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HOUSE BILL NO. 1570

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 5, 2015)

(Patron Prior to Substitute—Delegate Orrock)

A *BILL to amend and reenact §§ 15.2-2292, 19.2-389, 19.2-392.02, 63.2-100, 63.2-1702, 63.2-1704, 63.2-1720 through 63.2-1723, 63.2-1725, and 63.2-1734 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.2-1701.1, 63.2-1704.1, 63.2-1720.1 and 63.2-1721.1, relating to regulation of child care providers.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2292, 19.2-389, 19.2-392.02, 63.2-100, 63.2-1702, 63.2-1704, 63.2-1720 through 63.2-1723, 63.2-1725, and 63.2-1734 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.2-1701.1, 63.2-1704.1, 63.2-1720.1 and 63.2-1721.1 as follows:

§ 15.2-2292. Zoning provisions for family day homes.

A. Zoning ordinances for all purposes shall consider a family day home as defined in § 63.2-100 serving one through ~~five~~ *four* children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or § 15.2-914.

B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home as defined in § 63.2-100 serving ~~six~~ *five* through ~~twelve~~ *12* children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within ~~thirty~~ *30* days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator may issue the permit sought. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. Upon such hearing, the local governing body may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under subdivision A 3 of § 15.2-2286.

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

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

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

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

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

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

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

71 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
72 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
73 position of employment whenever, in the interest of public welfare or safety and as authorized in the
74 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
75 with a conviction record would be compatible with the nature of the employment under consideration;

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

83 9. To the extent permitted by federal law or regulation, public service companies as defined in
84 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
85 personal contact with the public or when past criminal conduct of an applicant would be incompatible
86 with the nature of the employment under consideration;

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

89 11. A person requesting a copy of his own criminal history record information as defined in
90 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
91 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
92 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
93 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
94 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
95 Solvers or Crime Line program as defined in § 15.2-1713.1;

96 12. Administrators and board presidents of and applicants for licensure or registration as a child
97 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
98 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
99 volunteers at such facilities, caretakers, and other adults living in family day care homes or homes
100 approved by family day care systems, and foster and adoptive parent applicants of private child-placing
101 agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, and 63.2-1721, and 63.2-1721.1, subject to
102 the restriction that the data shall not be further disseminated by the facility or agency to any party other
103 than the data subject, the Commissioner of Social Services' representative or a federal or state authority
104 or court as may be required to comply with an express requirement of law for such further
105 dissemination;

106 13. The school boards of the Commonwealth for the purpose of screening individuals who are
107 offered or who accept public school employment and those current school board employees for whom a
108 report of arrest has been made pursuant to § 19.2-83.1;

109 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
110 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
111 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

112 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
113 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
114 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to
115 the limitations set out in subsection E;

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

121 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 and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

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 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 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 pursuant to §§ 37.2-506 and 37.2-607;

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

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The 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

183 companies, for the conduct of investigations of applications for employment or for access to facilities,
184 by contractors, leased laborers, and other visitors;

185 35. Any employer of individuals whose employment requires that they enter the homes of others, for
186 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

187 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
188 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
189 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
190 subject to the restriction that the data shall not be further disseminated by the agency to any party other
191 than a federal or state authority or court as may be required to comply with an express requirement of
192 law for such further dissemination, subject to limitations set out in subsection G;

193 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
194 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
195 or have accepted a position related to the provision of transportation services to enrollees in the
196 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
197 program administered by the Department of Medical Assistance Services;

198 38. The State Corporation Commission for the purpose of investigating individuals who are current
199 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
200 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any
201 other provision of law, if an application is denied based in whole or in part on information obtained
202 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the
203 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or
204 its designee;

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

207 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
208 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
209 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
210 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

214 43. The Department of Social Services and directors of local departments of social services for the
215 purpose of screening individuals seeking to enter into a contract with the Department of Social Services
216 or a local department of social services for the provision of child care services for which child care
217 subsidy payments may be provided; and

218 44. Other entities as otherwise provided by law.

219 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
220 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
221 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
222 designated in the order on whom a report has been made under the provisions of this chapter.

223 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
224 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
225 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
226 copy of conviction data covering the person named in the request to the person making the request;
227 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
228 making of such request. A person receiving a copy of his own conviction data may utilize or further
229 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
230 subject, the person making the request shall be furnished at his cost a certification to that effect.

231 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
232 section shall be limited to the purposes for which it was given and may not be disseminated further.

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

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

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations 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 32.1-162.9:1.

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.

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. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children, or the elderly or disabled.

A. For purposes of this section:

"Barrier crime" means any offense set forth in § 63.2-1719 or 63.2-1726.

"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; ~~or the elderly or 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) *is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care*; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children; ~~or the elderly or 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 63.2-1721 and 63.2-1724~~, a 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; or the elderly or disabled for whom the qualified entity provides care.

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

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

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.

§ 63.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a

hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

429 "Child day center" means a child day program offered to (i) two or more children under the age of
430 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
431 more children at any location.

432 "Child day program" means a regularly operating service arrangement for children where, during the
433 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
434 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

435 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
436 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster
437 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or
438 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who
439 serve as or maintain a child-placing agency, shall not be required to be licensed.

440 "Child-protective services" means the identification, receipt and immediate response to complaints
441 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes
442 assessment, and arranging for and providing necessary protective and rehabilitative services for a child
443 and his family when the child has been found to have been abused or neglected or is at risk of being
444 abused or neglected.

445 "Child support services" means any civil, criminal or administrative action taken by the Division of
446 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
447 collect child support, or child and spousal support.

448 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,
449 family day home, family day system, or independent foster home.

450 "Children's residential facility" means any facility, child-caring institution, or group home that is
451 maintained for the purpose of receiving children separated from their parents or guardians for full-time
452 care, maintenance, protection and guidance, or for the purpose of providing independent living services
453 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.
454 Children's residential facility shall not include:

455 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,
456 return annually to the homes of their parents or guardians for not less than two months of summer
457 vacation;

458 2. An establishment required to be licensed as a summer camp by § 35.1-18; and

459 3. A licensed or accredited hospital legally maintained as such.

460 "Commissioner" means the Commissioner of the Department, his designee or authorized
461 representative.

462 "Department" means the State Department of Social Services.

463 "Department of Health and Human Services" means the Department of Health and Human Services
464 of the United States government or any department or agency thereof that may hereafter be designated
465 as the agency to administer the Social Security Act, as amended.

466 "Disposable income" means that part of the income due and payable of any individual remaining
467 after the deduction of any amount required by law to be withheld.

468 "Energy assistance" means benefits to assist low-income households with their home heating and
469 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,
470 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or
471 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance
472 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
473 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

474 "Family day home" means a child day program offered in the residence of the provider or the home
475 of any of the children in care for one through 12 children under the age of 13, exclusive of the
476 provider's own children and any children who reside in the home, when at least one child receives care
477 for compensation. The provider of a licensed or registered family day home shall disclose to the parents
478 or guardians of children in their care the percentage of time per week that persons other than the
479 provider will care for the children. Family day homes serving six five through 12 children, exclusive of
480 the provider's own children and any children who reside in the home, shall be licensed. However, no
481 family day home shall care for more than four children under the age of two, including the provider's
482 own children and any children who reside in the home, unless the family day home is licensed or
483 voluntarily registered. However, a family day home where the children in care are all grandchildren of
484 the provider shall not be required to be licensed.

485 "Family day system" means any person who approves family day homes as members of its system;
486 who refers children to available family day homes in that system; and who, through contractual
487 arrangement, may provide central administrative functions including, but not limited to, training of
488 operators of member homes; technical assistance and consultation to operators of member homes;
489 inspection, supervision, monitoring, and evaluation of member homes; and referral of children to
490 available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical

552 Assistance Services to perform nursing facility pre-admission screenings.

553 "Registered family day home" means any family day home that has met the standards for voluntary
554 registration for such homes pursuant to regulations adopted by the Board and that has obtained a
555 certificate of registration from the Commissioner.

556 "Residential living care" means a level of service provided by an assisted living facility for adults
557 who may have physical or mental impairments and require only minimal assistance with the activities of
558 daily living. The definition of "residential living care" includes the services provided by independent
559 living facilities that voluntarily become licensed.

560 "Social services" means foster care, adoption, adoption assistance, child-protective services, domestic
561 violence services, or any other services program implemented in accordance with regulations adopted by
562 the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of
563 Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14
564 of Title 51.5 provided by local departments of social services in accordance with regulations and under
565 the supervision of the Commissioner for Aging and Rehabilitative Services.

566 "Special order" means an order imposing an administrative sanction issued to any party licensed
567 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A
568 special order shall be considered a case decision as defined in § 2.2-4001.

569 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the
570 Department through which a relative can receive monthly cash assistance for the support of his eligible
571 children.

572 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the
573 Temporary Assistance for Needy Families program for families in which both natural or adoptive
574 parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for
575 Employment Not Welfare (VIEW) participation under § 63.2-609.

576 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social
577 Security Act, as amended, and administered by the Department through which foster care is provided on
578 behalf of qualifying children.

579 **§ 63.2-1701.1. Local government to report business licenses issued to child day centers and family**
580 **day homes.**

581 *The commissioner of the revenue or other local business license official shall report to the*
582 *Department on a quarterly basis the name, address, and contact information of any child day center or*
583 *family day home to which a business license was issued.*

584 **§ 63.2-1702. Investigation on receipt of application.**

585 Upon receipt of the application, the Commissioner shall cause an investigation to be made of the
586 activities, services, and facilities of the applicant and of his character and reputation or, if the applicant
587 is an association, partnership, limited liability company, or corporation, the character and reputation of
588 its officers and agents, and upon receipt of the initial application, an investigation of the applicant's
589 financial responsibility. The financial records of an applicant shall not be subject to inspection if the
590 applicant submits an operating budget and at least one credit reference. In the case of child welfare
591 agencies and assisted living facilities, the character and reputation investigation upon application shall
592 include background checks pursuant to § §§ 63.2-1721 and 63.2-1721.1; however, a children's residential
593 facility shall comply with the background check requirements contained in § 63.2-1726. Records that
594 contain confidential proprietary information furnished to the Department pursuant to this section shall be
595 exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5.

596 **§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt**
597 **of complaint; revocation or suspension of registration.**

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

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

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

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

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

610 B. The Board shall adopt regulations for voluntarily registered family day homes that include, but are
611 not limited to:

612 1. The criteria and process for the approval of the certificate of registration;

613 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.

§ 63.2-1704.1. Unlicensed and unregistered family day homes; notice to Department; notice to parents.

A. Every unlicensed and unregistered family day home shall, prior to beginning such operation and annually thereafter, submit the following to the Commissioner:

1. A statement of intent to operate an unlicensed, unregistered family day home serving fewer than five children, exclusive of the provider's own children and any children who reside in the home;

2. The name, address, and telephone number of the person maintaining the family day home; and

3. A statement that the person who maintains the family day home has provided the notice required by subsection B to the parents of every child for whom care is provided.

B. Every unlicensed, unregistered family day home shall provide written notice to the parents of every child receiving care, at the time the family day home begins providing care for the child, stating that the family day home is not regulated by the Department and referring parents to a website maintained by the Department for additional information regarding licensed, registered, and unlicensed, unregistered family day homes.

§ 63.2-1720. Assisted living facilities and adult day care centers; employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

A. A No assisted living facility, adult day care center or child welfare agency licensed or registered, child-placing agency, independent foster home, or family day system licensed in accordance with the

provisions of this chapter, or *registered family day homes* or family day homes approved by family day systems, shall ~~not~~ hire for compensated employment persons who have an offense as defined in § 63.2-1719. ~~Such employees~~ *All applicants for employment* shall undergo background checks pursuant to subsection D C. ~~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.~~

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 *subsection A* require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of ~~child welfare agencies~~ *licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems*, 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~~ *records* check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of ~~child welfare agencies~~ *licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems*, 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. ~~D.~~ Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D C 1 shall be is guilty of a Class 1 misdemeanor.

F. ~~E.~~ A licensed assisted living facility, licensed adult day care center, a licensed ~~or child-placing agency, licensed independent foster home, licensed family day system, registered child welfare agency, or a family day home.~~ or 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 child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems,~~ a copy of the information from the central registry for any compensated employee within 30 days of employment. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult day care center ~~or child welfare agency, child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system~~ shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

G. ~~F.~~ No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed ~~or registered~~ child welfare agency ~~child-placing agency, independent foster home, or family day system, registered family day home, or a family day home approved by a family day system.~~ Any person desiring to volunteer at such a ~~child welfare agency~~ *licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system* shall provide the agency, system, or home with a sworn statement or affirmation pursuant to subdivision D C 1. Such ~~child welfare agency~~ *licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system* shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or

affirmation provided pursuant to subdivision D C 1 ~~shall be~~ is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such ~~child welfare agency licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system~~ 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 child-placing agency, independent foster home, or family day system, registered family day home, 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. G. 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. H. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

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

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

§ 63.2-1720.1. Licensed child day centers and licensed family day homes; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center or family day home licensed in accordance with the provisions of this chapter shall hire for compensated employment or permit to serve as a volunteer in a position that is involved in the day-to-day operations of the child day center or family day home or in which the employee or volunteer will be alone with, in control of, or supervising children any person who has an offense as defined in § 63.2-1719. All applicants for employment or to serve as volunteers shall undergo a background check in accordance with subsection B.

B. Any applicant required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

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

3. Authorize the child day center or family day home to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department, and the Department shall report to the child day center or family day home whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center or family day home.

C. The child day center or family day home shall inform every applicant for compensated employment or to serve as a volunteer required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of

798 *the applicant's eligibility to have responsibility for the safety and well-being of children.*

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

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

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

807 *G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated*
808 *employment persons who have been convicted of not more than one misdemeanor offense under*
809 *§ 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense*
810 *while employed in a child day center or the object of the offense was a minor.*

811 *H. Fees charged for the processing and administration of background checks pursuant to this section*
812 *shall not exceed the actual cost to the state of such processing and administration.*

813 **§ 63.2-1721. Background check upon application for licensure as a child-placing agency, etc.;**
814 **penalty.**

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

827 *B. Background checks pursuant to this section subsection A require:*

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

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

834 *3. In the case of ~~child welfare agencies~~ child-placing agencies, independent foster homes, family day*
835 *systems, and family day homes, or adoptive or foster parents, a search of the central registry maintained*
836 *pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.*

837 *C. The character and reputation investigation pursuant to § 63.2-1702 shall include background*
838 *checks pursuant to subsection B of persons specified in subsection A. The applicant person required to*
839 *have a background check pursuant to subsection A shall submit the background check information*
840 *required in subsection B to the Commissioner's representative prior to issuance of a license, registration*
841 *or approval. The applicant shall provide an original criminal record clearance with respect to offenses*
842 *specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records*
843 *Exchange. Any person making a materially false statement regarding the sworn statement or affirmation*
844 *provided pursuant to subdivision B 1 shall be is guilty of a Class 1 misdemeanor. If any person*
845 *specified in subsection A required to have a background check has any offense as defined in*
846 *§ 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to*
847 *§ 63.2-1723 or is not subject to an exception in subsections subsection E, F, or G, (i) the Commissioner*
848 *shall not issue a license or registration to a ~~child welfare agency~~ child-placing agency, independent*
849 *foster home, or family day system, or a registration to a family day home; (ii) the Commissioner shall*
850 *not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an*
851 *adoptive or foster home; or (iv) a family day system shall not approve a family day home.*

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

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

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant 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 *that* 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided *that* 10 years have elapsed following the conviction.

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

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

§ 63.2-1721.1. Background check upon application for licensure as child day center or family day home; penalty.

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

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

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

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

3. Authorize the Department to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding the individual. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data.

C. If any person specified in subsection A required to have a background check has an offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723, no license as a child day center or family day home shall be granted.

D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center or family day home.

E. No person specified in subsection A shall be involved in the day-to-day operations of the child day center or family day home, or shall be alone with, in control of, or supervising one or more children without first having completed any required background check pursuant to subsection B.

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

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

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

924 *1. Fees charged for the processing and administration of background checks pursuant to this section*
925 *shall not exceed the actual cost to the state of such processing and administration.*

926 **§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain**
927 **background check.**

928 A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare
929 agency, an assisted living facility, or adult day care center; a child-placing agency may revoke the
930 approval of a foster home; and a family day system may revoke the approval of a family day home if
931 the assisted living facility, adult day care center, child welfare agency, foster home, or approved family
932 day home has knowledge that a person specified in §§ § 63.2-1720 and, 63.2-1720.1, 63.2-1721, or
933 63.2-1721.1 required to have a background check has an offense as defined in § 63.2-1719, and such
934 person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to
935 the exceptions in subsection B of § 63.2-1720 and, subsection G of § 63.2-1720.1, or subsection E, F, or
936 G of § 63.2-1724 63.2-1721.1, and the facility, center, or agency refuses to separate such person from
937 employment or service.

938 B. Failure to obtain background checks pursuant to §§ 63.2-1720 and, 63.2-1720.1, 63.2-1721, and
939 63.2-1721.1 shall be grounds for denial or revocation of a license, registration, or approval. No violation
940 shall occur if the assisted living facility, adult day care center or child welfare agency, child-placing
941 agency, independent foster home, family day system, family day home, or child day center has applied
942 for the background check timely and it has not been obtained due to administrative delay. The
943 provisions of this section shall be enforced by the Department.

944 **§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.**

945 A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is
946 disqualified because of a criminal conviction or a criminal conviction in the background check of any
947 other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720,
948 63.2-1720.1, 63.2-1721, 63.2-1721.1, and 63.2-1724, may apply in writing for a waiver from the
949 Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the
950 person is of good moral character and reputation and (ii) the waiver would not adversely affect the
951 safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any
952 person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the
953 Commissioner may grant a waiver to a family day home regulated licensed or registered by the
954 Department if any other adult living in the home of the applicant or provider has been convicted of not
955 more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, provided that (a) five years have
956 elapsed following the conviction and (b) the Department has conducted a home study that includes, but
957 is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination
958 that the offender is now a person of good moral character and reputation. The waiver shall not be
959 granted if the adult living in the home is an assistant or substitute provider or if such adult has been
960 convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this
961 section shall be available for inspection by the public. The child welfare agency shall notify in writing
962 every parent and guardian of the children in its care of any waiver granted for its operators, employees
963 or volunteers.

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

965 **§ 63.2-1725. Child day centers or family day homes receiving federal, state, or local child care**
966 **funds; eligibility requirements.**

967 Whenever any Every child day center or family day home that has not met the requirements of
968 §§ 63.2-1720, 63.2-1721, and 63.2-1724 applies to enter enters into a contract with the Department or a
969 local department to provide child care services to clients of the Department or local department, the
970 Department or local department shall require a criminal records check pursuant to subdivision A 43 of
971 § 19.2-389, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child
972 abuse or neglect investigation; of the applicant; any employee; prospective employee; volunteers; agents
973 involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or
974 more of the children; and any other adult living in a family day home. The applicant shall provide the
975 Department or local department with copies of these records checks. The child day center or family day
976 home shall not be permitted to enter into a contract with the Department or a local department for child
977 care services when an applicant; any employee; a prospective employee; a volunteer; an agent involved
978 in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or
979 any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day
980 center or family day home shall also require the above individuals to provide a sworn statement or
981 affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child
982 abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the

Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information from the central registry or convictions appearing on his criminal history record, the child day center or family day program shall provide a copy of such information obtained from the central registry or Central Criminal Records Exchange or both to the person. Further dissemination of the information provided to the facility, beyond dissemination to the Department, agents of the Department, or the local department, is prohibited which is funded, in whole or in part, by the Child Care and Development Block Grant shall comply with all requirements for eligibility established by federal law and regulation.

§ 63.2-1734. Regulations for child welfare agencies.

A. The Board shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. *Such regulations shall include provisions requiring licensed or registered child day centers and family day homes to notify the parent of every child enrolled in the child day center or family day home, in writing, of any emergency situation that occurs while the child is receiving care, within 48 hours of the occurrence of such emergency.*

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency.

Such regulations shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

B. The Board shall adopt or amend regulations, policies and procedures related to child day care in collaboration with the Virginia Recreation and Park Society. No regulation adopted by the Board shall prohibit a child day center from hiring an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, to provide protection for children placed in the care of the child day center or employees of the center. The Board shall adopt or amend regulations related to therapeutic recreation programs in collaboration with the Virginia Park and Recreation Society and the Department of Behavioral Health and Developmental Services.

2. That the provisions of this act related to national criminal history background checks for criminal history background checks pursuant to §§ 63.2-1720.1 and 63.2-1721.1 as added by this act shall become effective on July 1, 2017.

3. That the Department of Social Services shall develop and make available to child care providers, child day centers, and family day homes training and technical information and assistance regarding compliance with new licensure requirements established pursuant to this act.

4. That the Department of Social Services shall develop recommendations related to appropriate criminal and civil penalties for individuals who operate or engage in the conduct of a child day center or family day home without first obtaining a license or after such license has been revoked or has expired and not been renewed or who operate or engage in the conduct a child day center or family day home serving more children than the maximum stipulated in the license but shall not develop recommendations related to penalties for failure to comply with § 63.2-1704.1 as added by this act, and the Department shall report its recommendations to the Governor and the General Assembly by December 1, 2015.

5. That the Department of Social Services shall report on requirements established by the Child Care and Development Block Grant to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by December 1, 2015.