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## SENATE BILL NO. 1168

Offered January 14, 2015

Prefiled January 13, 2015

*A BILL to amend and reenact §§ 19.2-389, 19.2-392.02, 63.2-100, 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.*

Patrons—Hanger, Barker, Favola, Marsden, Wexton and Ebbin

Referred to Committee on Rehabilitation and Social Services

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-389, 19.2-392.02, 63.2-100, 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 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,

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59 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
60 the data shall not be further disseminated to any party other than a federal or state authority or court as  
61 may be required to comply with an express requirement of law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
119 elementary or secondary schools which are accredited by a statewide accrediting organization  
120 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 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the

Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

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

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

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

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

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

44. Other entities as otherwise provided by law.

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

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

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

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

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

E. Criminal history information provided to 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.

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

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

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

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

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

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility,

428 family day home, family day system, or independent foster home.

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

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

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

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

439 "Commissioner" means the Commissioner of the Department, his designee or authorized  
440 representative.

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

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

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

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

453 "Family day home" means a child day program offered in the residence of the provider or the home  
454 of any of the children in care for one through 12 children under the age of 13, ~~exclusive of~~ *including*  
455 the provider's own children and any children who reside in the home, when at least one child receives  
456 care for compensation. The provider of a licensed or registered family day home shall disclose to the  
457 parents or guardians of children in their care the percentage of time per week that persons other than the  
458 provider will care for the children. Family day homes serving six through 12 children, ~~exclusive of~~  
459 *including* the provider's own children and any children who reside in the home, shall be licensed.  
460 However, no family day home shall care for more than four children under the age of two, including the  
461 provider's own children and any children who reside in the home, unless the family day home is  
462 licensed or voluntarily registered. However, a family day home where (i) the children in care are all  
463 grandchildren of the provider, or (ii) *the home is the residence of all of the children in care* shall not be  
464 required to be licensed.

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

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

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

476 "General relief" means money payments and other forms of relief made to those persons mentioned  
477 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with §  
478 63.2-401.

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

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

488 "Independent living arrangement" means placement of a child at least 16 years of age who is in the  
489 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 Assistance Services to perform nursing facility pre-admission screenings.

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

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

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

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

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

551 children.

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

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

559 **§ 63.2-901.1. Criminal history and central registry check for placements of children.**

560 A. Each local board and licensed child-placing agency shall obtain, ~~in accordance with regulations~~  
561 ~~adopted by the Board,~~ criminal history record information from the Central Criminal Records Exchange  
562 and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results  
563 of a search of the child abuse and neglect central registry ~~of,~~ *in accordance with the provisions of*  
564 *§ 63.2-1721.1 and regulations adopted by the Board,* for (i) any individual with whom the local board  
565 or licensed child-placing agency is considering placing a child on an emergency, temporary or  
566 permanent basis, including the birth parent of a child in foster care placement, unless the birth parent  
567 has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth  
568 parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians  
569 pursuant to § 63.2-900. ~~The local board or licensed child-placing agency shall also obtain such~~  
570 ~~background checks on all,~~ and (ii) any adult household members residing in the home of the individual  
571 with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry  
572 search shall be at no cost to the individual. The local board or licensed child-placing agency shall pay  
573 for the national fingerprint criminal history ~~record~~ *records* check or may require such individual to pay  
574 the cost of the fingerprinting or the national fingerprinting criminal history ~~record~~ *records* check or both.  
575 In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may  
576 assess a fee for responding to requests required by this section.

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

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

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

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

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

603 C. In emergency circumstances, each local board may obtain, from a criminal justice agency,  
604 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau  
605 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records  
606 search authorized by this section. Within three days of placing a child, the local board shall require the  
607 individual for whom a criminal history record information check was requested to submit to  
608 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints  
609 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose  
610 of obtaining criminal record history information; pursuant to subsection B. The child shall be removed  
611 from the home immediately if any adult resident fails to provide such fingerprints and written  
612 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.

F. 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,

674 licensed adult day care center, a licensed or registered child welfare agency, or a family day home  
675 approved by a family day system shall provide the hiring or approving facility, center or agency with a  
676 sworn statement or affirmation pursuant to subdivision D 1. D. Any person making a materially false  
677 statement regarding the sworn statement or affirmation provided pursuant to subdivision D C 1 shall be  
678 is guilty of a Class 1 misdemeanor.

679 F. E. A licensed assisted living facility, or licensed adult day care center, a licensed or registered  
680 child welfare agency, or a family day home approved by a family day system shall obtain for any  
681 compensated employees within 30 days of employment (i) an original criminal record clearance with  
682 respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from  
683 the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare  
684 agencies or family day homes approved by family day systems, a copy of the information from the  
685 central registry for any compensated employee within 30 days of employment. However, no employee  
686 shall be permitted to work in a position that involves direct contact with a person or child receiving  
687 services until an original criminal record clearance or original criminal history record has been received,  
688 unless such person works under the direct supervision of another employee for whom a background  
689 check has been completed in accordance with the requirements of this section. If an applicant is denied  
690 employment because of information from the central registry or convictions appearing on his criminal  
691 history record, the assisted living facility, or adult day care center or child welfare agency shall provide  
692 a copy of the information obtained from the central registry or the Central Criminal Records Exchange  
693 or both to the applicant.

694 G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a  
695 licensed or registered child welfare agency or a family day home approved by a family day system. Any  
696 person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn  
697 statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any  
698 volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from  
699 the central registry and (ii) an original criminal record clearance with respect to offenses specified in  
700 § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any  
701 person making a materially false statement regarding the sworn statement or affirmation provided  
702 pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service  
703 because of information from the central registry or convictions appearing on his criminal history record,  
704 such child welfare agency shall provide a copy of the information obtained from the central registry or  
705 the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall  
706 apply only to volunteers who will be alone with any child in the performance of their duties and shall  
707 not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a  
708 family day home approved by a family day system, whether or not such parent-volunteer will be alone  
709 with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay,  
710 a group of children that includes the parent-volunteer's own child in a program that operates no more  
711 than four hours per day, provided that the parent-volunteer works under the direct supervision of a  
712 person who has received a clearance pursuant to this section.

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

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

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

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

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

728 § 63.2-1720.1. *Child welfare agencies and family day homes approved by family day systems;*  
729 *employment for compensation or use as volunteers of persons convicted of or found to have*  
730 *committed certain offenses prohibited; national background check required; penalty.*

731 A. No child welfare agency licensed or registered in accordance with the provisions of this chapter  
732 or family day home approved by a family day system shall hire for compensated employment or permit  
733 to serve as a volunteer in a position that is involved in the day-to-day operations of the child welfare  
734 agency or family day home or in which the employee or volunteer will be alone with, in control of, or  
735 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 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

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

799 3. In the case of child welfare agencies or adoptive or foster parents, a search of the central registry  
800 maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

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

815 D. No person specified in subsection A shall be involved in the day-to-day operations of a child  
816 welfare agency; be alone with, in control of, or supervising one or more children receiving services from  
817 a child welfare agency; or be permitted to work in a position that involves direct contact with a person  
818 receiving services without first having completed background checks pursuant to subsection B, unless  
819 such person is directly supervised by another person for whom a background check has been completed  
820 in accordance with the requirements of this section.

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

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

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

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

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

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

844 **§ 63.2-1721.1. Background check upon application for licensure as child welfare agency;  
845 background check for applicants for approval as family day home by a family day system;  
846 background check of foster or adoptive parents approved by child-placing agencies; penalty.**

847 A. Every (i) applicant for licensure as a child welfare agency; (ii) agent of an applicant for licensure  
848 as a child welfare agency at the time of application who is or will be involved in the day-to-day  
849 operations of the child welfare agency or who is or will be alone with, in control of, or supervising one  
850 or more of the children; (iii) applicant for approval as a family day home by a family day system; (iv)  
851 agent of an applicant for approval as a family day home by a family day system who is or will be  
852 involved in the day-to-day operations of the family day home or who is or will be alone with, in control  
853 of, or supervising one or more children; (v) adult living in the home of an applicant for approval as a  
854 family day home by a family day system; (vi) foster or adoptive parent requesting approval by a  
855 child-placing agency; or (vii) adult household member residing in the home of a foster or adoptive  
856 parent requesting approval by a child-placing agency shall undergo a background check in accordance  
857 with subsection B prior to issuance of a license as a child welfare agency, approval as a family day  
858 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 with an express requirement of law for such further dissemination.*

*L. 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.*

*M. 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.*

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

A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare agency, an assisted living facility, or adult day care center; a child-placing agency may revoke the approval of a foster home; and a family day system may revoke the approval of a family day home if the assisted living facility, adult day care center, child welfare agency, foster home, or approved family day home has knowledge that a person specified in §§ 63.2-1720 and 63.2-1720.1, 63.2-1721, or 63.2-1721.1 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 or is not subject to the exceptions in subsection D of § 63.2-901.1, subsection B of § 63.2-1720 and, subsection G of § 63.2-1720.1, or subsection E, G, H, or I of § 63.2-1721.1, and the facility, center, or agency refuses to separate such person from employment or service.

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

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

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

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

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

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within 30 days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a sworn statement or affirmation, a criminal history records check as provided in subdivision A 11 of § 19.2-389. However, no employee shall be permitted to work in a position that involves direct contact with a child 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, and a search of the central registry maintained pursuant to § 63.2-1515 in accordance with subsection B of § 63.2-1720.1. A child day center that is exempt from licensure pursuant to § 63.2-1716 shall refuse employment or service to any person who has any offense defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other person who is expected to be alone with one or more children in the child day center to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a



founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense ~~shall be~~ *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 such report and obtain a prompt resolution before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. The results of the criminal history background check must be received prior to permitting an applicant to work with children.

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

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

If the applicant is denied employment or the opportunity to volunteer or provide services at a

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

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

D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. *The 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.**