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HOUSE BILL NO. 971

Offered January 11, 2012

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A BILL to amend and reenact §§ 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 63.2-1719, and 63.2-1726 of the Code of Virginia, relating to barrier crimes.

Patron—Bell, Robert B.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 63.2-1719, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of *a felony violation of a protective order as set out in § 16.1-253.2*, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, *extortion by threat as set out in § 18.2-59*, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, *a felony violation of a protective order as set out in § 18.2-60.4*, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be 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.

A nursing home 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. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

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

B. 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.

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

INTRODUCED

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59 § 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited;
60 criminal records check required; drug testing; suspension or revocation of license.

61 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
62 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in
63 § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of *a felony*
64 *violation of a protective order as set out in § 16.1-253.2*, murder or manslaughter as set out in Article 1
65 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41,
66 abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in
67 § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title
68 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, *extortion by threat as set out*
69 *in § 18.2-59*, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in
70 § 18.2-60.3, *a felony violation of a protective order as set out in § 18.2-60.4*, sexual assault as set out in
71 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.)
72 of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime
73 of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a
74 sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out
75 in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in
76 § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and
77 neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as
78 set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as
79 set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and
80 neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an
81 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in
82 § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in
83 § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

84 However, a home care organization or hospice may hire an applicant convicted of one misdemeanor
85 specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

86 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any
87 home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any
88 licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or
89 affirmation disclosing any criminal convictions or any pending criminal charges, whether within or
90 without the Commonwealth. Any person making a materially false statement when providing such sworn
91 statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1
92 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited
93 other than to a federal or state authority or court as may be required to comply with an express
94 requirement of law for such further dissemination.

95 Such home care organization or hospice shall, within 30 days of employment, obtain for any
96 compensated employees an original criminal record clearance with respect to convictions for offenses
97 specified in this section or an original criminal history record from the Central Criminal Records
98 Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is
99 denied employment because of convictions appearing on his criminal history record, the home care
100 organization or hospice shall provide a copy of the information obtained from the Central Criminal
101 Records Exchange to the applicant.

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

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

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

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

116 § 37.2-314. Background check required.

117 A. As a condition of employment, the Department shall require any individual who (i) accepts a
118 position of employment at a state facility and was not employed by that state facility prior to July 1,
119 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the
120 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 individual.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been (i) *a felony violation of a protective order as set out in § 16.1-253.2*; convicted of murder or manslaughter, as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41; abduction, as set out in subsection A or B of § 18.2-47; abduction for immoral purposes, as set out in § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58; carjacking, as set out in § 18.2-58.1; extortion by threat, as set out in § 18.2-59; threat, as set out in § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; *a felony violation of a protective order as set out in § 18.2-60.4*; sexual assault, as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson, as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary, as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting, as set out in § 18.2-286.1; use of a machine gun in a crime of violence, as set out in § 18.2-289; aggressive use of a machine gun, as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence, as set out in subsection A of § 18.2-300; pandering, as set out in § 18.2-355; crimes against nature involving children, as set out in § 18.2-361; taking indecent liberties with children, as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children, as set out in § 18.2-371.1, including failing to secure medical attention for an injured child, as set out in § 18.2-314; obscenity offenses, as set out in § 18.2-374.1; possession of child pornography, as set out in § 18.2-374.1:1; electronic facilitation of pornography, as set out in § 18.2-374.3; incest, as set out in § 18.2-366; abuse or neglect of incapacitated adults, as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners, as set out in § 18.2-474.1; escape from jail, as set out in § 18.2-477; felonies by prisoners, as set out in § 53.1-203; or an equivalent offense in another state; (ii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, in the five years prior to the application date for employment; or (iii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, and continue on probation or parole or have failed to pay required court costs.

C. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual 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.

D. Those individuals 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.

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 individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2008, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2008, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2008, to submit to fingerprinting and to 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 for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the

182 applicant that he is entitled to obtain a copy of any background check report and to challenge the
183 accuracy and completeness of any such report and obtain a prompt resolution before a final
184 determination is made of the applicant's eligibility to have responsibility for the safety and well-being of
185 children. The applicant shall provide the children's residential facility with a written statement or
186 affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for
187 any offense within or outside the Commonwealth. The results of the criminal history background check
188 must be received prior to permitting an applicant to work with children.

189 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
190 record exists, shall forward it to the state agency that operates or regulates the children's residential
191 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
192 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are
193 available in order to obtain complete data. The state agency shall report to the children's facility whether
194 the applicant is eligible to have responsibility for the safety and well-being of children. Except as
195 otherwise provided in subsection B, no children's residential facility regulated or operated by the
196 Department shall hire for compensated employment or allow to volunteer or provide contractual services
197 persons who have been (a) convicted of or are the subject of pending charges for the following crimes:
198 *a felony violation of a protective order as set out in § 16.1-253.2*; murder or manslaughter as set out in
199 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in
200 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set
201 out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of
202 Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set
203 out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; *a*
204 *felony violation of a protective order as set out in § 18.2-60.4*; sexual assault as set out in Article 7
205 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter
206 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony
207 violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of
208 Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as
209 set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off
210 shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in
211 § 18.2-355; crimes against nature involving children as set out § 18.2-361; taking indecent liberties with
212 children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1,
213 including failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity
214 offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1.1;
215 electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or
216 neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an
217 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in
218 § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in
219 § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or
220 (b) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et
221 seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a
222 volunteer, or to provide contractual services; or (c) convicted of any felony violation relating to
223 possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue
224 on probation or parole or have failed to pay required court costs. The provisions of this section also
225 shall apply to structured residential programs, excluding secure detention facilities, established pursuant
226 to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court
227 that alleges the juvenile is delinquent or in need of services or supervision.

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

233 If the applicant is denied employment, or the opportunity to volunteer or provide services, at a
234 children's residential facility because of information appearing on his criminal history record, and the
235 applicant disputes the information upon which the denial was based, upon written request of the
236 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
237 record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties
238 that do not involve contact with children pending receipt of the report, the children's residential facility
239 is not precluded from suspending the applicant from his position pending a final determination of the
240 applicant's eligibility to have responsibility for the safety and well-being of children. The information
241 provided to the children's residential facility shall not be disseminated except as provided in this section.

242 C. Those individuals listed in clauses (i), (ii), and (iii) of subsection A also shall authorize the
243 children's residential facility to obtain a copy of information from the central registry maintained

pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Department shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect.

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

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of a *felony violation of a protective order as set out in § 16.1-253.2*, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, *extortion by threat as set out in § 18.2-59*, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, *a felony violation of a protective order as set out in § 18.2-60.4*, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

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

A. 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 Departments of Social Services; Education; Military Affairs; or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2007; to submit to fingerprinting and to 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 for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant 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 applicant's eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been

305 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth.
306 The results of the criminal history background check must be received prior to permitting an applicant
307 to work with children.

308 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
309 record exists, shall forward it to the state agency which operates or regulates the children's residential
310 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
311 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are
312 available in order to obtain complete data. The state agency shall report to the children's facility whether
313 the applicant is eligible to have responsibility for the safety and well-being of children. Except as
314 otherwise provided in subsection B, no children's residential facility regulated or operated by the
315 Departments of Education; Behavioral Health and Developmental Services; Military Affairs; or Social
316 Services shall hire for compensated employment or allow to volunteer or provide contractual services
317 persons who have been (i) convicted of or are the subject of pending charges for the following crimes: *a*
318 *felony violation of a protective order as set out in § 16.1-253.2*, murder or manslaughter as set out in
319 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in
320 § 18.2-41; abduction as set out in *subsection A or B of § 18.2-47 A*; abduction for immoral purposes as
321 set out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter
322 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat
323 as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in
324 § 18.2-60.3; *a felony violation of a protective order as set out in § 18.2-60.4*, sexual assault as set out in
325 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.)
326 of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2;
327 any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of
328 Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of
329 violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a
330 sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out
331 in § 18.2-355; crimes against nature involving children as set out § 18.2-361; taking indecent liberties
332 with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in
333 § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314;
334 obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in
335 § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in
336 § 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a
337 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of
338 Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape
339 from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense
340 in another state; or (ii) convicted of any felony violation relating to possession of drugs set out in
341 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for
342 employment, to be a volunteer, or to provide contractual services; or (iii) convicted of any felony
343 violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title
344 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of
345 this section also shall apply to structured residential programs, excluding secure detention facilities,
346 established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition
347 before the court that alleges the juvenile is delinquent or in need of services or supervision.

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

353 If the applicant is denied employment, or the opportunity to volunteer or provide services at a
354 children's residential facility because of information appearing on his criminal history record, and the
355 applicant disputes the information upon which the denial was based, upon written request of the
356 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
357 record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties
358 that do not involve contact with children pending receipt of the report, the children's residential facility
359 is not precluded from suspending the applicant from his position pending a final determination of the
360 applicant's eligibility to have responsibility for the safety and well-being of children. The information
361 provided to the children's residential facility shall not be disseminated except as provided in this section.

362 C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the
363 children's residential facility to obtain a copy of information from the central registry maintained
364 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant
365 shall provide the children's residential facility with a written statement or affirmation disclosing whether
366 he has ever been the subject of a founded case of child abuse or neglect within or outside the

367 Commonwealth. The children's residential facility shall receive the results of the central registry search
368 prior to permitting an applicant to work alone with children. Children's residential facilities regulated or
369 operated by the Departments of Education; Behavioral Health and Developmental Services; Military
370 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide
371 contractual services, persons who have a founded case of child abuse or neglect. Every residential
372 facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be
373 authorized to obtain a copy of the information from the central registry.

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