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HOUSE BILL NO. 1439

Offered January 9, 2013

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A BILL to amend and reenact §§ 63.2-1726 and 66-24 of the Code of Virginia, relating to background checks required; children's residential facilities regulated by Department of Juvenile Justice.

Patron—Watson

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 63.2-1726 and 66-24 of the Code of Virginia are amended and reenacted as follows:****§ 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, *Juvenile Justice*, 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 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 an applicant to work with children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant'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 applicant 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 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (a) convicted of or are the subject of pending charges for the following crimes: 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; assault 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; 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 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

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§ 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; (b) 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, to be a volunteer, or to provide contractual services; or (c) 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. 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, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

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

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

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

§ 66-24. Community group homes and other residential facilities for certain juveniles; licensure; personnel; summary suspension under certain circumstances; penalty.

A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities of children's residential facilities. The Board shall promulgate regulations that shall allow the Department to so assist and cooperate with other state departments. The Board's regulations shall establish the Department as the single licensing agency, with the exception of educational programs licensed by the Department of Education, for ~~group homes or children's~~ residential facilities providing care of juveniles in direct state care.

B. The Department is authorized to establish and maintain such a system of ~~community group homes or other children's~~ residential ~~care~~ facilities as the Department may from time to time acquire, construct, contract for or rent for the care of juveniles in direct state care, pending development of more permanent placement plans. Any ~~community group home or other children's~~ residential ~~care~~ facility that the Department may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.

Any more permanent placement plans shall consider adequate care and treatment, and suitable education, training and employment for such juveniles, as is appropriate.

C. The Department is further authorized to employ necessary personnel for ~~community group homes~~ ~~or other children's residential care~~ facilities or to contract with private entities for their operation. The Department shall conduct background checks of any individual who (i) accepts a position of employment at a ~~community group home or other children's residential care~~ facility, (ii) volunteers at a ~~community group home or other children's residential care~~ facility on a regular basis and will be alone with a juvenile in the performance of his duties, or (iii) provides contractual services directly to a juvenile in a ~~community group home or other children's residential care~~ facility on a regular basis and will be alone with a juvenile in the performance of his duties, pursuant to § 63.2-1726.

D. The Board shall promulgate regulations for licensure or certification of ~~community group homes~~ ~~or other children's residential care~~ facilities that contract with or are rented for the care of juveniles in direct state care pursuant to subsection B.

The Board's regulations shall address the services required to be provided in ~~such children's residential~~ facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations shall include, but need not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the ~~home or~~ facility; (ii) rules concerning allowable activities, local government- and ~~group home- or residential care~~ facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each ~~home or~~ facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

E. Pursuant to the procedures set forth in subsection F and in addition to any other legally authorized disciplinary actions, the Director may issue a summary order of suspension of the license or certificate of any ~~group home or children's residential~~ facility so regulated by the Department, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the ~~home or~~ facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents and the Director believes the operation of the ~~home or~~ facility should be suspended during the pendency of such proceeding.

F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or certificate holder or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee or certificate holder. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Director or his designee.

After such hearing, the Director may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee or certificate holder may appeal the Director's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Director had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Director may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of the juveniles who are residents of a ~~home or children's residential~~ facility whose license or certificate has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

G. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of ~~the children's residential facilities for children~~, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant ~~children's residential~~ facility.

H. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in ~~children's residential facilities~~ licensed by the Department when such violations result in the lowering of the licensure or certification status of the facility to provisional;

182 2. Post on the Department's website information concerning the application for initial licensure or
183 certification of or renewal, denial, or provisional licensure or certification of any *children's* residential
184 facility ~~for children~~ located in the locality;

185 3. Require all licensees or certificate holders to self-report lawsuits against or settlements with
186 *children's* residential facility operators relating to the health and safety or human rights of residents and
187 any criminal charges that may have been made relating to the health and safety or human rights of
188 residents;

189 4. Require proof of contractual agreements or staff expertise to provide educational services,
190 counseling services, psychological services, medical services, or any other services needed to serve the
191 residents in accordance with the *children's residential facility's* operational plan;

192 5. Modify the term of the license or certificate at any time during the term of the license or
193 certificate based on a change in compliance; and

194 6. Disseminate to local governments, or post on the Department's website, an accurate (updated
195 weekly or monthly as necessary) list of licensed and operating ~~group homes and other~~ *children's*
196 residential facilities ~~for children~~ by locality with information on services and identification of the lead
197 licensure agency.

198 1. As used in this section, "*children's residential facility*" shall have the same meaning as set forth in
199 § 63.2-100.