
933 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service  
934 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service  
935 provider, (iv) any person employed by a sponsored residential service provider to provide services in the  
936 home, (v) any person who enters into a shared living arrangement with a person receiving medical  
937 assistance services pursuant to a waiver, and (vi) any person under contract with the provider to serve in  
938 a direct care position to submit to fingerprinting and provide personal descriptive information to be  
939 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)  
940 for the purpose of obtaining national criminal history record information regarding the applicant. ~~Except~~  
941 ~~as otherwise provided in subsection C, D, or F, The Board shall adopt regulations that establish a waiver~~  
942 ~~process pursuant to subsection H of § 19.2-392.02 whereby such persons may apply for employment, for~~  
943 ~~approval as a sponsored residential service provider, to enter into a shared living arrangement, or to serve~~  
944 ~~in a direct care position under contract with a provider pursuant to this subsection despite convictions of~~  
945 ~~offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such~~  
946 ~~waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications~~  
947 ~~shall be subject to the provisions of subsection K of § 19.2-392.02. Unless an applicant has received such~~  
948 ~~a waiver pursuant to this subsection,~~ no provider licensed pursuant to this article shall:

949 1. Hire for compensated employment any person who has been convicted of (i) any offense set  
950 forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set  
951 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the  
952 application date for employment or (b) if such person continues on probation or parole or has failed to pay  
953 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-  
954 392.02;

955 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult  
956 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)

957 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any  
958 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior  
959 to the application date to be a sponsored residential service provider or (b) if such applicant continues on  
960 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the  
961 definition of barrier crime in § 19.2-392.02;

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

968 4. Allow any person under contract with the provider to serve in a direct care position who has  
969 been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §  
970 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02  
971 (a) in the five years prior to the application date for employment or (b) if such person continues on  
972 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the  
973 definition of barrier crime in § 19.2-392.02.

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

982 C. ~~Notwithstanding the provisions of subsection B, a provider may hire for compensated~~  
983 ~~employment or permit any person under contract with the provider to serve in a direct care position or~~

984 ~~permit any person employed by a temporary agency that has entered into a contract with the provider to~~  
985 ~~provide direct care services on behalf of the provider at adult substance abuse or adult mental health~~  
986 ~~treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor~~  
987 ~~violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation~~  
988 ~~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 §~~  
989 ~~18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime~~  
990 ~~in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially~~  
991 ~~similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a~~  
992 ~~screening assessment, that the criminal behavior was substantially related to the applicant's substance~~  
993 ~~abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to~~  
994 ~~individuals receiving services based on his criminal history background and his substance abuse or mental~~  
995 ~~illness history.~~

996 ~~D. Notwithstanding the provisions of subsection B, a provider may hire for compensated~~  
997 ~~employment or permit any person under contract with the provider to serve in a direct care position or~~  
998 ~~permit any person employed by a temporary agency that has entered into a contract with the provider to~~  
999 ~~provide direct care services on behalf of the provider at adult substance abuse treatment facilities a person~~  
1000 ~~who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially~~  
1001 ~~similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon~~  
1002 ~~if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the~~  
1003 ~~laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring~~  
1004 ~~provider determines, based upon a screening assessment, that the criminal behavior was substantially~~  
1005 ~~related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not~~  
1006 ~~a risk to individuals receiving services based on his criminal history background and his substance abuse~~  
1007 ~~history.~~

1008 ~~E. The hiring provider and a screening contractor designated by the Department shall screen~~  
1009 ~~applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have~~  
1010 ~~been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal~~

history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

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

~~G.~~ Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position, written consent and personal information

necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

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

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

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

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

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

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

~~Except as otherwise provided in subsection C, D, or F, Unless an applicant has received a waiver pursuant to subsection B,~~ no provider licensed pursuant to this article shall permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider if that person has been convicted of (i) any offense set forth in clause (i), (ii), or (iii)



1065 of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition  
1066 of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b)  
1067 if such person continues on probation or parole or has failed to pay required court costs for such offense  
1068 set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

1069 **§ 37.2-506. Background checks required.**

1070 A. As used in this section:

1071 "Direct care position" means any position that includes responsibility for (i) treatment, case  
1072 management, health, safety, development, or well-being of an individual receiving services or (ii)  
1073 immediately supervising a person in a position with this responsibility.

1074 "Hire for compensated employment" does not include (i) a promotion from one adult substance  
1075 abuse or adult mental health treatment position to another such position within the same community  
1076 services board or (ii) new employment in an adult substance abuse or adult mental health treatment  
1077 position in another office or program of the same community services board if the person employed prior  
1078 to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire  
1079 for compensated employment" includes (a) a promotion or transfer from an adult substance abuse  
1080 treatment position to any mental health or developmental services direct care position within the same  
1081 community services board or (b) new employment in any mental health or developmental services direct  
1082 care position in another office or program of the same community services board for which the person has  
1083 previously worked in an adult substance abuse treatment position.

1084 "Shared living" means an arrangement in which the Commonwealth's program of medical  
1085 assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing  
1086 with and providing companionship, support, and other limited, basic assistance to a person with  
1087 developmental disabilities receiving medical assistance services in accordance with a waiver for whom he  
1088 has no legal responsibility.

1089 B. Every community services board shall require (i) any applicant who accepts employment in any  
1090 direct care position with the community services board, (ii) any applicant for approval as a sponsored  
1091 residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored

1092 residential service provider, (iv) any person employed by a sponsored residential service provider to  
1093 provide services in the home, (v) any person who enters into a shared living arrangement with a person  
1094 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract to serve in  
1095 a direct care position on behalf of the community services board to submit to fingerprinting and provide  
1096 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the  
1097 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record  
1098 information regarding the applicant. ~~Except as otherwise provided in subsection C, D, or F, no~~ No  
1099 community services board shall hire for compensated employment, approve as a sponsored residential  
1100 service provider, permit to enter into a shared living arrangement with a person receiving medical  
1101 assistance services pursuant to a waiver, or permit any person under contract to serve in a direct care  
1102 position on behalf of the community services board persons who have been convicted of (a) any offense  
1103 set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set  
1104 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the  
1105 application date for employment, the application date to be a sponsored residential service provider, or  
1106 entering into a shared living arrangement or (2) if such person continues on probation or parole or has  
1107 failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime  
1108 in § 19.2-392.02. However, the Board shall adopt regulations that establish a waiver process pursuant to  
1109 subsection H of § 19.2-392.02 whereby persons may apply for employment, for approval as a sponsored  
1110 residential service provider, to enter into a shared living arrangement, or to serve in a direct care position  
1111 on behalf of the community services board pursuant to this subsection despite convictions of offenses set  
1112 forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is  
1113 granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply.  
1114 All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.

1115 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that  
1116 no record exists, shall submit a report to the requesting executive director or personnel director of the  
1117 community services board. If any applicant is denied employment because of information appearing on  
1118 his criminal history record and the applicant disputes the information upon which the denial was based,

the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

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

~~D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community~~

~~services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.~~

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

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

~~employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.~~

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

~~H-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:

1200 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §  
1201 19.2-389; and

1202 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint  
1203 of child abuse and neglect.

1204 ~~Except as otherwise provided in subsection C, D, or F~~ Unless an applicant has received a waiver  
1205 pursuant subsection B, no community services board shall permit any person employed by a temporary  
1206 agency that has entered into a contract with the community services board to provide direct care services  
1207 on behalf of the community services board if that person has been convicted of (i) any offense set forth in  
1208 clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in  
1209 clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application  
1210 date for employment, the application date to be a sponsored residential service provider, or entering into  
1211 a shared living arrangement or (b) if such person continues on probation or parole or has failed to pay  
1212 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-  
1213 392.02.

1214 **§ 63.2-901.1. Criminal history and central registry check for placements of children.**

1215 A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations  
1216 adopted by the Board, criminal history record information from the Central Criminal Records Exchange  
1217 and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results  
1218 of a search of the child abuse and neglect central registry of any individual with whom the local board or  
1219 licensed child-placing agency is considering placing a child on an emergency, temporary or permanent  
1220 basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an  
1221 entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a  
1222 placement agreement while legal custody remains with the parent, parents, or guardians pursuant to §  
1223 63.2-900. The local board or licensed child-placing agency shall also obtain such background checks on  
1224 all adult household members residing in the home of the individual with whom the child is to be placed  
1225 pursuant to subsection B. Such state criminal records or registry search shall be at no cost to the individual.  
1226 The local board or licensed child-placing agency shall pay for the national fingerprint criminal history

1227 record check or may require such individual to pay the cost of the fingerprinting or the national  
1228 fingerprinting criminal history record check or both. In addition to the fees assessed by the Federal Bureau  
1229 of Investigation, the designated state agency may assess a fee for responding to requests required by this  
1230 section.

1231 B. Background checks pursuant to this section require the following:

1232 1. A sworn statement or affirmation disclosing whether or not the individual has a criminal  
1233 conviction or is the subject of any pending criminal charges within or outside the Commonwealth and  
1234 whether or not the individual has been the subject of a founded complaint of child abuse or neglect within  
1235 or outside the Commonwealth;

1236 2. That the individual submit to fingerprinting and provide personal descriptive information to be  
1237 forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the  
1238 Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local  
1239 board or licensed child-placing agency shall inform the individual that he is entitled to obtain a copy of  
1240 any background check report and to challenge the accuracy and completeness of any such report and  
1241 obtain a prompt resolution before a final decision is made of the individual's fitness to have responsibility  
1242 for the safety and well-being of children.

1243 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that  
1244 no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an  
1245 individual's record lacking disposition data, conduct research in whatever state and local recordkeeping  
1246 systems are available in order to obtain complete data. The state agency shall report to the local board or  
1247 licensed child-placing agency whether the individual meets the criteria for having responsibility for the  
1248 safety and well-being of children based on whether or not the individual has ever been convicted of or is  
1249 the subject of pending charges for any ~~barrier~~ crime as ~~defined~~ described in ~~§ 19.2-392.02~~ subsection E.

1250 Copies of any information received by a local board or licensed child-placing agency pursuant to this  
1251 section shall be available to the state agency that regulates or operates such a child-placing agency but  
1252 shall not be disseminated further; and

1253 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint  
1254 of child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any  
1255 other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in  
1256 which a prospective parent or other adult in the home has resided in the preceding five years.

1257 C. In emergency circumstances, each local board may obtain, from a criminal justice agency,  
1258 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau  
1259 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records  
1260 search authorized by this section. Within three days of placing a child, the local board shall require the  
1261 individual for whom a criminal history record information check was requested to submit to fingerprinting  
1262 and provide personal descriptive information to be forwarded along with the fingerprints through the  
1263 Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining  
1264 criminal record history information, pursuant to subsection B. The child shall be removed from the home  
1265 immediately if any adult resident fails to provide such fingerprints and written permission to perform a  
1266 criminal history record check when requested.

1267 D. Any individual with whom the local board is considering placing a child on an emergency basis  
1268 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh  
1269 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or  
1270 neglect. The search of the central registry must occur prior to emergency placement. Such central registry  
1271 search shall be at no cost to the individual. Prior to emergency placement, the individual shall provide a  
1272 written statement of affirmation disclosing whether he has ever been the subject of a founded case of child  
1273 abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not approve  
1274 individuals with a founded complaint of child abuse as foster or adoptive parents.

1275 E. The child-placing agency shall not approve a foster or adoptive home if any individual has been  
1276 convicted of any ~~barrier~~ crime ~~as defined in § 19.2-392.02~~ listed under 42 U.S.C. § 671(a)(20) or  
1277 regulations adopted thereunder or is the subject of a founded complaint of abuse or neglect as maintained  
1278 in registries pursuant to § 63.2-1515 and 42 ~~U.S.C.S.~~ U.S.C. § 16901 et seq. ~~A child-placing agency may~~  
1279 ~~approve as a foster parent an applicant who has been convicted of not more than one misdemeanor as set~~



~~out in § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10 years have elapsed following the conviction.~~

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

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

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

A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange of any individual the local board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on all adult household members residing in the home of the individual with whom the adult is to be placed. The local board shall not hire for compensated employment any persons who have been convicted of any offense

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

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

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

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

[the provisions of subsection K of § 19.2-392.02.](#) All applicants for employment shall undergo background checks pursuant to subsection ~~C~~ B.

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

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

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

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

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

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

~~E. D.~~ A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, or licensed independent foster home shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies or independent foster homes, (a) an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange and (b) a copy of the information from the central registry for any compensated employee within 30 days of employment. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or

original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult day care center, child-placing agency, or independent foster home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

~~F.-E.~~ No volunteer who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth shall be permitted to serve in a licensed child-placing agency or independent foster home. However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby volunteers may apply to volunteer despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02. Any person desiring to volunteer at a licensed child-placing agency or independent foster home shall provide the agency, system, or home with a sworn statement or affirmation pursuant to subdivision ~~C.B~~ 1. Such licensed child-placing agency or independent foster home shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (a) the information from the central registry and (b) an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision ~~C.B~~ 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such licensed child-placing agency or independent foster home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency or independent foster home, whether or not such parent-volunteer will be alone with any

child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

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

~~H.G.~~ Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

~~I.H.~~ Notwithstanding any other provision of law, a licensed adult day care center that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for an employee in accordance with this section and (ii) whether such employee is eligible for employment.

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

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

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

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

1415 application for licensure as an assisted living facility, all applicants shall undergo a background check  
1416 pursuant to subsection B. The Board shall adopt regulations that establish a waiver process pursuant to  
1417 subsection H of § 19.2-392.02 whereby such applicants and agents may apply for employment despite  
1418 convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is granted  
1419 pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All  
1420 waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02. In addition, foster  
1421 or adoptive parents requesting approval by child-placing agencies shall undergo background checks  
1422 pursuant to subsection B prior to their approval.

1423 B. Background checks pursuant to subsection A require:

1424 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is  
1425 the subject of any pending criminal charges within or outside the Commonwealth and whether or not the  
1426 person has been the subject of a founded complaint of child abuse or neglect within or outside the  
1427 Commonwealth;

1428 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §  
1429 19.2-389; and

1430 3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a  
1431 search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse  
1432 and neglect.

1433 C. The person required to have a background check pursuant to subsection A shall submit the  
1434 background check information required in subsection B to the Commissioner's representative prior to  
1435 issuance of a license, registration, or approval. The applicant, other than an applicant for licensure as an  
1436 assisted living facility or foster or adoptive parents, shall provide an original criminal record clearance  
1437 with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from  
1438 the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall  
1439 provide an original criminal record clearance with respect to any offense set forth in clause (i) of the  
1440 definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal  
1441 Records Exchange. Any person making a materially false statement regarding the sworn statement or

affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an assisted living facility or foster or adoptive parents, required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or ~~is not subject to an exception in subsection E, F, G, or H (a)~~, has not been granted a waiver pursuant to subsection A, the Commissioner shall not issue a license to a child-placing agency or independent foster home ~~or (b) a child-placing agency shall not approve an adoptive or foster home~~. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 and has not been granted a waiver pursuant to subsection A, the Commissioner shall not issue a license to an assisted living facility.

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

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

F. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, or any substantially similar~~



~~offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.~~

~~G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, or eight years have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test administered by a laboratory or medical professional within 90 days prior to being approved, and such test returned with a negative result; and (iv) complies with any other obligations as determined by the Department.~~

~~H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.~~

~~I.~~ If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

~~J.~~ F. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

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

A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted living facility, or adult day care center and a child-placing agency may revoke the approval of a foster home if the assisted living facility, adult day care center, child welfare agency, or foster home has



knowledge that a person specified in § 63.2-1720 or 63.2-1721 required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 and has not been granted a waiver pursuant to subsection H of § 19.2-392.02 or (ii) in the case of a child welfare agency or foster home, is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 ~~or is not subject to the exceptions in subsection B of § 63.2-1720 or subsection E, F, G, or H of § 63.2-1721~~, and the facility, center, or agency refuses to separate such person from employment or service or allows the household member to continue to reside in the home.

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

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

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

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

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

1522           A. As a condition of employment, volunteering, or providing services on a regular basis, every  
1523 children's residential facility that is regulated or operated by the Departments of Social Services,  
1524 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual  
1525 who (i) accepts a position of employment at such a facility, (ii) is employed by such a facility, (iii)  
1526 volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility  
1527 to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with  
1528 the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of  
1529 Investigation for the purpose of obtaining criminal history record information regarding such applicant.  
1530 The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any  
1531 background check report and to challenge the accuracy and completeness of any such report and obtain a  
1532 prompt resolution before a final determination is made of the applicant's eligibility to have responsibility  
1533 for the safety and well-being of children. The applicant shall provide the children's residential facility with  
1534 a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of  
1535 pending charges for any offense within or outside the Commonwealth. The results of the criminal history  
1536 background check must be received prior to permitting an applicant to work in the children's residential  
1537 facility.

1538           The Central Criminal Records Exchange, upon receipt of an individual's record or notification that  
1539 no record exists, shall forward it to the state agency—~~which~~ that operates or regulates the children's  
1540 residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an  
1541 applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping  
1542 systems are available in order to obtain complete data. The state agency shall report to the children's  
1543 facility whether the applicant is eligible to have responsibility for the safety and well-being of children.  
1544 Except as otherwise provided in subsection B, no children's residential facility regulated or operated by  
1545 the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social  
1546 Services shall hire for compensated employment or allow to volunteer or provide contractual services  
1547 persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in  
1548 clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in

clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment or to volunteer or provide contractual services despite convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02. The provisions of this section also shall apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision and to local secure detention facilities, provided, however, that the provisions of this section related to local secure detention facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local agency that regulates or operates the local secure detention facility shall process the criminal history record information regarding such applicant in accordance with this subsection and subsection B.

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

1575           If the applicant is denied employment or the opportunity to volunteer or provide services at a  
1576 children's residential facility because of information appearing on his criminal history record, and the  
1577 applicant disputes the information upon which the denial was based, upon written request of the applicant  
1578 the state agency shall furnish the applicant the procedures for obtaining his criminal history record from  
1579 the Federal Bureau of Investigation. The information provided to the children's residential facility shall  
1580 not be disseminated except as provided in this section.

1581           C. Those individuals listed in clauses (i) through (iv) of subsection A also shall authorize the  
1582 children's residential facility to obtain a copy of information from the central registry maintained pursuant  
1583 to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall  
1584 provide the children's residential facility with a written statement or affirmation disclosing whether he has  
1585 ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth.  
1586 The children's residential facility shall receive the results of the central registry search prior to permitting  
1587 an applicant to work. Children's residential facilities regulated or operated by the Departments of  
1588 Education; Behavioral Health and Developmental Services; Military Affairs; and Social Services shall not  
1589 hire for compensated employment or allow to volunteer or provide contractual services, persons who have  
1590 a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or  
1591 operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information  
1592 from the central registry.

1593           D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and  
1594 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with  
1595 the provisions of this section. Copies of any information received by a children's residential facility  
1596 pursuant to this section shall be available to the agency that regulates or operates such facility but shall  
1597 not be disseminated further. The cost of obtaining the criminal history record and the central registry  
1598 information shall be borne by the employee or volunteer unless the children's residential facility, at its  
1599 option, decides to pay the cost.

1600       **2. That the provisions of the first enactment of this act shall become effective on July 1, 2025, except**  
1601 **that provisions in §§ 63.2-901.1 and 63.2-1721 of the Code of Virginia, as amended by this act,**

1602 relating to foster and adoptive parents shall become effective in due course. The Boards of  
1603 Behavioral Health and Developmental Services, Education, Health, and Social Services shall  
1604 promulgate regulations to implement the provisions of this act to be effective by July 1, 2025.

1605 3. That any individual with a barrier crime conviction serving in a position pursuant to a current  
1606 exception, waiver, or screening process as set out in §§ 22.1-289.035, 22.1-289.038, 32.1-126.01, 32.1-  
1607 162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-1720, and 63.2-1726 of the Code of Virginia,  
1608 as amended by this act, up until the first date of enactment of this act on July 1, 2025, shall continue  
1609 to be subject to such exception, waiver, or screening process and shall not be terminated upon  
1610 enactment of this law or required to apply for a barrier crime conviction waiver so long as he serves  
1611 in such position. In its regulations, the Boards of Behavioral Health and Developmental Services,  
1612 Education, Health, and Social Services may require that an individual subject to such waiver,  
1613 exception, or screening process shall have one year after July 1, 2025, to file an application for a  
1614 new waiver pursuant to the regulations set out by each board and that such individual shall not be  
1615 terminated for lacking such waiver while such application is pending.

1616 4. That, upon enactment of this act on July 1, 2025, the Departments of Behavioral Health and  
1617 Developmental Services, Education, Health, and Social Services shall begin accepting at least some  
1618 or all applications for waivers as directed in subsection H of § 19.2-392.02 of the Code of Virginia,  
1619 as amended by this act, pursuant to the regulations set out by the Boards of Behavioral Health and  
1620 Developmental Services, Education, Health, and Social Services as directed in §19.2-392.02 of the  
1621 Code of Virginia, as amended by this act. However, if necessary, to prevent overwhelming  
1622 department resources for receiving applications and to ensure that applications are answered in a  
1623 timely manner, in its regulations each board may set out a phased implementation of such  
1624 regulations that shall not exceed a period of two years after the date of enactment of this act before  
1625 the waiver application process under each department shall be fully functioning.

1626 5. That the Secretaries of Education, Health and Human Resources, and Labor (the Secretaries)  
1627 shall provide recommendations to the Chairmen of the House Committees on Labor and  
1628 Commerce, Education, and Health, Welfare and Institutions and the Senate Committees on

1629 Commerce and Labor, Education and Health, and Rehabilitation and Social Services on the  
1630 development of a navigation system for assisting applicants in navigating the waiver processes  
1631 across each department no later than July 1, 2024. Such recommendations may include a  
1632 recommendation for a third party or state agency that may oversee the navigation system, how such  
1633 system may function, procurement for the system, the assessment that a navigation system is  
1634 unnecessary, and any other information determined by the Secretaries.

1635 6. That the Department of State Police shall implement any necessary enhancements to the Criminal  
1636 History and Rap Back Information System, including the ability to add or remove barrier crime  
1637 conviction waivers, by July 1, 2025.

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