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SENATE BILL NO. 868

Offered January 9, 2013

Prefiled January 3, 2013

A BILL to amend and reenact §§ 15.2-914, 19.2-389, 19.2-392.02, 22.1-296.3, 32.1-162.9:1, 63.2-1702, 63.2-1704, 63.2-1717, 63.2-1720, and 63.2-1721 through 63.2-1726 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 5 of Title 32.1 an article numbered 8, consisting of a section numbered 32.1-169.15:1, by adding in Title 37.2 a chapter numbered 4.1, consisting of sections numbered 37.2-441, 37.2-442, and 37.2-443, and by adding sections numbered 63.2-1720.1 and 63.2-1721.1 through 63.2-1721.4; and to repeal §§ 32.1-126.01, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 37.2-607, 63.2-901.1, 63.2-1601.1, and 63.2-1719 of the Code of Virginia, relating to criminal history background checks; barrier crimes.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-914, 19.2-389, 19.2-392.02, 22.1-296.3, 32.1-162.9:1, 63.2-1702, 63.2-1704, 63.2-1717, 63.2-1720, and 63.2-1721 through 63.2-1726 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 32.1 an article numbered 8, consisting of a section numbered 32.1-169.15:1, by adding in Title 37.2 a chapter numbered 4.1, consisting of sections numbered 37.2-441, 37.2-442, and 37.2-443, and by adding sections numbered 63.2-1720.1 and 63.2-1721.1 through 63.2-1721.4 as follows:

§ 15.2-914. Regulation of child-care services and facilities in certain counties and cities.

Any (i) county that has adopted the urban county executive form of government, (ii) city adjacent to a county that has adopted the urban county executive form of government, or (iii) city which is completely surrounded by such county may by ordinance provide for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to one or more children not related by blood or marriage while such children are separated from their parent, guardian or legal custodian in a dwelling not the residence of the child during a part of the day for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services.

Such local ordinance shall not require the regulation or licensing of any child-care facility that is licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by § 63.2-1716.

Such local ordinances shall not be more extensive in scope than comparable state regulations applicable to family day homes. Such local ordinances may regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities so long as such regulation remains no more extensive in scope than comparable state regulations applicable to family day homes. Local regulations shall not affect the manner of construction or materials to be used in the erection, alteration, repair or use of a residential dwelling.

Such local ordinances may require that persons who provide child-care services shall provide certification from the Central Criminal Records Exchange and a national criminal background check, in accordance with §§ 19.2-389 and 19.2-392.02, that such persons have not been convicted of any offense involving the sexual molestation of children, the physical or sexual abuse or rape of a child or ~~any offense identified in § 63.2-1719 a barrier crime as defined in § 19.2-392.02~~, and such ordinances may require that persons who provide child-care services shall provide certification from the central registry of the Department of Social Services that such persons have not been the subject of a founded complaint of abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based.

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and

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59 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
60 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
61 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

62 2. Such other individuals and agencies that require criminal history record information to implement
63 a state or federal statute or executive order of the President of the United States or Governor that
64 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
65 conduct, except that information concerning the arrest of an individual may not be disseminated to a
66 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the
67 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
68 pending;

69 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
70 services required for the administration of criminal justice pursuant to that agreement which shall
71 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
72 security and confidentiality of the data;

73 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
74 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
75 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
76 security of the data;

77 5. Agencies of state or federal government that are authorized by state or federal statute or executive
78 order of the President of the United States or Governor to conduct investigations determining
79 employment suitability or eligibility for security clearances allowing access to classified information;

80 6. Individuals and agencies where authorized by court order or court rule;

81 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
82 owned, operated or controlled by any political subdivision, and any public service corporation that
83 operates a public transit system owned by a local government for the conduct of investigations of
84 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
85 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
86 conviction record would be compatible with the nature of the employment, permit, or license under
87 consideration;

88 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.)
89 and their contractors, for the conduct of investigations of individuals who have been offered a position
90 of employment whenever, in the interest of public welfare or safety and as authorized in the
91 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
92 with a conviction record would be compatible with the nature of the employment under consideration;

93 8. Public or private agencies when authorized or required by federal or state law or interstate
94 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
95 adult members of that individual's household, with whom the agency is considering placing a child or
96 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
97 temporary, or permanent basis pursuant to §§ ~~63.2-901.1~~ and 63.2-1505 and 63.2-1721.3, subject to the
98 restriction that the data shall not be further disseminated to any party other than a federal or state
99 authority or court as may be required to comply with an express requirement of law;

100 9. To the extent permitted by federal law or regulation, public service companies as defined in
101 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
102 personal contact with the public or when past criminal conduct of an applicant would be incompatible
103 with the nature of the employment under consideration;

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

106 11. A person requesting a copy of his own criminal history record information as defined in
107 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
108 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
109 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
110 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
111 Compeer; or (vi) any board member or any individual who has been offered membership on the board
112 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

113 12. Administrators and board presidents of and applicants for licensure or registration as a child
114 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
115 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
116 volunteers and *contract service providers* at such facilities, caretakers, and other adults living in family
117 day-care homes or homes approved by family day-care systems, and foster and adoptive parent
118 applicants of private child-placing agencies, pursuant to §§ ~~63.2-1719~~, 63.2-1720, and 63.2-1721, and
119 63.2-1721.2, subject to the restriction that the data shall not be further disseminated by the facility or
120 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;

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 State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), 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, *and hospices* 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 applicants for compensated employment or to provide contract services in licensed nursing homes, licensed home care organizations, home care organizations exempt from licensure under subdivision 3 a or 3 b of § 32.1-162.8, and licensed hospices pursuant to § 32.1-162.9-4 32.1-162.15:1,* subject to the limitations set out in subsection E;

16. ~~Licensed homes for adults, licensed district homes for adults, assisted living facilities and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults or to provide contract services pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720,~~ subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board 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 in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

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

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

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

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment *or to provide contract services*, pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment *or to provide contract services* pursuant to ~~§§ 37.2-506 and 37.2-607~~ § 37.2-441;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment *or to provide contract services* pursuant to ~~§§ 37.2-506 and 37.2-607~~ § 37.2-441;

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 *or is permitted to provide contract services* in any 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~~ § ~~37.2-441~~;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for 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 chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates 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. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

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 § ~~63.2-1601.4~~ ~~63.2-1721.4~~, 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.) 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 § 6.2-1605, 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; and

43. 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.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

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

E. Criminal history information provided to *hospitals*, licensed nursing homes, ~~hospitals and to licensed home care organizations, home care organizations exempt from licensure under subdivision 3 a or 3 b of § 32.1-162.8, and licensed hospices~~ pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ ~~32.1-126.01, 32.1-126.02, and 32.1-162.9; 32.1-162.15.1.~~

F. Criminal history information provided to licensed assisted living facilities, ~~licensed district homes for adults, and licensed adult day-care centers~~ pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § ~~63.1-189.1 or 63.2-1720.~~

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § ~~63.2-1719 63.2-1721.4.~~

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 19.2-392.02. Definitions.

A. For purposes of this section:

"Barrier crime" means any offense set forth in ~~§ 63.2-1719 or 63.2-1726~~ of the following:

1. Crimes against the person, or an equivalent offense in another state:

Capital murder, as set out in § 18.2-31;

First or second degree murder, as set out in § 18.2-32;

Murder of a pregnant woman, as set out in § 18.2-32.1;

Killing of a fetus, as set out in § 18.2-32.2;

Felony homicide, as set out in § 18.2-33;

Voluntary manslaughter, as set out in § 18.2-35;

Involuntary manslaughter, as set out in § 18.2-36, 18.2-36.1, or 18.2-36.2;

Malicious wounding by mob, as set out in § 18.2-41;

Assault or battery by mob, as set out in § 18.2-42;

Abduction, as set out in subsection A or B of § 18.2-47;

Abduction with intent to extort money or for immoral purpose, as set out in § 18.2-48;

Shooting, stabbing, etc., with intent to maim, kill, etc., as set out in § 18.2-51;

Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical service providers, as set out in § 18.2-51.1;

Aggravated malicious wounding, as set out in § 18.2-51.2;

Reckless endangerment, as set out in § 18.2-51.3;

Maiming, etc., of another resulting from driving while intoxicated, as set out in § 18.2-51.4;

Maiming, etc., of another resulting from operating a watercraft while intoxicated, as set out in § 18.2-51.5;

Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire,

305 as set out in § 18.2-52;
306 Possession of infectious biological substances or radiological agents, as set out in § 18.2-52.1;
307 Shooting, etc., in committing or attempting a felony, as set out in § 18.2-53;
308 Use or display of firearm in committing a felony, as set out in § 18.2-53.1;
309 Attempts to poison, as set out in § 18.2-54.1;
310 Adulteration of food, drink, drugs, cosmetics, etc., as set out in § 18.2-54.2;
311 Bodily injuries caused by prisoners, state juvenile probationers and state and local adult
312 probationers, or adult parolees, as set out in § 18.2-55;
313 Hazing of youth gang members, as set out in § 18.2-55.1;
314 Hazing, as set out in § 18.2-56;
315 Reckless handling of firearms, as set out in § 18.2-56.1;
316 Allowing access to firearms by children, as set out in § 18.2-56.2;
317 Assault and battery, as set out in § 18.2-57;
318 Pointing laser at law-enforcement officer, as set out in § 18.2-57.01;
319 Disarming a law-enforcement or correctional officer, as set out in § 18.2-57.02;
320 Assault and battery against a family or household member, as set out in § 18.2-57.2;
321 Robbery, as set out in § 18.2-58;
322 Carjacking, as set out in § 18.2-58.1;
323 Extortion by threat, as set out in § 18.2-59;
324 Threat of death or bodily injury, as set out in § 18.2-60;
325 Any felony stalking offense, as set out in § 18.2-60.3;
326 Any felony violation of a protective order, as set out in § 16.1-253.2 or 18.2-60.4;
327 Rape, as set out in § 18.2-61;
328 Carnal knowledge of child between 13 and 15 years of age, as set out in § 18.2-63;
329 Carnal knowledge of certain minors, as set out in § 18.2-64.1;
330 Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender, as
331 set out in § 18.2-64.2;
332 Forcible sodomy, as set out in § 18.2-67.1;
333 Object sexual penetration, as set out in § 18.2-67.2;
334 Aggravated sexual battery, as set out in § 18.2-67.3;
335 Sexual battery, as set out in § 18.2-67.4;
336 Infected sexual battery, as set out in § 18.2-67.4.1;
337 Sexual abuse of a child under 15 years of age, as set out in § 18.2-67.4.2;
338 Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual
339 battery, as set out in § 18.2-67.5;
340 Third misdemeanor offense of sexual battery or certain other offenses, as set out in § 18.2-67.5.1;
341 or
342 Subsequent offenses of certain felony sexual assault, as set out in § 18.2-67.5.2 or 18.2-67.5.3;
343 2. Crimes against property, or an equivalent offense in another state:
344 Burning or destroying dwelling house, etc., as set out in § 18.2-77;
345 Burning or destroying meeting house, etc., as set out in § 18.2-79;
346 Burning or destroying any other building or structure, as set out in § 18.2-80;
347 Burning or destroying personal property, standing grain, etc., as set out in § 18.2-81;
348 Burning building or structure while in such building or structure with intent to commit a felony, as
349 set out in § 18.2-82;
350 Threats to bomb or damage buildings or means of transportation; false information as to danger to
351 such buildings, etc., as set out in § 18.2-83;
352 Causing, inciting, etc., commission of act proscribed by § 18.2-83, as set out in § 18.2-84;
353 Manufacture, possession, use, etc., of fire bombs or explosive materials or devices, as set out in
354 § 18.2-85;
355 Setting fire to woods, fences, grass, etc., as set out in § 18.2-86;
356 Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized, as set out in
357 § 18.2-87;
358 Setting off chemical bombs capable of producing smoke in certain public buildings, as set out in §
359 18.2-87.1;
360 Carelessly damaging property by fire, as set out in § 18.2-88;
361 Burglary, as set out in § 18.2-89;
362 Entering dwelling house, etc., with intent to commit murder, rape, robbery, or arson, as set out in §
363 18.2-90;
364 Entering dwelling house, etc., with intent to commit larceny, assault and battery, or other felony, as
365 set out in § 18.2-91;
366 Breaking and entering dwelling house with intent to commit other misdemeanor, as set out in §

18.2-92;
 Entering bank, armed, with intent to commit larceny, as set out in § 18.2-93; or
 Possession of burglarious tools, etc., as set out in § 18.2-94;
 3. Felony offenses relating to the manufacturing, selling, giving, distributing, or possessing with
 intent to manufacture, sell, give, or distribute of drugs, or an equivalent offense in another state:
 Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or
 distribute a controlled substance or an imitation controlled substance, as set out in § 18.2-248;
 Transporting controlled substances into the Commonwealth, as set out in § 18.2-248.01;
 Allowing a child to be present during manufacture or attempted manufacture of methamphetamine,
 as set out in § 18.2-248.02;
 Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or
 distribute methamphetamine, as set out in § 18.2-248.03;
 Selling, giving, distributing, or possessing with intent to sell, give, or distribute marijuana, as set out
 in § 18.2-248.1;
 Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or
 distribute synthetic cannabinoids as set out in §18.2-248.1:1;
 Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or
 distribute illegal stimulants and steroids, as set out in § 18.2-248.5;
 Distribution of flunitrazepam, as set out in § 18.2-251.2;
 Distribution of gamma-butyrolactone; 1,4-butanediol, as set out in § 18.2-251.3;
 Distribution of certain drugs to persons under the age of 18, as set out in § 18.2-255;
 Sale or manufacture of drugs on or near certain properties, as set out in § 18.2-255.2;
 Conspiracy, as set out in § 18.2-256;
 Attempts, as set out in § 18.2-257;
 Permitting, keeping, establishing, or maintaining a property deemed a common nuisance, as set out
 in § 18.2-258;
 Maintaining a fortified drug house, as set out in § 18.2-258.02;
 Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit, or forgery,
 as set out in § 18.2-258.1; or
 Assisting individuals in unlawfully procuring prescription drugs, as set out in § 18.2-258.2;
 4. Felony offenses relating to the possession of drugs, or an equivalent offense in another state:
 Possession of controlled substances, as set out in § 18.2-250;
 Possession of flunitrazepam, as set out in § 18.2-251.2;
 Possession of gamma-butyrolactone; 1,4-butanediol, as set out in § 18.2-251.3;
 Conspiracy, as set out in § 18.2-256; or
 Attempts, as set out in § 18.2-257;
 5. Crimes involving health or safety, or an equivalent offense in another state:
 Shooting from vehicles so as to endanger persons, as set out in § 18.2-286.1;
 Possession or use of machine gun for crime of violence, as set out in § 18.2-289;
 Possession or use of a machine gun for aggressive purpose, as set out in § 18.2-290;
 Possession or use of a sawed-off shotgun in a crime of violence, as set out in subsection A of §
 18.2-300; or
 Failing to secure medical attention for an injured child, as set out in § 18.2-314;
 6. Crimes involving morals and decency, or an equivalent offense in another state:
 Taking, detaining, etc., person for prostitution, etc., or consenting thereto, as set out in § 18.2-355;
 Crimes against nature, as set out in § 18.2-361, involving children;
 Incest, as set out in § 18.2-366;
 Abuse or neglect of incapacitated adults, as set out in § 18.2-369;
 Taking indecent liberties with children, as set out in § 18.2-370 or 18.2-370.1;
 Penetration of the mouth of a child with lascivious intent, as set out in § 18.2-370.6;
 Causing or encouraging acts rendering children delinquent, as set out in § 18.2-371, when such acts
 result in a criminal homicide, as set out in subsection C of § 9.1-902, such that the person is required
 to register with the Department of State Police for inclusion in the Sex Offender and Crimes Against
 Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1;
 Abuse or neglect of children, as set out in § 18.2-371.1;
 Production, publication, sale, financing, etc., of child pornography, as set out in § 18.2-374.1;
 Possession, reproduction, distribution, or facilitation of child pornography, as set out in
 § 18.2-374.1:1;
 Use of communications systems to facilitate certain crimes involving children, as set out in §
 18.2-374.3;
 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; or

Unlawful filming, videotaping, or photographing of another as set out in § 18.2-386.1 upon a third or subsequent conviction, when as a result of such third or subsequent conviction the individual is required to register with the Department of State Police for inclusion in the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 *et seq.*) of Title 9.1;

7. Crimes against the administration of justice, or an equivalent offense in another state:

Delivery of drugs firearms, explosives, etc., to prisoners, as set out in § 18.2-474.1; or

Escape from jail, as set out in § 18.2-477; or

8. Any felony offense by prisoners as set out in § 53.1-203.

In the case of a an assisted living facility, adult day care center, child welfare agency, family day home approved by a family day system, or foster or adoptive home approved by a child-placing agency, as defined in § 63.2-100, and in the case of child-care services and facilities regulated and licensed pursuant to a county or city ordinance in accordance with § 15.2-914, the term "barrier crime" shall also include conviction of any other felony, including prior adult convictions within or outside the Commonwealth, unless five years have elapsed since the date of conviction.

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

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

"Department" means the Department of State Police.

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

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

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

"Qualified entity" means a business or organization that provides care to children, the elderly, or the disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt pursuant to subdivision A 10 of § 63.2-1715.

B. Notwithstanding §§ ~~63.2-1719 to 63.2-1720~~, 63.2-1721, 63.2-1721.2, and 63.2-1724, a qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted at any local or state law-enforcement agency and provided the fingerprints to the qualified entity; and

2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document, (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction, (iii) a notice to the provider that the entity may request a background check, (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a 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, 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 record-keeping 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, the elderly or disabled.

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.

§ 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records checks.

A. As a condition of employment, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education shall require any applicant who accepts employment for the first time after July 1, 1998, whether full-time or part-time, permanent or temporary, 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 Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the governing board or administrator, or to a private organization coordinating such records on behalf of such governing board or administrator pursuant to a written agreement with the Department of State Police, that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of the following crimes or their equivalent if from another jurisdiction: any offense set forth in ~~§ 63.2-1719 or 63.2-1726~~ *barrier crime as defined in § 19.2-392.02*, use of a firearm in the commission of a felony as set out in § 18.2-53.1, or an equivalent offense in another state.

B. The Central Criminal Records Exchange shall not disclose information to such governing board, administrator, or private organization coordinating such records regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the governing board, administrator, or private organization coordinating such records shall not be disseminated except as provided in this section. A governing board or administrator employing or previously employing a temporary teacher or a private organization coordinating such records on behalf of such governing board or administrator pursuant to a written agreement with the Department of State Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or administrator of another accredited private or religious elementary or secondary school in which such teacher has accepted employment. Such governing board, administrator, or private organization transferring criminal records information pursuant to this section shall be immune from civil liability for any official act, decision or omission done or made in the performance of such transfer, when such acts or omissions are taken in good faith and are not the result of gross negligence or willful misconduct.

In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State Police may assess a fee for responding to requests required by this section which shall not exceed \$15 per request for a criminal records check.

For purposes of this section, "governing board" or "administrator" means the unit or board or person designated to supervise operations of a system of private or religious schools or a private or religious school accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education.

Nothing in this section or § 19.2-389 shall be construed to require any private or religious school which is not so accredited to comply with this section.

§ 32.1-162.9:1. Drug free workplace; drug testing.

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

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 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.

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

C. 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.

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

Article 8.

Background Checks.

§ 32.1-162.15:1. *Employment for compensation of persons convicted of certain offenses prohibited; background check required.*

A. For the purposes of this article, the term "barrier crime" shall have the same definition as set forth in § 19.2-392.02, except that the term "barrier crime" shall not include a conviction for burglary,

as set out in § 18.2-89; entering dwelling house, etc., with intent to commit murder, rape, robbery, or arson, as set out in § 18.2-90; entering dwelling house, etc., with intent to commit larceny, assault and battery, or other felony, as set out in § 18.2-91; breaking and entering dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; entering bank, armed, with intent to commit larceny, as set out in § 18.2-93; possession of burglarious tools, etc., as set out in § 18.2-94; or any crime set forth in subdivision 3 of § 19.2-392.02, relating to felony offenses related to the manufacturing, selling, giving, distributing, or possessing with the intent to distribute of drugs, or subdivision 4 of § 19.2-392.02, relating to felony offenses relating to the possession of drugs.

B. A licensed nursing home as defined in § 32.1-123, licensed home care organization as defined in § 32.1-162.7, home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8, or hospice as defined in § 32.1-162.1 shall not hire for compensated employment or permit to provide contract services to a resident of such nursing home or person receiving services from such home care organization or hospice any applicant who has been convicted of a barrier crime as defined in subsection A. Each licensed nursing home, licensed home care organization, home care organization exempt from licensure under subdivision 3 a or 3 b of § 32.1-162.8, and hospice shall conduct a criminal history background check pursuant to this section and § 19.2-389 for each applicant for employment or to provide contract services to a resident or person receiving services.

C. Any person desiring to work at a nursing home, home care organization, or hospice required to conduct a criminal background check pursuant to subsection B or to provide contract services to a resident of a nursing home or person receiving services from a home care organization or hospice required to conduct a criminal background check pursuant to subsection B shall provide the nursing home, home care organization, or hospice with a sworn statement or affirmation disclosing any criminal convictions, whether within or outside of the Commonwealth. Any applicant 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.

D. Within 30 days of employment or the granting of permission to provide contract services to a resident or other person receiving services from a nursing home, home care organization, or hospice required to perform a background check pursuant to subsection B, such nursing home, home care organization, or hospice shall obtain criminal history record information from the Central Criminal Records Exchange pursuant to § 19.2-389 for each applicant for employment or to provide contract services. If an applicant is denied employment or the opportunity to provide contract services because of convictions appearing on his criminal history record, the nursing home, home care organization, or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

E. 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.

F. Notwithstanding subsection B, a licensed nursing home, home care organization, or hospice 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.

G. 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.

H. Each nursing home required to perform criminal background checks pursuant to subsection B 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.

I. The provisions of this article shall not apply to any facility set forth in § 32.1-124, nor shall the provisions of this article be construed to authorize or require the interference with or prevention of the establishment or operation of a nursing home for the practice of religious tenets of any recognized church or denomination in the ministrations to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on environmental protection and life safety are complied with.

CHAPTER 4.1.

BACKGROUND CHECKS.

§ 37.2-441. Employment for compensation or use as volunteers or contract service providers of persons convicted of certain offenses prohibited; background checks required.

A. As used in this section, the term "direct care position" means (i) any position that includes responsibility for treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) the immediate supervision of a person in such a position.

B. As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the

674 same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or
675 adult mental health treatment position in another office or program licensed pursuant to this article if
676 the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years
677 prior to the application date for employment. As used in this section, "hire for compensated
678 employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to
679 any mental health or developmental services direct care position within the same licensee licensed
680 pursuant to this article or (b) new employment in any mental health or developmental services direct
681 care position in another office or program of the same licensee licensed pursuant to this article for
682 which the person has previously worked in an adult substance abuse treatment position.

683 C. The Department shall not hire for compensated employment or permit to provide contract services
684 to a person receiving services at a state facility any applicant who has been convicted of a barrier
685 crime as defined in § 19.2-392.02. The Department shall require any applicant for compensated
686 employment in a state facility or to provide contract services to a person receiving services in a state
687 facility, to submit to fingerprinting and provide personal descriptive information to be forwarded along
688 with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau
689 of Investigation (FBI) for the purpose of obtaining national criminal history record information
690 regarding the applicant.

691 D. Private providers licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4, community
692 services boards established pursuant to Chapter 5 (§ 37.2-500 et seq.), and behavioral health authorities
693 established pursuant to Chapter 6 (§ 37.2-600 et seq.) shall not hire for compensated employment in a
694 direct care position or allow to provide contract services in a direct care position to any person
695 receiving services from such private provider, community services board, or behavioral health authority
696 any applicant who has been convicted of a barrier crime as defined in § 19.2-392.02. Each licensed
697 private provider, community services board, and behavioral health authority shall require each applicant
698 for compensated employment or to provide contract services in a direct care position to submit to
699 fingerprinting and provide personal descriptive information to be forwarded through the Central
700 Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining
701 national criminal history record information regarding the applicant.

702 E. Every applicant for employment or to provide contract services required to have a criminal
703 history check pursuant to subsection C or D shall provide the Department, private provider licensed by
704 the Department, community services board, or behavioral health authority with a sworn statement or
705 affirmation disclosing any criminal convictions, whether within or outside of the Commonwealth. Any
706 applicant making a materially false statement when providing such sworn statement or affirmation
707 regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor.

708 F. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
709 no record exists, shall submit a report to (i) the state facility in cases involving an applicant for
710 employment or to provide contract services at a state facility or (ii) the Department in cases involving
711 applicants for employment or to provide contract services in a direct care position with a licensed
712 private provider, community services board, or behavioral health authority. In cases in which a report is
713 submitted to the Department, the Department shall inform the private provider, community services
714 board, or behavioral health authority that the applicant has been convicted of a barrier crime as
715 defined in § 19.2-392.02 or that no record exists. If an applicant is denied employment or the
716 opportunity to provide contract services because of information appearing on his criminal history record
717 and the applicant disputes the information upon which the denial was based, the Central Criminal
718 Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a
719 copy of the criminal history record from the FBI. Information provided to a state facility or the
720 Department shall not be disseminated except as provided in this section.

721 G. Notwithstanding the provisions of subsection D, the Department may hire for compensated
722 employment or permit to provide contractual services to a person receiving services at a state facility,
723 and a licensed private provider, community services board, or behavioral health authority may hire for
724 compensated employment in a direct care position any person who has been convicted of a felony
725 violation relating to the possession of drugs as set out in subdivision 4 of the definition of "barrier
726 crime" as set forth in § 19.2-392.02, if more than five years have elapsed since the date of the
727 conviction and the applicant has paid all required court costs and has satisfied all requirements of his
728 probation or parole and is no longer on probation or parole.

729 H. Notwithstanding the provisions of subsection D, a licensed private provider, community services
730 board, or behavioral health authority may hire for compensated employment at adult substance abuse or
731 adult mental health treatment facilities an applicant who was convicted of a misdemeanor violation
732 relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in
733 § 18.2-56.1; (iii) assault and battery, as set out in subsection A of § 18.2-57; (iv) assault and battery
734 against a family or household member, as set out in subsection A of § 18.2-57.2; (v) any misdemeanor
735 or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in

§ 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; (vi) any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or (v) an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the applicant 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.

I. Notwithstanding the provisions of subsection D, a licensed private provider, community services board, or behavioral health authority may hire for compensated employment at adult substance abuse treatment facilities an applicant who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the applicant has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

J. For the purposes of subsections H and I, the hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections F and G 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 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.

K. Notwithstanding the provisions of subsection D, a licensed private provider, community services board, or behavioral health authority may hire for compensated employment applicants 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 applicant committed the offense while employed in a direct care position.

L. The Department shall require all applicants, as a condition of employment at a state facility or with a licensed private provider, community services board, or behavioral health authority, to consent to and provide 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 for information on any investigation of child abuse or neglect undertaken on them.

M. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record required by this section shall be borne by the applicant, unless the Department, licensed private provider, community services board, or behavioral health authority decides to pay the cost.

N. No person who complies in good faith with the provisions of this section shall 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.

O. The Board may adopt regulations to comply with the provisions of this section.

§ 37.2-442. Children's residential facilities; employment for compensation or use as volunteers or contract service providers of persons convicted of certain offenses prohibited; background checks required.

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 contract 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 undergo a criminal background check pursuant to § 63.2-1726.

§ 37.2-443. Certain individuals employed by the Department; background checks required.

A. The Department shall not hire for compensated employment or permit to provide contract services in a position that (i) receives, monitors, or disburses funds of the Commonwealth or (ii) includes direct contact with an individual receiving services from the Department and requires the employee, volunteer, or contract provider to be alone with an individual receiving services any applicant who has been convicted or is the subject of pending charges for a barrier crime as defined in § 19.2-392.02.

B. As a condition of employment or providing contract services, the Department shall require an applicant for a position described in subsection A 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.

C. Every applicant for employment or to provide contract services required to undergo a criminal history record check pursuant to subsection B shall also provide to the Department a sworn statement or affirmation disclosing any criminal convictions, whether within or outside of the Commonwealth. Any applicant 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.

D. 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 or the opportunity to provide contract services 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. Information provided to a state facility or the Department shall not be disseminated except as provided in this section.

E. Notwithstanding the provisions of subsection A, the Department may hire for compensated employment or permit to provide contract services in a position that (i) receives, monitors, or disburses funds of the Commonwealth or (ii) includes direct contact with an individual receiving services from the Department and requires the employee or contract provider to be alone with an individual receiving services any applicant who has been convicted of a felony violation relating to the possession of drugs as set out in subdivision 4 of the definition of "barrier crime" as set forth in § 19.2-392.02 if more than five years have elapsed since the date of the conviction and the applicant has paid all required court costs and has satisfied all requirements of his probation or parole and is no longer on probation or parole.

F. The cost of obtaining the criminal history record required by this section shall be borne by the applicant, unless the Department decides to pay the cost.

G. Information provided to the Department pursuant to this section shall be available to the Department but shall not be disseminated further, except as permitted by state or federal law.

H. The Board may adopt regulations to comply with the provisions of this section.

§ 63.2-1702. Investigation on receipt of application.

Upon receipt of the application the Commissioner shall cause an investigation to be made of the activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation or, if the applicant is an association, partnership, limited liability company or corporation, the character and reputation of its officers and agents. In the case of child welfare agencies, the financial records of an applicant shall not be subject to inspection if the applicant submits a current balance sheet and income statement accompanied by a letter from a certified public accountant certifying the accuracy thereof and three credit references. In the case of child welfare agencies and assisted living facilities, the character and reputation investigation upon application shall include background checks pursuant to §§ 63.2-1721 and 63.2-1721.1; however, a children's residential facility shall comply with the background check requirements contained in § 63.2-1726.

§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt of complaint; revocation or suspension of registration.

A. Any person who maintains a family day home serving fewer than six children, exclusive of the provider's own children and any children who reside in the home, may apply for voluntary registration. An applicant for voluntary registration shall file with the Commissioner, prior to beginning any such operation and thereafter biennially, an application which shall include, but not be limited to, the following:

1. The name, address, phone number, and social security number of the person maintaining the family day home;

2. The number and ages of the children to receive care;

3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information submitted to the Commissioner; and

4. Documentation that the background check requirements for registered child welfare agencies in Article 3 (§ 63.2-1719 63.2-1720 et seq.) of this chapter have been met.

B. The Board shall adopt regulations for voluntarily registered family day homes that include, but are

not limited to:

1. The criteria and process for the approval of the certificate of registration;
2. Requirements for a self-administered health and safety guidelines evaluation checklist;
3. A schedule for fees to be paid by the providers to the contract organization or to the Department if it implements the provisions of this section for processing applications for the voluntary registration of family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying such homes as eligible or registered;

4. The criteria and process for the renewal of the certificate of registration; and

5. The requirement that upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Commissioner reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a registered family day home is determined by the Commissioner to be in noncompliance with the regulations for voluntarily registered family day homes, the Commissioner shall give reasonable notice to the operator of the nature of the noncompliance and may thereafter revoke or suspend the registration.

C. Upon receiving the application on forms prescribed by the Commissioner, and after having determined that the home has satisfied the requirements of the regulations for voluntarily registered family day homes, the Commissioner shall issue a certificate of registration to the family day home.

D. The Commissioner shall contract in accordance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) with qualified local agencies and community organizations to review applications and certify family day homes as eligible for registration, pursuant to the regulations for voluntarily registered family day homes. If no qualified local agencies or community organizations are available, the Commissioner shall implement the provisions of this section. "Qualified" means demonstrated ability to provide sound financial management and administrative services including application processing, maintenance of records and reports, technical assistance, consultation, training, monitoring, and random inspections.

E. The scope of services in contracts shall include:

1. The identification of family day homes which may meet the standards for voluntary registration provided in subsection A; and

2. A requirement that the contract organization shall provide administrative services, including, but not limited to, processing applications for the voluntary registration of family day homes; certifying such homes as eligible for registration; providing technical assistance, training and consultation with family day homes; ensuring providers' compliance with the regulations for voluntarily registered family day homes, including monitoring and random inspections; and maintaining permanent records regarding all family day homes which it may certify as eligible for registration.

F. The contract organization, upon determining that a family day home has satisfied the requirements of the regulations for voluntarily registered family day homes, shall certify the home as eligible for registration on forms prescribed by the Commissioner. The Commissioner, upon determining that certification has been properly issued, may register the family day home.

G. The provisions of this section shall not apply to any family day home located in a county, city, or town in which the governing body provides by ordinance for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities pursuant to the provisions of § 15.2-914.

§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited private schools; provisional certification; annual statement and documentary evidence required; enforcement; injunctive relief.

A. A preschool or nursery school program operated by a private school accredited by a statewide accrediting organization recognized by the Board of Education or a private school or preschool that offers to preschool-aged children a program accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission and is recognized by the Board of Education, shall be exempt from licensure under this subtitle if it complies with the provisions of this section and meets the requirements of subsection B, C or D.

B. A school described in subsection A shall meet the following conditions in order to be exempt under this subsection:

920 1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory
921 school attendance laws, and children below the age of compulsory school attendance also participate in
922 such instructional programs;

923 2. The instructional programs for children of and below the age of eligibility for school attendance
924 share (i) a specific verifiable common pedagogy, (ii) education materials, (iii) methods of instruction,
925 and (iv) professional training and individual teacher certification standards, all of which are required by
926 a state-recognized accrediting organization;

927 3. The instructional programs described in subdivisions 1 and 2 have mixed age groups of
928 three-year-old to six-year-old children and the number of pupils in the preschool program does not
929 exceed 15 pupils for each instructional adult;

930 4. The instructional program contemplates a three-to-four-year learning cycle under a common
931 pedagogy; and

932 5. Children below the age of eligibility for kindergarten attendance do not attend the instructional
933 program for more than four hours per day.

934 C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment
935 ratio at any one time during the current school year of five children age five or above to one
936 four-year-old child as long as no child in attendance is under age four and the number of pupils in the
937 preschool program does not exceed 12 pupils for each instructional adult.

938 D. A private school or preschool described in subsection A shall meet the following conditions in
939 order to be exempt under this subsection:

940 1. The school offers instructional classes and has been in operation since January 1984.

941 2. The school does not hold itself out as a child care center, child day center, or child day program.

942 3. Children enrolled in the school are at least three years of age and do not attend more than (i)
943 three hours per day and (ii) five days per week.

944 4. The enrolled children attend only one program offered by the school per day.

945 5. The school maintains a certificate or permit issued pursuant to a local government ordinance that
946 addresses health, safety and welfare of the children, such as but not limited to space requirements, and
947 requires annual inspections.

948 E. The school shall file with the Commissioner, prior to the beginning of the school year or calendar
949 year, as the case may be, and thereafter, annually, a statement which includes the following:

950 1. Intent to operate a certified preschool program;

951 2. Documentary evidence that the school has been accredited as provided in subsection A;

952 3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having
953 charge of a child enrolled in the school's preschool program the fact of the program's exemption from
954 licensure;

955 4. Documentary evidence that the physical facility in which the preschool program will be conducted
956 has been inspected (i) before initial certification by the local building official and (ii) within the
957 12-month period prior to initial certification and at least annually thereafter by the local health
958 department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an
959 inspection report which documents that the facility is in compliance with applicable laws and regulations
960 pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire
961 Prevention Code or the Uniform Statewide Building Code;

962 5. Documentation that the school has disclosed the following in writing to the parents, guardians, or
963 persons having charge of a child enrolled in the school's preschool program, and in a written statement
964 available to the general public: (i) the school facility is in compliance with applicable laws and
965 regulations pertaining to food services, health and sanitation, water supply, building codes, and the
966 Statewide Fire Prevention Code or the Uniform Statewide Building Code, (ii) the preschool program's
967 maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff
968 health requirements, and (iv) a description of the school's public liability insurance, if any;

969 6. Qualifications of school personnel who work in the preschool program; and

970 7. Documentary evidence that the private school requires all employees of the preschool and other
971 school employees who have contact with the children enrolled in the preschool program to obtain a
972 criminal record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or
973 continued employment. The school shall not hire or continue employment of any such person who has
974 an offense specified in § 63.2-1719 been convicted of a barrier crime as defined in § 19.2-392.02.

975 All accredited private schools seeking certification of preschool programs shall file such information
976 on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of
977 accredited private schools which comply with the provisions of subsection A.

978 F. A preschool program of a private school that has not been accredited as provided in subsection A,
979 or which has not provided documentation to the Commissioner that it has initiated the accreditation
980 process, shall be subject to licensure.

981 The Commissioner shall issue a provisional certificate to a private school which provides

documentation to the Commissioner that it has initiated the accreditation process. The provisional certificate shall permit the school to operate its preschool program during the accreditation process period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A provisional certificate may be renewed up to an additional year if the accrediting organization provides a statement indicating it has visited the school within the previous six months and the school has made sufficient progress. Such programs shall not be subject to licensure during the provisional certification period.

G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure.

H. If the preschool program of a private school which is accredited as provided in subsection A fails to file the statement and the required documentary evidence, the Commissioner shall notify the school of its noncompliance and may thereafter take such action as he determines appropriate, including notice that the program is required to be licensed.

I. The revocation or denial of the certification of a preschool program shall be subject to appeal pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a final agency decision shall be in accordance with the provisions of the Administrative Process Act.

J. Any person who has reason to believe that a private school falling within the provisions of this section is in noncompliance with any applicable requirement of this section may report the same to the Department, the local department, the local health department, or the local fire marshal, each of which may inspect the school for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

K. Upon receipt of a complaint concerning a certified preschool program of an accredited private school, or of a private school to which provisional certification has been issued, if for good cause shown there is reason to suspect that the school is in noncompliance with any provision of this section or the health or safety of the children attending the preschool program is in danger, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary of the services, personnel, and facilities of the school's program. The school shall afford the Commissioner reasonable opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool program. If, upon completion of the investigation, it is determined that the school is in noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of its noncompliance and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

L. Failure of a private school to comply with the provisions of this section, or a finding that the health and safety of the children attending the preschool program are in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

M. If a private school operates a child day program outside the scope of its instructional classes during the school year or operates a child day program during the summer, the child day program shall be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

N. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices of a private school from obtaining a license pursuant to this subtitle.

§ 63.2-1720. Employment for compensation or use as volunteers or contract service providers of persons convicted of certain offenses prohibited; background checks required; penalty.

A. An assisted living facility, or adult day care center or child welfare agency licensed or registered in accordance with the provisions of this chapter, or family day homes approved by family day systems, shall not hire for compensated employment or permit to provide contract services to persons receiving services from such assisted living facility or adult day care center persons who have an offense as defined in § 63.2-1719. Such employees shall undergo background checks pursuant to subsection D. In the case of child welfare agencies, the provisions of this section shall apply to employees who are involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children *been convicted of a barrier crime as defined in § 19.2-392.02.*

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the conviction.

C. 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 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.

D. 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; in the case of child welfare agencies, 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. In the case of child welfare agencies, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

E. Any person desiring to work as a compensated employee at a licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor.

F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry.

A child welfare agency licensed or registered in accordance with the provisions of this chapter or a family day home approved by a family day system shall not hire for compensated employment or permit to provide contract services to children receiving services from such child welfare agency or family day home persons who have been convicted of a barrier crime as defined in § 19.2-392.02.

C. Every licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system shall conduct a background search pursuant to this section and § 19.2-389 for each applicant for employment or to provide contract services to a person receiving services from such assisted living facility, adult day care center, child welfare agency, or family day home.

D. Any person desiring to work as a compensated employee at or to provide contract services to a person receiving services from a licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system shall provide the assisted living facility, adult day care center, child welfare agency, or family day home with a sworn statement or affirmation disclosing any criminal convictions or pending charges for a barrier crime as defined in § 19.2-392.02, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation is guilty of a Class 1 misdemeanor.

Within 30 days of employment or the granting of permission to provide contract services to a person receiving services from a licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system, such assisted living facility, adult day care center, child welfare agency, or family day home shall obtain criminal history record information from the Central Criminal Records Exchange pursuant to § 19.2-389 for each applicant for employment or to provide contract services to a person receiving services. If an applicant is denied employment or the opportunity to provide contract services from the assisted living facility, adult day care center, child welfare agency, or family day home because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center or, child welfare agency, or family day home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

G. E. No volunteer who has an offense as defined in § 63.2-1719 licensed or registered child welfare agency or family day home approved by a family day system shall be permitted permit any person who has been convicted of a barrier crime as defined in § 19.2-392.02 to serve in a as a volunteer of the licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1 disclosing any criminal convictions or pending charges for a barrier crime as defined in § 19.2-392.02, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation is guilty of a Class 1 misdemeanor.

Such child welfare agency shall obtain for any volunteers, within Within 30 days of commencement of volunteer service, the licensed or registered child welfare agency or family day home approved by a family day system shall obtain a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses barrier crimes specified in § 63.2-1719 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 D + shall be 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 child welfare agency or family day 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 or registered child welfare agency, or a family day home approved by a family day system, 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.

H. 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.

I. 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.

J. 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. The provisions of this section 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.

L. 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. § 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

H. No person who complies in good faith with the provisions of this section shall 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.

I. The provisions of this section 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.

J. Notwithstanding the provisions of subsection A, a licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect if five years have elapsed following the conviction.

K. Notwithstanding the provisions of subsection B, 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 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.

§ 63.2-1720.1. Child welfare agencies and family day homes approved by family day systems; employment for compensation or use as volunteers or providers of contract services of persons who are the subject of founded complaints of child abuse or neglect prohibited; background check required.

A. A child welfare agency licensed or registered in accordance with the provisions of this chapter or a family day home approved by a family day system shall not hire for compensated employment or permit to provide contract services to children receiving services from such child welfare agency or family day home persons who are the subject of founded complaints of child abuse or neglect. Every licensed child welfare agency and family day home approved by a family day system shall obtain, for each applicant for employment or to provide contract services to a child receiving services from such child welfare agency or family day home, a search of the central registry of founded complaints of child abuse and neglect maintained pursuant to § 63.2-1515 for any founded complaints of child abuse and neglect.

B. Any person desiring to work as a compensated employee at or to provide contract services to a child receiving services from a licensed or registered child welfare agency or a family day home approved by a family day system shall provide the child welfare agency or family day home with a sworn statement or affirmation disclosing whether the person has been the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth. Any person making a

1166 materially false statement when providing such sworn statement or affirmation is guilty of a Class 1
1167 misdemeanor.

1168 Within 30 days of employment or the granting of permission to provide contract services to a child
1169 receiving services from a licensed or registered child welfare agency or family day home approved by a
1170 family day system, such child welfare agency or family day home shall obtain, for each applicant for
1171 employment or to provide contract services to a child receiving services, a copy of the information
1172 related to any founded complaints of child abuse or neglect from the central registry maintained
1173 pursuant to § 63.2-1515. If an applicant is denied employment or the opportunity to provide contract
1174 services because of information from the central registry, the child welfare agency or family day home
1175 shall provide a copy of the information obtained from the central registry.

1176 The provisions of this section shall only apply to employees or contract service providers who are
1177 involved in the day-to-day operations of or who are alone with, in control of, or supervising one or
1178 more children receiving services from such child welfare agency or family day home.

1179 C. No licensed or registered child welfare agency or family day home approved by a family day
1180 system shall permit any person who has a founded complaint of child abuse or neglect to serve as a
1181 volunteer at such child welfare agency. Any person wishing to serve as a volunteer at a licensed or
1182 registered child welfare agency or a family day home approved by a family day system shall provide the
1183 child welfare agency or family day home with a sworn statement or affirmation disclosing whether the
1184 person has been the subject of a founded complaint of child abuse or neglect within or without the
1185 Commonwealth. Any person making a materially false statement when providing such sworn statement
1186 or affirmation is guilty of a Class 1 misdemeanor.

1187 Within 30 days of commencement of volunteer service, the licensed or registered child welfare
1188 agency or family day home approved by a family day system shall obtain for each applicant a copy of
1189 the information related to any founded complaints of child abuse or neglect from the central registry
1190 maintained pursuant to § 63.2-1515. If a volunteer is denied service because of information from the
1191 central registry, the child welfare agency or family day home shall provide a copy of the information
1192 obtained from the central registry.

1193 The provisions of this subsection shall apply only to volunteers who will be alone with any child in
1194 the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed
1195 or registered child welfare agency, or a family day home approved by a family day system, whether or
1196 not such parent-volunteer will be alone with any child in the performance of his duties. For the
1197 purposes of this subsection, "parent-volunteer" means an individual who supervises, without pay, a
1198 group of children that includes the parent-volunteer's own child in a program that operates no more
1199 than four hours per day, provided that the parent-volunteer works under the direct supervision of a
1200 person who has received a clearance pursuant to this section.

1201 D. Further dissemination of the background check information is prohibited other than to the
1202 Commissioner's representative or a federal or state authority or court as may be required to comply
1203 with an express requirement of law for such further dissemination.

1204 E. A person who complies in good faith with the provisions of this section shall not be liable for any
1205 civil damages for any act or omission in the performance of duties under this section unless the act or
1206 omission was the result of gross negligence or willful misconduct.

1207 F. The provisions of this section shall not apply to any children's residential facility licensed
1208 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements
1209 contained in § 63.2-1726.

1210 **§ 63.2-1721. Application for licensure as an assisted living facility or adult day care, licensure**
1211 **or registration as a child welfare agency, and approval of a family day home by a family day**
1212 **system; background checks required; penalty.**

1213 A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii)
1214 agents at the time of application who are or will be involved in the day-to-day operations of the child
1215 welfare agency or who are or will be alone with, in control of, or supervising one or more of the
1216 children; and (iii) any other adult living in the home of an applicant for licensure or registration as a
1217 family day home shall undergo a background check. Upon application for licensure as an assisted living
1218 facility, all applicants shall undergo a background check. In addition, foster or adoptive parents
1219 requesting approval by child-placing agencies and operators of family day homes requesting approval by
1220 family day systems, and any other adult residing in the family day home or existing employee or
1221 volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to
1222 their approval.

1223 B. Background checks pursuant to this section require:

1224 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
1225 subject of any pending criminal charges within or outside the Commonwealth and whether or not the
1226 person has been the subject of a founded complaint of child abuse or neglect within or outside the
1227 Commonwealth;

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

3. In the case of child welfare agencies or adoptive or foster parents, 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.

A. The character and reputation investigation required pursuant to § 63.2-1702 for applicants for a licensure of an assisted living facility, licensure or registration of a child welfare agency, or approval as a family day home by a family day system shall include a background check pursuant to this section and § 19.2-389. The following persons shall, upon application for licensure of an assisted living facility, licensure or registration of a child welfare agency, or approval as a family day home by a family day system, undergo a background check prior to the issuance of a license, registration, or approval:

1. Every applicant for a license to operate an assisted living facility;

2. Every applicant for a license or registration to operate a child welfare agency;

3. Every applicant for approval of a family day home by a family day system; and

4. Every adult living in the home of an applicant for licensure or registration to operate a family day home or approval of a family day home by a family day system.

B. Every individual required, pursuant to subsection A, to undergo a background check as part of the character and reputation investigation required by § 63.2-1702 shall submit a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth, 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 when providing such sworn statement or affirmation provided pursuant to subdivision B 4 shall be is 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, F, or G (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) the Commissioner shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an adoptive or foster home; or (iv) a family day system shall not approve a family day home.

C. 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. If any person required to undergo a background check pursuant to subsection A has been convicted of a barrier crime as defined in § 19.2-392.02 and such individual has not been granted a waiver by the Commissioner pursuant to § 63.2-1723, (i) for individuals specified in subdivision A 1, the Commissioner shall not issue a license to operate an assisted living facility, (ii) for individuals specified in subdivision A 2, the Commissioner shall not issue a license or registration to operate a child welfare agency, and (iii) for individuals specified in subdivision A 3 or A 4, a family day system shall not issue approval as 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. 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.

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, 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. 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 felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

H. E. 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

1289 a copy of the information obtained from the central registry or the Central Criminal Records Exchange
1290 or both to the applicant.

1291 I. Further dissemination of the background check information is prohibited other than to the
1292 Commissioner's representative or a federal or state authority or court as may be required to comply with
1293 an express requirement of law for such further dissemination.

1294 J. F. The provisions of this section referring to a sworn statement or affirmation and to prohibitions
1295 on the issuance of a license for any offense shall not apply to any children's residential facility licensed
1296 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements
1297 contained in § 63.2-1726.

1298 **§ 63.2-1721.1. Application for license to operate a child welfare agency or approval as a family**
1299 **day home by a family day system; background checks; founded complaints of child abuse or neglect.**

1300 A. The character and reputation investigation required pursuant to § 63.2-1702 for applicants for a
1301 license or registration as a child welfare agency and investigation and review of applications for
1302 approval of a family day home by a family day system shall include a check of the central registry
1303 maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect for:

1304 1. Every applicant for a license or registration to operate a child welfare agency;

1305 2. Every person who is an agent of an applicant for a license or registration to operate a child
1306 welfare agency at the time an application is made, who is or will be involved in the day-to-day
1307 operations of the child welfare agency, or who is or will be alone with, in control of, or supervising one
1308 or more children receiving services from the child welfare agency;

1309 3. Every applicant for approval of a family day home by a family day system; and

1310 4. Every adult living in the home of an applicant for licensure or registration to operate a family
1311 day home or approval of a family day home by a family day system.

1312 B. Prior to the issuance of a license or registration as a child welfare agency or approval as a
1313 family day home by a family day system, every individual required to have a search of the central
1314 registry maintained pursuant to § 63.2-1515 pursuant to subsection A shall provide a sworn statement or
1315 affirmation disclosing whether the person has been the subject of a founded complaint of child abuse or
1316 neglect within or without the Commonwealth to the Commissioner's representative in the case of an
1317 applicant for licensure or registration as a child welfare agency or to a representative of the family day
1318 system in the case of applicants for approval as a family day home by a family day system.

1319 C. If any person required to undergo a background check pursuant to subsection A has been
1320 convicted of a barrier crime as defined in § 19.2-392.02 and such individual has not been granted a
1321 waiver by the Commissioner pursuant to § 63.2-1723, (i) for individuals specified in subdivision A 1 or
1322 A 2, the Commissioner shall not issue a license or registration to operate a child welfare agency, and
1323 (ii) for individuals specified in subdivision A 3 or A 4, a family day system shall not issue approval as a
1324 family day home.

1325 D. Any person making a materially false statement when providing the sworn statement or
1326 affirmation required pursuant to subsection B is guilty of a Class 1 misdemeanor.

1327 E. Further dissemination of the information obtained from the central registry is prohibited other
1328 than to the Commissioner's representative or a federal or state authority or court as may be required to
1329 comply with an express requirement of law for such further dissemination.

1330 F. If an applicant is denied licensure, registration, or approval because of information from the
1331 central registry, the Commissioner shall provide a copy of the information obtained from the central
1332 registry to the applicant.

1333 G. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on
1334 the issuance of a license for any offense shall not apply to any children's residential facility licensed
1335 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements
1336 contained in § 63.2-1726.

1337 **§ 63.2-1721.2. Approval as foster or adoptive parent by a child-placing agency; placement of**
1338 **children on an emergency, temporary, or permanent basis; background checks required.**

1339 A. Every (i) applicant for approval as a foster or adoptive parent by a child-placing agency; (ii)
1340 individual with whom a child-placing agency is considering placing a child on an emergency,
1341 temporary, or permanent basis, including the birth parent of a child in foster care placement, unless the
1342 birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local
1343 board or birth parent revokes a placement agreement while legal custody remains with the parent,
1344 parents, or guardians pursuant to § 63.2-900; and (iii) adult household member residing in the home of
1345 an individual with whom the child is to be placed on an emergency, temporary, or permanent basis
1346 shall undergo a background check in accordance with this section. A child-placing agency shall not
1347 approve as a foster or adoptive parent any person who has been convicted of a barrier crime as defined
1348 in § 19.2-392.02. A child-placing agency shall not approve as a foster or adoptive home any household
1349 in which an adult household member has been convicted of a barrier crime as defined in § 19.2-392.02.

1350 B. Every individual required to undergo a background check pursuant to subsection A shall provide

the child-placing agency with a sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and shall submit to fingerprinting and provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The child-placing agency shall inform the individual that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final decision is made of the individual's fitness to have responsibility for the safety and well-being of children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an individual's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the child-placing agency whether the individual meets the criteria for having responsibility for the safety and well-being of children based on whether or not the individual has ever been convicted of or is the subject of pending charges for a barrier crime as defined in § 19.2-392.02. Copies of any information received by a child-placing agency pursuant to this section shall be available to the state agency that regulates or operates such a child-placing agency but shall not be disseminated further.

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

D. Notwithstanding the provisions of subsection A, a child-placing agency may place a child on an emergency, temporary, or permanent basis with an individual who has been convicted of not more than one misdemeanor as set forth in § 18.2-57 or 18.2-57.2 not involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following the conviction.

E. Notwithstanding the provisions of subsection A, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor as set forth in § 18.2-57 or 18.2-57.2 not involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following the conviction.

F. Notwithstanding the provisions of subsection A, 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. Notwithstanding the provisions of subsection A, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

H. Notwithstanding the provisions of subsection A, a child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the 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) a felony violation relating to the possession of drugs as set forth in subdivision 4 of the definition of "barrier crime" as set forth in § 19.2-392.02 other than a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor conviction related to burning or destroying a building or structure when the value of the building or structure is less than \$200 as set forth in § 18.2-80, burning or destroying personal property, standing grain, etc., when the value of the thing burnt or destroyed is less than \$200 as set forth in § 18.2-81, threats to bomb or damage buildings or means of transportation or communicating false information as to the danger of such buildings or means of transportation when such person is under 15 years of age pursuant to § 18.2-83, setting woods, etc., on fire intentionally whereby another is damaged or jeopardized pursuant to § 18.2-87, setting off chemical bombs capable of producing smoke in certain public buildings pursuant to § 18.2-87.1, or carelessly damaging property by fire pursuant to § 18.2-88; or (iii) an equivalent offense in another state.

I. State criminal history information obtained from the Central Criminal Records Exchange pursuant to subsection A shall be obtained at no cost to the individual. However, the child-placing agency may require the individual with whom it is considering placing a child to bear the cost of obtaining national

criminal history record information. In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for responding to requests required by this section.

§ 63.2-1721.3. Approval as foster or adoptive parent by a child-placing agency; emergency, temporary, or permanent placement of a child; background checks; founded complaints of child abuse or neglect.

A. Prior to approving an applicant as a foster or adoptive parent or placing a child on an emergency, temporary, or permanent basis, a child-placing agency shall obtain for each applicant for approval as a foster or adoptive parent; each individual with whom a child-placing agency is considering placing a child on an emergency, temporary, or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900; and each adult household member residing in the home of an individual with whom the child is to be placed on an emergency, temporary, or permanent basis a sworn statement disclosing whether the person has been the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth and shall obtain the results of a search of (i) the central registry of child abuse and neglect records maintained pursuant to § 63.2-1515 and (ii) any child abuse and neglect registry maintained by any other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, in which a prospective foster or adoptive parent, individual with whom a child will be placed on an emergency, temporary, or permanent basis, and any other adults residing in the home of a person with whom a child will be placed on an emergency, temporary, or permanent basis has resided in the preceding five years. A child-placing agency shall not approve as a foster or adoptive parent any person who has been the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth. A child-placing agency shall not approve as a foster or adoptive home a household in which an adult household member has been the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth.

B. Any person making a materially false statement when providing the sworn statement or affirmation required pursuant to subsection A is guilty of a Class 1 misdemeanor.

C. Further dissemination of the information obtained from the central registry 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.

D. The provisions of this section 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.

§ 63.2-1721.4. Providers of agency-approved adult services; background checks required.

A. Each local board shall obtain criminal history record information pursuant to this section and § 19.2-389 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 approve as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601 any person who has been convicted of a barrier crime as defined in § 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, a 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 a barrier crime as defined in § 19.2-392.02.

§ 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 or registration of a child welfare agency, ~~an assisted living facility or adult day care center~~, a child-placing agency may revoke the approval of a foster home, and a family day system may revoke the approval of a family day home if the ~~assisted living facility, adult day care center~~, child welfare agency, foster home, or approved family day home has knowledge that (i) a person specified in §§ 63.2-1720 and 63.2-1721, or 63.2-1721.2 required to have a background check has ~~an offense as defined in § 63.2-1719~~ been convicted of a barrier crime as defined in § 19.2-392.02, 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 1 of

§ 63.2-1720 and subsection E, F, G, or H of § ~~63.2-1724~~ 63.2-1721.2, or (ii) a person specified in § 63.2-1720.1, 63.2-1721.1, or 63.2-1721.3 required to have a search of the central registry maintained pursuant to § 63.2-1515 has been the subject of a founded complaint of child abuse or neglect, and the facility, center, or agency child welfare agency, foster home, or family day home refuses to separate such person from employment or service.

B. The Commissioner may revoke or deny renewal of a license or registration of an assisted living facility or an adult day care center if the assisted living facility or adult day care center has knowledge that a person specified in § 63.2-1720 or 63.2-1721 has been convicted of a barrier crime as defined in § 19.2-392.02, and such person is not subject to the exceptions in subsection H of § 63.2-1720, and the facility or center refuses to separate such person from employment or service.

C. Failure to obtain background checks pursuant to §§ 63.2-1720 and ~~63.2-1724~~ through 63.2-1721.3 shall be grounds for denial or revocation of a license, registration, or approval. No violation shall occur if the assisted living facility, adult day care center, or child welfare agency 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, provide contract services, or work at a child welfare agency and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 63.2-1721, and 63.2-1724, 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 a barrier crime as defined in § ~~63.2-1719~~ 19.2-392.02. However, the Commissioner may grant a waiver to a family day home regulated by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, provided (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available for inspection by the public. 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.

§ 63.2-1724. Records check by unlicensed child day center; penalty.

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within 30 days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of § 19.2-389 and shall refuse employment or service to any person who has ~~any offense defined in § 63.2-1719~~ been convicted of a barrier crime as defined in § 19.2-392.02 or has been the subject of a founded complaint of child abuse or neglect. Such center shall also require a prospective employee or volunteer or any other person who is expected to be alone with one or more children in the child day center to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her 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. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry or convictions appearing on his criminal history record, the child day center shall provide a copy of the information obtained from the central registry or Central Criminal Records Exchange or both to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers 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 the child day center 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

1535 which includes the parent-volunteer's own child, in a program ~~which~~ *that* operates no more than four
1536 hours per day, where the parent-volunteer works under the direct supervision of a person who has
1537 received a clearance pursuant to this section.

1538 **§ 63.2-1725. Records checks of child day centers or family day homes receiving federal, state, or**
1539 **local child care funds; penalty.**

1540 Whenever any child day center or family day home that has not met the requirements of
1541 §§ 63.2-1720, 63.2-1720.1, 63.2-1721, 63.2-1721.1, and 63.2-1724 applies to enter into a contract with a
1542 local department to provide child care services to clients of the local department, the local department
1543 shall require a criminal records check pursuant to subdivision A 11 of § 19.2-389, as well as a search of
1544 the central registry maintained pursuant to § 63.2-1515, on any child abuse or neglect investigation, of
1545 the applicant; any employee; prospective employee; volunteers; agents involved in the day-to-day
1546 operation; all agents who are alone with, in control of, or supervising one or more of the children; and
1547 any other adult living in a family day home. The applicant shall provide the local department with
1548 copies of these records checks. The child day center or family day home shall not be permitted to enter
1549 into a contract with a local department for child care services when an applicant; any employee; a
1550 prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with,
1551 in control of, or supervising one or more children; or any other adult living in a family day home has
1552 ~~any offense as defined in § 63.2-1719 been convicted of a barrier crime as defined in § 19.2-392.02 or~~
1553 ~~has been the subject of a founded complaint of child abuse or neglect within or outside of the~~
1554 *Commonwealth*. The child day center or family day home shall also require the above individuals to
1555 provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the
1556 subject of a founded case of child abuse or neglect or (ii) convicted of a crime or is the subject of any
1557 pending criminal charges within the Commonwealth or any equivalent offense outside the
1558 Commonwealth. Any person making a materially false statement regarding any such offense shall be
1559 guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information
1560 from the central registry or convictions appearing on his criminal history record, the child day center or
1561 family day program shall provide a copy of such information obtained from the central registry or
1562 Central Criminal Records Exchange or both to the person. Further dissemination of the information
1563 provided to the facility, beyond dissemination to the local department, is prohibited.

1564 **§ 63.2-1726. Background checks required; children's residential facilities.**

1565 A. As a condition of employment, volunteering or providing services on a regular basis, every *No*
1566 children's residential facility that is regulated or operated by the Departments of Social Services;
1567 Education; Military Affairs; or Behavioral Health and Developmental Services shall ~~require any~~
1568 ~~individual who (i) accepts a position of employment at such a facility who was not employed by that~~
1569 ~~facility prior to July 1, 2007; (ii) volunteers for such a facility on a regular basis and will be alone with~~
1570 ~~a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1,~~
1571 ~~2007; or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and~~
1572 ~~will be alone with a juvenile in the performance of his duties who did not provide such services prior to~~
1573 ~~July 1, 2007; to submit to fingerprinting and to provide personal descriptive information; to be~~
1574 ~~forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the~~
1575 ~~Federal Bureau of Investigation for the purpose of obtaining criminal history record information~~
1576 ~~regarding such applicant (i) hire for compensated employment or (ii) permit to regularly volunteer or~~
1577 ~~provide contract services to a child receiving services from such facility when such volunteer or contract~~
1578 ~~service provider will be alone with a child receiving services in the performance of his duties any~~
1579 ~~person who has been convicted of or is the subject of pending charges for a barrier crime as defined in~~
1580 ~~§ 19.2-392.02. Prior to hiring any person for compensated employment or permitting any person to~~
1581 ~~regularly volunteer or provide contract services to a child receiving services when such volunteer or~~
1582 ~~contract services provider would be alone with a child receiving services in the performance of his~~
1583 ~~duties, each children's residential facility shall conduct a background check as set forth in this section~~
1584 ~~for each such applicant.~~

1585 The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any
1586 background check report and to challenge the accuracy and completeness of any such report and obtain
1587 a prompt resolution before a final determination is made of the applicant's eligibility to have
1588 responsibility for the safety and well-being of children. The applicant shall provide the children's
1589 residential facility with a written statement or affirmation disclosing whether he has ever been convicted
1590 of or is the subject of pending charges for any offense within or outside the Commonwealth. The results
1591 of the criminal history background check must be received prior to permitting an applicant to work with
1592 children.

1593 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
1594 record exists, shall forward it to the state agency which operates or regulates the children's residential
1595 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
1596 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 (i) convicted of or are the subject of pending charges for the following crimes: 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 § 18.2-47 A; 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; 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 § 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 § 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; or (ii) convicted of any felony violation relating to possession of drugs 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 (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. 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. Each applicant for employment or to regularly volunteer or provide contract services to a child receiving services when such volunteer or contract services provider would be alone with a child receiving services in the performance of his duties 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 barrier crime as defined in § 19.2-392.02 within or outside the Commonwealth and shall 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 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 child-placing agency shall inform an applicant who is denied employment or permission to volunteer or provide contract services because of pending charges appearing on his criminal record that he may be eligible for employment or to volunteer or provide contract services when he is no longer the subject of pending charges for a barrier crime as defined in § 19.2-392.02.

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 that operates or regulates the children's residential facility with which the applicant is affiliated and which is responsible for performing the criminal history background check. 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

1658 *applicant is eligible to have responsibility for the safety and well-being of children. If the an applicant*
1659 *is denied employment; or the opportunity to volunteer or provide contract services at a children's*
1660 *residential facility because of information appearing on his criminal history record, and the applicant*
1661 *disputes the information upon which the denial was based, upon written request of the applicant the state*
1662 *agency shall furnish the applicant the procedures for obtaining his criminal history record from the*
1663 *Federal Bureau of Investigation. If the applicant has been permitted to assume duties that do not involve*
1664 *contact with children pending receipt of the report, the children's residential facility is not precluded*
1665 *from suspending the applicant from his position pending a final determination of the applicant's*
1666 *eligibility to have responsibility for the safety and well-being of children. The information provided to*
1667 *the children's residential facility shall not be disseminated except as provided in this section.*

1668 *C. Notwithstanding the provisions of subsection A, a children's residential facility may hire for*
1669 *compensated employment or permit to volunteer or provide contract services persons who have been*
1670 *convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2 if 10 years have*
1671 *elapsed following the conviction, unless the person committed such offense in the scope of his*
1672 *employment, volunteer, or contract services.*

1673 *D. Notwithstanding the provisions of subsection A, a children's residential facility may hire for*
1674 *compensated employment or may permit an individual to volunteer or provide contract services persons*
1675 *who have been convicted of any felony violation relating to the possession of drugs as set out in*
1676 *subdivision 4 of the definition of "barrier crime" set forth in § 19.2-392.02 if more the five years have*
1677 *elapsed since the date of the conviction and such person has paid all required court costs and has*
1678 *satisfied all requirements of his probation or parole and is no longer on probation or parole.*

1679 *E. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the*
1680 *children's residential facility to obtain a copy of information from the central registry maintained*
1681 *pursuant to § 63.2-1515 on any investigation founded complaints of child abuse or neglect undertaken*
1682 *on him for the applicant. The applicant shall provide the children's residential facility with a written*
1683 *statement or affirmation disclosing whether he has ever been the subject of a founded case of child*
1684 *abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the*
1685 *results of the central registry search prior to permitting an applicant to work alone with children.*
1686 *Children's residential facilities regulated or operated by the Departments of Education; Behavioral Health*
1687 *and Developmental Services; Military Affairs; and Social Services shall not hire for compensated*
1688 *employment or allow to volunteer or provide contractual services; persons who have a founded case of*
1689 *child abuse or neglect. Every residential facility for juveniles which that is regulated or operated by the*
1690 *Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central*
1691 *registry.*

1692 *D. F. The cost of obtaining the criminal history record and the central registry information shall be*
1693 *borne by the applicant unless the children's residential facility, at its option, decides to pay the cost.*

1694 *G. Information provided to or received by a children's residential facility pursuant to this section*
1695 *shall be available to the agency that regulates or operates such facility but shall not be disseminated*
1696 *further except as provided in this section.*

1697 *H. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and*
1698 *Developmental Services; and the Department of Military Affairs; may adopt regulations to comply with*
1699 *the provisions of this section. Copies of any information received by a children's residential facility*
1700 *pursuant to this section shall be available to the agency that regulates or operates such facility but shall*
1701 *not be disseminated further. The cost of obtaining the criminal history record and the central registry*
1702 *information shall be borne by the employee or volunteer unless the children's residential facility, at its*
1703 *option, decides to pay the cost.*

1704 **2. That §§ 32.1-126.01, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 37.2-607, 63.2-901.1, 63.2-1601.1,**
1705 **and 63.2-1719 of the Code of Virginia are repealed.**