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HOUSE BILL NO. 1931

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact §§ 19.2-389, 19.2-392.02, 63.2-901.1, 63.2-1702, and 63.2-1720 through 63.2-1726 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.2-1720.1 and 63.2-1721.1, relating to regulation of child welfare agencies; national criminal history record checks.

Patrons—Anderson, Hester, Peace and Torian

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 19.2-392.02, 63.2-901.1, 63.2-1702, and 63.2-1720 through 63.2-1726 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.2-1720.1 and 63.2-1721.1 as follows:

§ 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;

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

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

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

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

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or

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59 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
60 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
61 the data shall not be further disseminated to any party other than a federal or state authority or court as
62 may be required to comply with an express requirement of law;

63 9. To the extent permitted by federal law or regulation, public service companies as defined in
64 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
65 personal contact with the public or when past criminal conduct of an applicant would be incompatible
66 with the nature of the employment under consideration;

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

69 11. A person requesting a copy of his own criminal history record information as defined in
70 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
71 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
72 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
73 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
74 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
75 Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

89 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
90 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
91 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

101 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
102 § 4.1-103.1;

103 18. The State Board of Elections and authorized officers and employees thereof and general registrars
104 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
105 voter registration, limited to any record of felony convictions;

106 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
107 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
108 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

116 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
117 Department for the purpose of determining an individual's fitness for employment pursuant to
118 departmental instructions;

119 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious
120 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 companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

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

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

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

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained

182 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the
183 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or
184 its designee;

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

187 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
188 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
189 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
190 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

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

198 44. Other entities as otherwise provided by law.

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

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

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

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

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

225 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
226 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
227 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

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

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

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

242 **§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**
243 **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.

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

A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry ~~of~~, *in accordance with the provisions of § 63.2-1721.1 and regulations adopted by the Board*, for (i) any individual with whom the local board or licensed child-placing agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900. ~~The local board or licensed child-placing agency shall also obtain such background checks on all, and (ii) any adult household members residing in the home of the individual with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be at no cost to the individual. The local board or licensed child-placing agency shall pay for the national fingerprint criminal history record records check or may require such individual to pay the cost of the fingerprinting or the national fingerprinting criminal history record records check or both. In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for responding to requests required by this section.~~

B. Background checks pursuant to this section require the following:

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

2. That the individual submit to fingerprinting and provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final decision is made of the individual's fitness to have responsibility for the safety and well-being of children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an individual's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the local board or licensed child-placing agency whether the individual meets the criteria for having responsibility for the safety and well-being of children based on whether or not the individual has ever been convicted of or is the subject of pending charges set forth in § 63.2-1719 or an equivalent set forth in another state. Copies of any information received by a local board or licensed child-placing agency pursuant to this section shall be available to the state agency that regulates or operates such a child-placing agency but shall not be disseminated further; and

3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in which a prospective parent or other adult in the home has resided in the preceding five years.

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

D. C. Any individual with whom the local board is considering placing a child on an emergency basis shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam

Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, for any founded complaint of child abuse or neglect. The search of the central registry must occur prior to emergency placement. Such central registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall provide a written statement of affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not approve individuals with a founded complaint of child abuse as foster or adoptive parents.

E. D. The child-placing agency shall not approve a foster or adoptive home if any individual has a record of an offense defined in § 63.2-1719 or a founded complaint of abuse or neglect as maintained in registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 et seq. A child-placing agency may approve as a foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57, not involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following the conviction.

E. E. A local board or child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the local board or child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, but not including a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.

§ 63.2-1702. Investigation on receipt of application.

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

§ 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. ~~An~~ No assisted living facility, or adult day care center or child welfare agency licensed or registered in accordance with the provisions of this chapter, or family day homes approved by family day systems, shall not hire for compensated employment 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, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and

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, 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

428 sworn statement or affirmation pursuant to subdivision D 1. D. Any person making a materially false
429 statement regarding the sworn statement or affirmation provided pursuant to subdivision D C 1 shall be
430 is guilty of a Class 1 misdemeanor.

431 F. E. A licensed assisted living facility, or licensed adult day care center, a licensed or registered
432 child welfare agency, or a family day home approved by a family day system shall obtain for any
433 compensated employees within 30 days of employment (i) an original criminal record clearance with
434 respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from
435 the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare
436 agencies or family day homes approved by family day systems, a copy of the information from the
437 central registry for any compensated employee within 30 days of employment. However, no employee
438 shall be permitted to work in a position that involves direct contact with a person or child receiving
439 services until an original criminal record clearance or original criminal history record has been received,
440 unless such person works under the direct supervision of another employee for whom a background
441 check has been completed in accordance with the requirements of this section. If an applicant is denied
442 employment because of information from the central registry or convictions appearing on his criminal
443 history record, the assisted living facility, or adult day care center or child welfare agency shall provide
444 a copy of the information obtained from the central registry or the Central Criminal Records Exchange
445 or both to the applicant.

446 G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a
447 licensed or registered child welfare agency or a family day home approved by a family day system. Any
448 person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn
449 statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any
450 volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from
451 the central registry and (ii) an original criminal record clearance with respect to offenses specified in
452 § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any
453 person making a materially false statement regarding the sworn statement or affirmation provided
454 pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service
455 because of information from the central registry or convictions appearing on his criminal history record,
456 such child welfare agency shall provide a copy of the information obtained from the central registry or
457 the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall
458 apply only to volunteers who will be alone with any child in the performance of their duties and shall
459 not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a
460 family day home approved by a family day system, whether or not such parent-volunteer will be alone
461 with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay,
462 a group of children that includes the parent-volunteer's own child in a program that operates no more
463 than four hours per day, provided that the parent-volunteer works under the direct supervision of a
464 person who has received a clearance pursuant to this section.

465 H. F. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult
466 day care center without the permission or under the supervision of a person who has received a
467 clearance pursuant to this section.

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

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

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

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

480 § 63.2-1720.1. *Child welfare agencies and family day homes approved by family day systems;
481 employment for compensation or use as volunteers of persons convicted of or found to have
482 committed certain offenses prohibited; national background check required; penalty.*

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

C. The child welfare agency or family day home approved by a family day system 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 the applicant's eligibility to have responsibility for the safety and well-being of children.

D. 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.

E. 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.

F. 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.

G. 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.

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

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

§ 63.2-1721. Background check upon application for licensure as an assisted living facility; penalty.

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

B. 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 whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and

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 or adoptive or foster parents, a search of the central registry maintained pursuant to ~~§ 63.2-1515~~ for any founded complaint of child abuse and neglect.

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

D. No person specified in subsection A shall be involved in the day-to-day operations of a child welfare agency; be alone with, in control of, or supervising one or more children receiving services from a child welfare agency; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B, unless such person is directly supervised by another person for whom a background check 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 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

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

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

I. *F.* 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 welfare agency; background check for applicants for approval as family day home by a family day system; background check of foster or adoptive parents approved by child-placing agencies; penalty.

A. Every (i) applicant for licensure as a child welfare agency; (ii) agent of an applicant for licensure as a child welfare agency at the time of application who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more of the children; (iii) applicant for approval as a family day home by a family day system; (iv) agent of an applicant for approval as a family day home by a family day system who is or will be involved in the day-to-day operations of the family day home or who is or will be alone with, in control of, or supervising one or more children; (v) adult living in the home of an applicant for approval as a family day home by a family day system; (vi) foster or adoptive parent requesting approval by a child-placing agency; or (vii) adult household member residing in the home of a foster or adoptive parent requesting approval by a child-placing agency shall undergo a background check in accordance with subsection B prior to issuance of a license as a child welfare agency, approval as a family day home by a family day system, or approval as a foster or adoptive parent by a child-placing agency.

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 in the case of individuals described in clause (i) or (ii) of subsection A, the family day system in the case of individuals described in clause (iii), (iv), or (v) of subsection A, or the child-placing agency in the case of individuals described in clause (vi) or (vii) of subsection A 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. In the case of individuals described in clause (vi) or (vii) of subsection A, the search shall also include a search of the child abuse and neglect registry maintained by any other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, in which a prospective parent or other adult in the home has resided in the preceding five years.

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. For individuals described in clause (iii), (iv), or (v) of subsection A, the Department shall report to the family day system whether the applicant is eligible to have responsibility for the safety and well-being of children. For individuals described in clause (vi) or (vii) of subsection A, the Department shall report to the child-placing agency 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.

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, (i) no license as a child welfare agency shall be granted if the individual is described in clause (i) or (ii) of subsection A; (ii) no approval as a family day home shall be granted by the family day system if the individual is described in clause (iii), (iv), or (v) of subsection A; and (iii) no child-placing agency shall approve the individual as a foster or adoptive parent if the individual is described in clause (vi) or (vii) of subsection A.

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 or denial of a license as a child welfare agency, approval as a family day home by a family day system, or approval as a foster or adoptive parent by a child-placing agency.

E. No person specified in subsection A shall be involved in the day-to-day operations of the child welfare agency or family day home approved by a family day system, 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. 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 moral turpitude or the abuse or neglect of a minor, provided 10 years have elapsed following the conviction.

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling, home, or other structure with intent to commit larceny who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

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

J. If an applicant is denied licensure 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.

K. 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

674 *with an express requirement of law for such further dissemination.*

675 *L. Fees charged for the processing and administration of background checks pursuant to this section*
 676 *shall not exceed the actual cost to the state of such processing and administration.*

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

681 **§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain**
 682 **background check.**

683 A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare
 684 agency, an assisted living facility, or adult day care center; a child-placing agency may revoke the
 685 approval of a foster home; and a family day system may revoke the approval of a family day home if
 686 the assisted living facility, adult day care center, child welfare agency, foster home, or approved family
 687 day home has knowledge that a person specified in §§ § 63.2-1720 and, 63.2-1720.1, 63.2-1721, or
 688 63.2-1721.1 required to have a background check has an offense as defined in § 63.2-1719, and such
 689 person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to
 690 the exceptions in subsection D of § 63.2-901.1, subsection B of § 63.2-1720 and, subsection G of
 691 § 63.2-1720.1, or subsection E, G, H, or I of § 63.2-1721.1, and the facility, center, or agency
 692 refuses to separate such person from employment or service.

693 B. Failure to obtain background checks pursuant to §§ 63.2-1720 and, 63.2-1720.1, 63.2-1721, and
 694 63.2-1721.1 shall be grounds for denial or revocation of a license, registration, or approval. No violation
 695 shall occur if the assisted living facility, adult day care center, or child welfare agency has applied for
 696 the background check timely and it has not been obtained due to administrative delay. The provisions of
 697 this section shall be enforced by the Department.

698 **§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.**

699 A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is
 700 disqualified because of a criminal conviction or a criminal conviction in the background check of any
 701 other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720,
 702 63.2-1720.1, 63.2-1721, 63.2-1721.1, and 63.2-1724, may apply in writing for a waiver from the
 703 Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the
 704 person is of good moral character and reputation and (ii) the waiver would not adversely affect the
 705 safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any
 706 person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the
 707 Commissioner may grant a waiver to a family day home regulated by the Department if any other adult
 708 living in the home of the applicant or provider has been convicted of not more than one misdemeanor
 709 offense under § 18.2-57 or § 18.2-57.2, provided (a) five years have elapsed following the conviction
 710 and (b) the Department has conducted a home study that includes, but is not limited to, (1) an
 711 assessment of the safety of children placed in the home and (2) a determination that the offender is now
 712 a person of good moral character and reputation. The waiver shall not be granted if the adult living in
 713 the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor
 714 offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available
 715 for inspection by the public. The child welfare agency shall notify in writing every parent and guardian
 716 of the children in its care of any waiver granted for its operators, employees or volunteers.

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

718 **§ 63.2-1724. Records check by unlicensed child day center; penalty.**

719 Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a
 720 prospective employee or volunteer or any other person who is expected to be alone with one or more
 721 children enrolled in the child day center to obtain within 30 days of employment or commencement of
 722 volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded
 723 complaint of child abuse or neglect and a sworn statement or affirmation, a criminal history records
 724 check as provided in subdivision A 11 of § 19.2-389. However, no employee shall be permitted to work
 725 in a position that involves direct contact with a child until an original criminal record clearance or
 726 original criminal history record has been received, unless such person works under the direct supervision
 727 of another employee for whom a background check has been completed in accordance with the
 728 requirements of this section, and a search of the central registry maintained pursuant to § 63.2-1515 in
 729 accordance with subsection B of § 63.2-1720.1. A child day center that is exempt from licensure
 730 pursuant to § 63.2-1716 shall refuse employment or service to any person who has any offense defined
 731 in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other person
 732 who is expected to be alone with one or more children in the child day center to provide a sworn
 733 statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a
 734 founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending
 735 criminal charges for any offense within the Commonwealth or any equivalent offense outside the

~~Commonwealth.~~ The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense ~~shall be~~ *is* guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry or convictions appearing on his criminal history record, the child day center shall provide a copy of the information obtained from the central registry or Central Criminal Records Exchange or both to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending the child day center whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

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

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

Whenever any child day center or family day home that has not met the requirements of §§ 63.2-1720, 63.2-1721, 63.2-1720.1, 63.2-1721.1, and 63.2-1724 applies to enter into a contract with the Department or a local department to provide child care services to clients of the Department or local department, the Department or local department shall require *a sworn statement or affirmation*, a criminal history records check, ~~pursuant to subdivision A 43 of § 19.2-389, as well as and~~ a search of the central registry maintained pursuant to § 63.2-1515, ~~on any child abuse or neglect investigation, or in accordance with subsection B of § 63.2-1720.1, for the applicant; any employee; a prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home.~~ The applicant shall provide the Department or local department with copies of these records checks. The child day center or family day home shall not be permitted to enter into a contract with the Department or a local department for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day center or family day home shall also require the above individuals to provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child 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~~ *is* 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. *Fees charged for the processing and administration of background checks pursuant to this section shall not exceed the actual cost to the state of such processing and administration.*

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

A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2007, to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any

797 such report and obtain a prompt resolution before a final determination is made of the applicant's
798 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the
799 children's residential facility with a written statement or affirmation disclosing whether he has ever been
800 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth.
801 The results of the criminal history background check must be received prior to permitting an applicant
802 to work with children.

803 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
804 record exists, shall forward it to the state agency which operates or regulates the children's residential
805 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
806 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are
807 available in order to obtain complete data. The state agency shall report to the children's facility whether
808 the applicant is eligible to have responsibility for the safety and well-being of children. Except as
809 otherwise provided in subsection B, no children's residential facility regulated or operated by the
810 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social
811 Services shall hire for compensated employment or allow to volunteer or provide contractual services
812 persons who have been (a) convicted of or are the subject of pending charges for the following crimes:
813 a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in
814 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in
815 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set
816 out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of
817 Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set
818 out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; a
819 felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7
820 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter
821 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony
822 violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of
823 Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as
824 set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off
825 shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in
826 § 18.2-355; crimes against nature involving children as set out in § 18.2-361; taking indecent liberties
827 with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in
828 § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314;
829 obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in
830 § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in §
831 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a
832 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of
833 Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape
834 from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent
835 offense in another state; (b) convicted of any felony violation relating to possession of drugs as set out
836 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date
837 for employment, to be a volunteer, or to provide contractual services; or (c) convicted of any felony
838 violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title
839 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of
840 this section also shall apply to residential programs established pursuant to § 16.1-309.3 for juvenile
841 offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is
842 delinquent or in need of services or supervision, and to local secure detention facilities provided,
843 however, that the provisions of this section related to local secure detention facilities shall only apply to
844 an individual who, on or after July 1, 2013, accepts a position of employment at such local secure
845 detention facility, volunteers at such local secure detention facility on a regular basis and will be alone
846 with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at
847 a local secure detention facility on a regular basis and will be alone with a juvenile in the performance
848 of his duties. The Central Criminal Records Exchange and the state or local agency that regulates or
849 operates the local secure detention facility shall process the criminal history record information regarding
850 such applicant in accordance with this subsection and subsection B.

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

856 If the applicant is denied employment or the opportunity to volunteer or provide services at a
857 children's residential facility because of information appearing on his criminal history record, and the
858 applicant disputes the information upon which the denial was based, upon written request of the

applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

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

D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. *The Department shall establish a fee not to exceed \$40 or the amount equal to the actual cost of the background check conducted by the Department of State Police and the Federal Bureau of Investigation, whichever is greater, for background checks pursuant to this section.* The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

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, 63.2-1721.1, and 63.2-1725 for individuals for whom a criminal history background check was not completed prior to July 1, 2015, shall become effective on July 1, 2017.

3. That the provisions of this act amending §§ 63.2-1720.1, 63.2-1721.1, and 63.2-1725 relating to national criminal history background checks for individuals for whom a criminal history background check had been completed prior to July 1, 2015, shall become effective on July 1, 2020.

4. That the Department of Social Services shall convene a work group to (i) review existing exceptions to licensure requirements for certain child day centers and make recommendations regarding changes to those exceptions and (ii) review existing rules and requirements related to zoning, property owners' associations, and insurance affecting child day centers and family day homes and make recommendations for changes to such rules and requirements. The work group shall report its findings and recommendations to the Governor and the General Assembly no later than December 1, 2015.

5. 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.