

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 722

An Act to amend and reenact §§ 63.2-901.1 and 63.2-1721 of the Code of Virginia, relating to background checks for foster parents.

[H 2002]

Approved March 25, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-901.1 and 63.2-1721 of the Code of Virginia are amended and reenacted as follows:

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

A. Each local board and licensed child-placing agency shall obtain and consider, in accordance with regulations adopted by the Board, statewide criminal history record information from the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry of any individual with whom the local board or agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement. The local board or agency may also obtain such a criminal records or registry search on all adult household members residing in the home of the individual with whom the child is to be placed. Such criminal records or registry search shall be at no cost to the individual. If the placement is not made because of information obtained through the criminal history record information or registry search or both, the local board or agency shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the information provided to the local board or agency is prohibited.

B. In emergency circumstances, each local board or licensed child-placing agency may obtain, from a criminal justice agency, criminal history record information from the Central Criminal Records Exchange through the Virginia Criminal Information Network (VCIN) for the criminal records search authorized by this section.

C. *A child-placing agency may approve as a foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.*

§ 63.2-1721. Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.

A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for licensure or registration as a family day home shall undergo a background check. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to this section require:

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

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

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

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 shall be guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, 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 subsections E or F, (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) a child-placing agency shall not

approve an adoptive or foster home; or (iii) a family day system shall not approve a family day home.

D. No person specified in subsection A shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having completed background checks pursuant to subsection B.

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 convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect ~~or moral turpitude~~, *moral turpitude*, or a minor, provided 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 convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

G. 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.

H. 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. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.