2017 RECONVENED SESSION

REENROLLED

[S 1008]

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VIRGINIA ACTS OF ASSEMBLY - CHAPTER

An Act to amend and reenact §§ 15.2-914, 16.1-333.1, 19.2-389, 19.2-392.02, 22.1-296.3, 32.1-126.01, 2 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1601.1, 63.2-1717, 63.2-1719, 63.2-1720, as it is currently effective and as it shall become effective, 63.2-1720.1, as it 3 4 5 shall become effective, 63.2-1721, as it is currently effective and as it shall become effective, 63.2-1721.1, as it shall become effective, and 63.2-1722 through 63.2-1726 of the Code of Virginia, 6

7 relating to criminal history record checks; barrier crimes.

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Approved

10 Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-914, 16.1-333.1, 19.2-389, 19.2-392.02, 22.1-296.3, 32.1-126.01, 32.1-162.9:1, 37.2-314, 11 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1601.1, 63.2-1717, 63.2-1719, 63.2-1720, as it is 12 13 currently effective and as it shall become effective, 63.2-1720.1, as it shall become effective, 63.2-1721, as it is currently effective and as it shall become effective, 63.2-1721.1, as it shall 14 15 become effective, and 63.2-1722 through 63.2-1726 of the Code of Virginia are amended and 16 reenacted as follows:

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

Any (i) county that has adopted the urban county executive form of government, (ii) city adjacent to 18 19 a county that has adopted the urban county executive form of government, or (iii) city which is completely surrounded by such county may by ordinance provide for the regulation and licensing of 20 21 persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to 22 23 one or more children not related by blood or marriage while such children are separated from their 24 parent, guardian or legal custodian in a dwelling not the residence of the child during a part of the day 25 for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential 26 structure which is used to provide child-care services.

27 Such local ordinance shall not require the regulation or licensing of any child-care facility that is 28 licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any 29 facility operated by a religious institution as exempted from licensure by § 63.2-1716.

30 Such local ordinances shall not be more extensive in scope than comparable state regulations 31 applicable to family day homes. Such local ordinances may regulate the possession and storage of 32 firearms, ammunition, or components or combination thereof at child-care facilities so long as such 33 regulation remains no more extensive in scope than comparable state regulations applicable to family 34 day homes. Local regulations shall not affect the manner of construction or materials to be used in the 35 erection, alteration, repair or use of a residential dwelling.

Such local ordinances may require that persons who provide child-care services shall provide 36 37 certification from the Central Criminal Records Exchange and a national criminal background check, in 38 accordance with §§ 19.2-389 and 19.2-392.02, that such persons have not been convicted of any offense involving the sexual molestation of children, or the physical or sexual abuse or rape of a child or any offense identified barrier crime defined in § 63.2-1719 19.2-392.02, and such ordinances may require 39 40 41 that persons who provide child-care services shall provide certification from the central registry of the 42 Department of Social Services that such persons have not been the subject of a founded complaint of 43 abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, 44 45 or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based. 46

§ 16.1-333.1. Written findings necessary to order that minor is emancipated on the basis of 47 48 intent to marry.

49 The court may enter an order declaring such a minor who desires to get married emancipated if, after 50 a hearing where both individuals intending to marry are present, the court makes written findings that:

1. It is the minor's own will that the minor enter into marriage, and the minor is not being compelled 51 52 against the minor's will by force, threats, persuasions, menace, or duress; 53

2. The individuals to be married are mature enough to make such a decision to marry;

54 3. The marriage will not endanger the safety of the minor. In making this finding, the court shall 55 consider (i) the age difference between the parties intending to be married; (ii) whether either individual 56 to be married has a criminal record containing any conviction of an act of violence, as defined in REENROLLED

§ 19.2-297.1, or any conviction of an offense set forth a barrier crime, as defined in § 63.2-1719 or 57 58 63.2-1726 19.2-392.02; and (iii) any history of violence between the parties to be married; and

59 4. It is in the best interests of the minor petitioning for an order of emancipation that such order be 60 entered. Neither a past or current pregnancy of either individual to be married or between the individuals 61 to be married nor the wishes of the parents or legal guardians of the minor desiring to be married shall 62 be sufficient evidence to establish that the best interests of the minor would be served by entering the 63 order of emancipation.

§ 19.2-389. Dissemination of criminal history record information. 64

65 A. Criminal history record information shall be disseminated, whether directly or through an 66 intermediary, only to:

67 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for 68 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 69 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all 70 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 71 72 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For 73 purposes of this subdivision, criminal history record information includes information sent to the Central 74 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time 75 or part-time employee of the State Police, a police department or sheriff's office that is a part of or 76 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the 77 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice; 78

79 2. Such other individuals and agencies that require criminal history record information to implement 80 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 81 conduct, except that information concerning the arrest of an individual may not be disseminated to a 82 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the 83 84 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is 85 pending;

86 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide 87 services required for the administration of criminal justice pursuant to that agreement which shall 88 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the 89 security and confidentiality of the data;

90 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities 91 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, 92 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and 93 security of the data;

94 5. Agencies of state or federal government that are authorized by state or federal statute or executive 95 order of the President of the United States or Governor to conduct investigations determining 96 employment suitability or eligibility for security clearances allowing access to classified information; 97

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

98 7. Agencies of any political subdivision of the Commonwealth, public transportation companies 99 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 100 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is 101 102 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 103 104 consideration;

105 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of 106 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 107 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person 108 109 with a conviction record would be compatible with the nature of the employment under consideration;

110 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 111 adult members of that individual's household, with whom the agency is considering placing a child or 112 113 from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that 114 the data shall not be further disseminated to any party other than a federal or state authority or court as 115 may be required to comply with an express requirement of law; 116

9. To the extent permitted by federal law or regulation, public service companies as defined in 117

118 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
personal contact with the public or when past criminal conduct of an applicant would be incompatible
120 with the nature of the employment under consideration;

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

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

130 12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' 131 132 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and 133 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved 134 by family day systems, and foster and adoptive parent applicants of private child-placing agencies, 135 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction 136 that the data shall not be further disseminated by the facility or agency to any party other than the data 137 subject, the Commissioner of Social Services' representative or a federal or state authority or court as 138 may be required to comply with an express requirement of law for such further dissemination;

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

142 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
143 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

149 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
150 investigations of applicants for compensated employment in licensed assisted living facilities and
151 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

152 17. (Effective until July 1, 2018) The Alcoholic Beverage Control Board for the conduct of 153 investigations as set forth in § 4.1-103.1;

154 17. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the conduct of 155 investigations as set forth in § 4.1-103.1;

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

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

162 102.10, 102.10, 102.10, 102.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 101.10, 1

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

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

172 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
173 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
174 records information on behalf of such governing boards or administrators pursuant to a written
175 agreement with the Department of State Police;

176 24. Public and nonprofit private colleges and universities for the purpose of screening individuals177 who are offered or accept employment;

178 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,

by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of

179 higher education, for the purpose of assessing or intervening with an individual whose behavior may 180 181 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal 182 history record information obtained pursuant to this section or otherwise use any record of an individual 183 beyond the purpose that such disclosure was made to the threat assessment team;

184 26. Executive directors of community services boards or the personnel director serving the 185 community services board for the purpose of determining an individual's fitness for employment, 186 approval as a sponsored residential service provider, or permission to enter into a shared living 187 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to 188 §§ 37.2-506 and 37.2-607;

189 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of 190 determining an individual's fitness for employment, approval as a sponsored residential service provider, 191 or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607; 192

193 28. The Commissioner of Social Services for the purpose of locating persons who owe child support 194 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the 195 name, address, demographics and social security number of the data subject shall be released;

196 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of 197 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the 198 purpose of determining if any applicant who accepts employment in any direct care position or requests 199 approval as a sponsored residential service provider or permission to enter into a shared living 200 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted 201 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with 202 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 203 37.2-607;

204 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants 205 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 206 (§ 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 207 208 for the purpose of determining if any person being considered for election to any judgeship has been 209 convicted of a crime;

210 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of 211 determining an individual's fitness for employment in positions designated as sensitive under Department 212 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal 213 history record information to the agencies shall be limited to those positions generally described as 214 directly responsible for the health, safety and welfare of the general populace or protection of critical 215 infrastructures;

216 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under 217 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually 218 Violent Predators Act (§ 37.2-900 et seq.);

219 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, 220 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary 221 companies, for the conduct of investigations of applications for employment or for access to facilities, 222 by contractors, leased laborers, and other visitors;

223 35. Any employer of individuals whose employment requires that they enter the homes of others, for 224 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

225 36. Public agencies when and as required by federal or state law to investigate (i) applicants as 226 providers of adult foster care and home-based services or (ii) any individual with whom the agency is 227 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, 228 subject to the restriction that the data shall not be further disseminated by the agency to any party other 229 than a federal or state authority or court as may be required to comply with an express requirement of 230 law for such further dissemination, subject to limitations set out in subsection G;

231 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening 232 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, 233 or have accepted a position related to the provision of transportation services to enrollees in the 234 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other 235 program administered by the Department of Medical Assistance Services;

236 38. The State Corporation Commission for the purpose of investigating individuals who are current 237 or proposed members, senior officers, directors, and principals of an applicant or person licensed under 238 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 239

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from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the 240 241 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or 242 its designee;

243 39. The Department of Professional and Occupational Regulation for the purpose of investigating 244 individuals for initial licensure pursuant to § 54.1-2106.1;

245 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and 246 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment 247 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 248 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment; 249

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

250 42. The State Treasurer for the purpose of determining whether a person receiving compensation for 251 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

252 43. The Department of Social Services and directors of local departments of social services for the 253 purpose of screening individuals seeking to enter into a contract with the Department of Social Services 254 or a local department of social services for the provision of child care services for which child care 255 subsidy payments may be provided;

256 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of 257 a juvenile's household when completing a predispositional or postdispositional report required by 258 § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

259 45. Other entities as otherwise provided by law.

260 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records 261 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal 262 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons 263 designated in the order on whom a report has been made under the provisions of this chapter.

264 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to 265 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the 266 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a 267 copy of conviction data covering the person named in the request to the person making the request; 268 however, such person on whom the data is being obtained shall consent in writing, under oath, to the 269 making of such request. A person receiving a copy of his own conviction data may utilize or further 270 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data 271 subject, the person making the request shall be furnished at his cost a certification to that effect.

272 B. Use of criminal history record information disseminated to noncriminal justice agencies under this 273 section shall be limited to the purposes for which it was given and may not be disseminated further.

274 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal 275 history record information for employment or licensing inquiries except as provided by law.

276 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 277 278 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is 279 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases 280 where time is of the essence and the normal response time of the Exchange would exceed the necessary 281 time period. A criminal justice agency to whom a request has been made for the dissemination of 282 criminal history record information that is required to be reported to the Central Criminal Records 283 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. 284 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. 285

286 E. Criminal history information provided to licensed nursing homes, hospitals and to home care 287 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange 288 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

289 F. Criminal history information provided to licensed assisted living facilities and licensed adult day 290 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange 291 for any offense specified in § 63.2-1720.

292 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be 293 limited to the convictions on file with the Exchange for any offense specified set forth in clause (i) of 294 the definition of barrier crime in \S 63.2-1719 19.2-392.02.

295 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal 296 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the 297 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in 298 the request to the employer or prospective employer making the request, provided that the person on 299 whom the data is being obtained has consented in writing to the making of such request and has 300 presented a photo-identification to the employer or prospective employer. In the event no conviction data 301 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 302 303 conducted on forms provided by the Exchange.

304 § 19.2-392.02. National criminal background checks by businesses and organizations regarding 305 employees or volunteers providing care to children or the elderly or disabled. 306 A. For purposes of this section:

307 "Barrier crime" means any offense set forth in § 63.2-1719 or 63.2-1726 (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 308 309 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 310 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 311 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 312 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 313 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 314 315 316 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation 317 of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of 318 § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any 319 320 violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 321 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 322 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 323 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 324 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, 325 326 or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense 327 under the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 328 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 329 330 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of 331 another jurisdiction; (v) any offense set forth in \S 9.1-902 that results in the person's requirement to 332 333 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any 334 finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 335 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to 336 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration 337 in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where 338 339 the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) 340 unless five years have elapsed from the date of the conviction.

341 "Barrier crime information" means the following facts concerning a person who has been arrested for, 342 or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the 343 time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief 344 description of the barrier crime or offenses for which the person has been arrested or has been 345 convicted, the disposition of the charge, and any other information that may be useful in identifying 346 persons arrested for or convicted of a barrier crime.

347 "Care" means the provision of care, treatment, education, training, instruction, supervision, or 348 recreation to children or the elderly or disabled. 349

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or 350 351 seeks to volunteer for a qualified entity.

352 "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 353 354 of a foreign government, an international governmental or an international quasi-governmental 355 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. 356

357 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may 358 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity 359 provides care; (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 360 361 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. 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:

368 1. Been fingerprinted; and

369 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 370 371 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or 372 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime 373 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a 374 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background 375 check report, to challenge the accuracy and completeness of any information contained in any such 376 report, and to obtain a prompt determination as to the validity of such challenge before a final 377 determination is made by the Department; and (v) a notice to the provider that prior to the completion 378 of the background check the qualified entity may choose to deny the provider unsupervised access to 379 children or the elderly or disabled for whom the qualified entity provides care.

380 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a 381 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in 382 subsection B, the Department shall make a determination whether the provider has been convicted of or 383 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier 384 crime information, the Department shall access the national criminal history background check system, 385 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other 386 methods of identification, and shall access the Central Criminal Records Exchange maintained by the 387 Department. If the Department receives a background report lacking disposition data, the Department 388 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain 389 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry 390 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.

396 E. Any background check conducted pursuant to this section for a provider employed by a397 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.

402 G. The failure to request a criminal background check pursuant to subsection B shall not be 403 considered negligence per se in any civil action.

404 § 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records 405 checks.

A. As a condition of employment, the governing boards or administrators of private elementary or
secondary schools that are accredited pursuant to § 22.1-19 shall require any applicant who accepts
employment, whether full-time or part-time, permanent or temporary, to submit to fingerprinting and to
provide personal descriptive information to be forwarded along with the applicant's fingerprints through
the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of
obtaining criminal history record information regarding such applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the governing board or administrator, or to a private organization coordinating such records on behalf of such governing board or administrator pursuant to a written agreement with the Department of State Police, that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of the following crimes or their equivalent if from another jurisdiction: any offense set forth any barrier crime as defined in § 63.2-1719 19.2-392.02.

B. The Central Criminal Records Exchange shall not disclose information to such governing board,
administrator, or private organization coordinating such records regarding charges or convictions of any
crimes. If any applicant is denied employment because of information appearing on the criminal history
record and the applicant disputes the information upon which the denial was based, the Central Criminal

423 Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the 424 criminal history record from the Federal Bureau of Investigation. The information provided to the 425 governing board, administrator, or private organization coordinating such records shall not be 426 disseminated except as provided in this section. A governing board or administrator employing or 427 previously employing a temporary teacher or a private organization coordinating such records on behalf 428 of such governing board or administrator pursuant to a written agreement with the Department of State 429 Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the 430 criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or 431 administrator of another accredited private elementary or secondary school in which such teacher has 432 accepted employment. Such governing board, administrator, or private organization transferring criminal 433 records information pursuant to this section shall be immune from civil liability for any official act, decision, or omission done or made in the performance of such transfer, when such acts or omissions 434 435 are taken in good faith and are not the result of gross negligence or willful misconduct.

436 Fees charged for the processing and administration of background checks pursuant to this section437 shall not exceed the actual cost to the state of such processing and administration.

438 C. Effective July 1, 2017, the governing board or administrator of a private elementary or secondary 439 school that is accredited pursuant to § 22.1-19 that operates a child welfare agency regulated by the 440 Department of Social Services pursuant to Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 shall accept 441 evidence of a background check in accordance with § 63.2-1720.1 for individuals who are required to 442 undergo a background check in accordance with that section as a condition of employment in lieu of the 443 background check required by subsection A.

444 D. For purposes of this section, "governing board" or "administrator" means the unit or board or 445 person designated to supervise operations of a system of private schools or a private school accredited 446 pursuant to § 22.1-19.

447 Nothing in this section or § 19.2-389 shall be construed to require any private or religious school 448 which is not so accredited to comply with this section.

\$ 32.1-126.01. Employment for compensation of persons convicted of barrier crimes prohibited;
 criminal records check required; suspension or revocation of license.

451 A. A licensed nursing home shall not hire for compensated employment, persons who have been 452 convicted of a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set 453 out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes 454 455 as set out in <u>§ 18.2-48</u>, assaults and bodily woundings as set out in Article 4 (<u>§ 18.2-51</u> et seq.) of 456 Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion 457 by threat as set out in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking 458 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 1 459 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a **460** machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out 461 in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of 462 § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in 463 464 § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in 465 § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure 466 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in 467 <u>§ 18.2-374.1</u>, possession of child pornography as set out in <u>§ 18.2-374.1</u>; electronic facilitation of 468 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in 469 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 470 (§ 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 471 472 § 53.1-203, or an equivalent offense in another state any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. However, a licensed nursing home may hire an applicant who has 473 474 been convicted of one such offense punishable as a misdemeanor specified in this section that does not 475 involving involve abuse or neglect, if five years have elapsed following the conviction.

476 Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn 477 statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether 478 within or without *outside* the Commonwealth. Any person making a materially false statement when 479 providing such sworn statement or affirmation regarding any such offense shall be *is* guilty upon 480 conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this 481 section is prohibited other than to a federal or state authority or court as may be required to comply 482 with an express requirement of law for such further dissemination.

483 A nursing home shall, within 30 days of employment, obtain for any compensated employees an

484 original criminal record clearance with respect to convictions for offenses specified in this section or an 485 original criminal history record from the Central Criminal Records Exchange. However, no employee shall be permitted to work in a position that involves direct contact with a patient until an original 486 487 criminal record clearance or original criminal history record has been received, unless such person works 488 under the direct supervision of another employee for whom a background check has been completed in 489 accordance with the requirements of this section. The provisions of this section shall be enforced by the 490 Commissioner. If an applicant is denied employment because of convictions appearing on his criminal 491 history record, the nursing home shall provide a copy of the information obtained from the Central 492 Criminal Records Exchange to the applicant.

493 The provisions of this section shall not apply to volunteers who work with the permission or under 494 the supervision of a person who has received a clearance pursuant to this section.

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

498 C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this 499 section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

500 § 32.1-162.9:1. Émployment for compensation of persons convicted of barrier crimes prohibited; 501 criminal records check required; drug testing; suspension or revocation of license.

502 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization 503 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in 504 § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of a felony 505 violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41, 506 507 abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 508 509 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 510 in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in 511 512 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime 513 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 514 515 sawed-off shotgun in a crime of violence as set out in subsection A of §-18.2-300, pandering as set out 516 in <u>§ 18.2-355</u>, crimes against nature involving children as set out in <u>§ 18.2-361</u>, incest as set out in 517 § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and 518 neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as 519 set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as 520 set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an 521 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in 522 523 § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in 524 § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state any 525 offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

526 However, a home care organization or hospice may hire an applicant who has been convicted of one
527 such offense punishable as a misdemeanor specified in this section that does not involving involve abuse
528 or neglect, if five years have elapsed since the conviction.

529 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any 530 home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or 531 532 affirmation disclosing any criminal convictions or any pending criminal charges, whether within or 533 without outside the Commonwealth. Any person making a materially false statement when providing 534 such sworn statement or affirmation regarding any such offense shall be is guilty upon conviction of a 535 Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is 536 prohibited other than to a federal or state authority or court as may be required to comply with an 537 express requirement of law for such further dissemination.

538 Such home care organization or hospice shall, within 30 days of employment, obtain for any 539 compensated employees an original criminal record clearance with respect to convictions for offenses 540 specified in this section or an original criminal history record from the Central Criminal Records 541 Exchange. However, no employee shall be permitted to work in a position that involves direct contact 542 with a patient until an original criminal record clearance or original criminal history record has been 543 received, unless such person works under the direct supervision of another employee for whom a 544 background check has been completed in accordance with the requirements of this section. The

545 provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment 546 because of convictions appearing on his criminal history record, the home care organization or hospice 547 shall provide a copy of the information obtained from the Central Criminal Records Exchange to the 548 applicant.

549 The provisions of this section shall not apply to volunteers who work with the permission or under 550 the supervision of a person who has received a clearance pursuant to this section.

B. A licensed home care organization as defined in § 32.1-162.7 or any home care organization 551 552 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining 553 a drug-free workplace, which may include drug testing when the employer has cause to believe that the 554 person has engaged in the use of illegal drugs and periodically during the course of employment. All 555 positive results from drug testing administered pursuant to this section shall be reported to the health 556 regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

C. A person who complies in good faith with the provisions of this section shall not be liable for 557 558 any civil damages for any act or omission in the performance of duties under this section unless the act 559 or omission was the result of gross negligence or willful misconduct.

D. A licensed home care organization or hospice shall notify and provide all students a copy of the 560 provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such 561 562 home care organization or hospice. 563

§ 37.2-314. Background check required.

564 A. As a condition of employment, the Department shall require any applicant who (i) accepts a 565 position of employment at a state facility and was not employed by that state facility prior to July 1, 566 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the 567 Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to 568 fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) 569 for the purpose of obtaining national criminal history record information regarding the applicant. 570

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated 571 572 employment persons who have been (i) convicted of a felony violation of a protective order as set out in 573 § 16.1-253.2; murder or manslaughter, as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 574 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 wounding, as set 575 out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58; 576 carjacking, as set out § 18.2-58.1; extortion by threat, as set out in § 18.2-59; threat, as set out in 577 578 § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; a felony violation of a protective 579 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 580 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 581 582 583 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 584 585 crime of violence, as set out in subsection A of § 18.2-300; pandering, as set out in § 18.2-355; crimes 586 against nature involving children, as set out in § 18.2-361; taking indecent liberties with children, as set 587 out in § 18.2-370 or 18.2-370.1; abuse or neglect of children, as set out in § 18.2-371.1, including 588 failing to secure medical attention for an injured child, as set out in § 18.2-314; obscenity offenses, as 589 set out in § 18.2-374.1; possession of child pornography, as set out in § 18.2-374.1:1; electronic 590 facilitation of pornography, as set out in § 18.2-374.3; incest, as set out in § 18.2-366; abuse or neglect 591 of incapacitated adults, as set out in § 18.2-369; employing or permitting a minor to assist in an act 592 constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in 593 § 18.2-379; delivery of drugs to prisoners, as set out in § 18.2-474.1; escape from jail, as set out in 594 § 18.2-477; felonies by prisoners, as set out in § 53.1-203; or an equivalent offense in another state; (i) 595 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) 596 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, offense set forth in clause (iv) of the definition of barrier crime in 597 **598** § 19.2-392.02 (a) in the five years prior to the application date for employment; or (iii) convicted of any 599 felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 600 of Title 18.2, and continue (b) such person continues on probation or parole or have has failed to pay 601 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in 602 § 19.2-392.02.

603 C. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an applicant is denied 604 employment because of information appearing on his criminal history record and the applicant disputes 605

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the information upon which the denial was based, the Central Criminal Records Exchange shall, upon
written request, furnish to the applicant the procedures for obtaining a copy of the criminal history
record from the FBI. The information provided to the state facility or Department shall not be
disseminated except as provided in this section.

D. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or
 Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any
 investigation of child abuse or neglect undertaken on them.

E. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department or state facility decides to pay the cost.

619 § 37.2-408.1. Background check required; children's residential facilities.

620 A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or 621 providing services on a regular basis, every children's residential facility that is regulated or operated by 622 the Department shall require any person who (i) accepts a position of employment at such a facility who 623 was not employed by that facility prior to July 1, 2008, (ii) volunteers for such a facility on a regular 624 basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such 625 facility prior to July 1, 2008, or (iii) provides contractual services directly to a juvenile for such facility 626 on a regular basis and will be alone with a juvenile in the performance of his duties who did not 627 provide such services prior to July 1, 2008, to submit to fingerprinting and to provide personal 628 descriptive information, to be forwarded along with the person's fingerprints through the Central 629 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the person. The children's residential facility shall inform the person 630 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and 631 632 completeness of any such report and obtain a prompt resolution before a final determination is made of 633 the person's eligibility to have responsibility for the safety and well-being of children. The person shall 634 provide the children's residential facility with a written statement or affirmation disclosing whether he 635 has ever been convicted of or is the subject of pending charges for any offense within or outside the 636 Commonwealth. The results of the criminal history background check must be received prior to 637 permitting a person to work with children.

638 The Central Criminal Records Exchange, upon receipt of a person's record or notification that no 639 record exists, shall forward it to the state agency that operates or regulates the children's residential 640 facility with which the person is affiliated. The state agency shall, upon receipt of a person's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are 641 642 available in order to obtain complete data. The state agency shall report to the children's facility whether 643 the person is eligible to have responsibility for the safety and well-being of children. Except as 644 otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services 645 **646** persons who have been (a) convicted of or are the subject of pending charges for the following crimes: 647 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 648 649 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set 650 out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seg.) 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 651 652 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 653 felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 654 (§ 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 655 656 violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of 657 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 658 shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in 659 § 18.2-355; crimes against nature involving children as set out § 18.2-361; taking indecent liberties with 660 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, 661 662 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; 663 electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or **664** neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an 665 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in 666

§ 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in 667 668 $\frac{18.2-477}{100}$; felonies by prisoners as set out in $\frac{100}{100}$ 53.1-203; or an equivalent offense in another state; (a) 669 any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or 670 (b) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et 671 seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state, set forth in clause (iv) of the 672 definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; (c) convicted of any felony violation 673 relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and 674 675 continue or (2) such person continues on probation or parole or have has failed to pay required court costs; or (d) convicted of any offense set forth in § 9.1-902 or have been the subject of a finding of not 676 677 guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an 678 offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any other state for 679 such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of **680** this section also shall apply to structured residential programs, excluding secure detention facilities, 681 682 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. 683

684 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for 685 compensated employment or for volunteer or contractual service purposes persons who have been **686** convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially **687** similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, 688 unless the person committed such offense in the scope of his employment, volunteer, or contractual 689 services.

690 If the person is denied employment, or the opportunity to volunteer or provide services, at a 691 children's residential facility because of information appearing on his criminal history record, and the person disputes the information upon which the denial was based, upon written request of the person the 692 693 state agency shall furnish the person the procedures for obtaining his criminal history record from the 694 Federal Bureau of Investigation. If the person has been permitted to assume duties that do not involve 695 contact with children pending receipt of the report, the children's residential facility is not precluded 696 from suspending the person from his position pending a final determination of the person's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's **697 698** residential facility shall not be disseminated except as provided in this section.

699 C. Those persons listed in clauses (i), (ii), and (iii) of subsection A also shall authorize the children's 700 residential facility to obtain a copy of information from the central registry maintained pursuant to 701 § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide 702 the children's residential facility with a written statement or affirmation disclosing whether he has ever 703 been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The 704 children's residential facility shall receive the results of the central registry search prior to permitting a 705 person to work alone with children. Children's residential facilities regulated or operated by the 706 Department shall not hire for compensated employment, or allow to volunteer or provide contractual 707 services, persons who have a founded case of child abuse or neglect.

708 D. The cost of obtaining the criminal history record and the central registry information shall be 709 borne by the person unless the children's residential facility, at its option, decides to pay the cost.

710 § 37.2-416. Background checks required. 711

A. As used in this section:

712 "Direct care position" means any position that includes responsibility for (i) treatment, case 713 management, health, safety, development, or well-being of an individual receiving services or (ii) 714 immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse 715 716 or adult mental health treatment position to another such position within the same licensee licensed 717 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health 718 treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application 719 720 date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care 721 722 position within the same licensee licensed pursuant to this article or (b) new employment in any mental 723 health or developmental services direct care position in another office or program of the same licensee 724 licensed pursuant to this article for which the person has previously worked in an adult substance abuse 725 treatment position.

726 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance 727 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and

providing companionship, support, and other limited, basic assistance to a person with intellectual or
developmental disabilities receiving medical assistance services in accordance with a waiver for whom
he has no legal responsibility.

731 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts 732 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service 733 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential 734 service provider, (iv) any person employed by a sponsored residential service provider to provide 735 services in the home, and (v) any person who enters into a shared living arrangement with a person 736 receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide 737 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the 738 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record 739 information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider 740 licensed pursuant to this article shall (a) hire:

1. Hire for compensated employment persons any person who have has been convicted of (i) any
offense listed in subsection B set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §
37.2-314; (b) approve 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier
crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) such
person continues on probation or parole or has failed to pay required court costs for such offense set
forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

747 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing 748 in the home of the applicant, or any person employed by the applicant has been convicted of $\frac{\partial}{\partial i}$ any 749 offense listed in subsection B set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 750 37.2-314 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in 751 § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) such applicant continues on probation or parole or has failed to pay required court 752 753 costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02; or (c)754 permit

755 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
756 services pursuant to a waiver any person who has been convicted of an (i) any offense listed in
757 subsection B set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 37.2-314
758 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02
759 (a) in the five years prior to entering into a shared living arrangement or (b) such person continues on
760 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of
761 the definition of barrier crime in § 19.2-392.02.

762 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no 763 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed 764 pursuant to this article. If any applicant is denied employment because of information appearing on the 765 criminal history record and the applicant disputes the information upon which the denial was based, the 766 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures 767 for obtaining a copy of the criminal history record from the FBI. The information provided to the 768 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated 769 except as provided in this section.

770 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 771 at adult substance abuse or adult mental health treatment facilities a person who was convicted of any 772 violation of § 18.2-51.3; a misdemeanor violation relating to (i) unlawful hazing, as set out in of 773 § 18.2-56; (ii) reckless handling of a firearm, as set out in § or 18.2-56.1; or (iii) assault and battery, as 774 set out in or subsection A of § 18.2-57; or any misdemeanor or felony violation related to (a) reckless 775 endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in of 776 § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set 777 out in §, 18.2-92; or (d) possession of burglarious tools, as set out in §, or 18.2-94; or any felony 778 violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of 779 Title 18.2 offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an 780 offense pursuant to subsections H1 and H2 of § 18.2-248; or an equivalent any substantially similar 781 offense in under the laws of another state jurisdiction, if the hiring provider determines, based upon a 782 screening assessment, that the criminal behavior was substantially related to the applicant's substance 783 abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to 784 individuals receiving services based on his criminal history background and his substance abuse or 785 mental illness history.

786 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 787 at adult substance abuse treatment facilities a person who has been convicted of not more than one 788 offense of assault and battery of a law enforcement officer under subsection C of § 18.2-57, or an 789 equivalent any substantially similar offense in under the laws of another state jurisdiction, if (i) the 790 person has been granted a simple pardon if the offense was a felony committed in Virginia, or the 791 equivalent if the offense person was committed in convicted under the laws of another state jurisdiction; 792 (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based 793 upon a screening assessment, that the criminal behavior was substantially related to the applicant's 794 substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals 795 receiving services based on his criminal history background and his substance abuse history.

796 E. The hiring provider and a screening contractor designated by the Department shall screen 797 applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have 798 been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal 799 history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, 800 the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court 801 costs for any prior convictions, and shall have been free of parole or probation for at least five years for 802 803 all convictions. In addition to any supplementary information the provider or screening contractor may 804 require or the applicant may wish to present, the applicant shall provide to the screening contractor a 805 statement from his most recent probation or parole officer, if any, outlining his period of supervision 806 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The 807 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

808 F. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 809 persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 810 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct 811 812 care position.

813 G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living 814 815 arrangement with a person receiving medical assistance services pursuant to a waiver, written consent 816 and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515. 817

818 H. The cost of obtaining the criminal history record and search of the child abuse and neglect 819 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article 820 decides to pay the cost.

821 I. A person who complies in good faith with the provisions of this section shall not be liable for any 822 civil damages for any act or omission in the performance of duties under this section unless the act or 823 omission was the result of gross negligence or willful misconduct. 824

§ 37.2-506. Background checks required.

A. As used in this section:

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826 "Direct care position" means any position that includes responsibility for (i) treatment, case 827 management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility. "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse 828

829 830 or adult mental health treatment position to another such position within the same community services 831 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in 832 another office or program of the same community services board if the person employed prior to July 1, 833 1999, had no convictions in the five years prior to the application date for employment. "Hire for 834 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment 835 position to any mental health or developmental services direct care position within the same community 836 services board or (b) new employment in any mental health or developmental services direct care 837 position in another office or program of the same community services board for which the person has 838 previously worked in an adult substance abuse treatment position.

839 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance 840 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and 841 providing companionship, support, and other limited, basic assistance to a person with intellectual or 842 developmental disabilities receiving medical assistance services in accordance with a waiver for whom 843 he has no legal responsibility.

844 B. Every community services board shall require (i) any applicant who accepts employment in any 845 direct care position with the community services board, (ii) any applicant for approval as a sponsored 846 residential service provider, (iii) any adult living in the home of an applicant for approval as a 847 sponsored residential service provider, (iv) any person employed by a sponsored residential service 848 provider to provide services in the home, and (v) any person who enters into a shared living 849 arrangement with a person receiving medical assistance services pursuant to a waiver to submit to

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850 fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal 851 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national 852 criminal history record information regarding the applicant. Except as otherwise provided in subsection 853 C, D, or F, no community services board shall hire for compensated employment, approve as a 854 sponsored residential service provider, or permit to enter into a shared living arrangement with a person 855 receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any offense listed in subsection B of § 37.2-314 set forth in clause (i), (ii), or (iii) of the definition of 856 857 barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier 858 crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (2) 859 860 such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. 861

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no 862 record exists, shall submit a report to the requesting executive director or personnel director of the 863 864 community services board. If any applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, 865 866 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the 867 procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be 868 disseminated except as provided in this section. 869

870 C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person 871 872 who was convicted of any violation of § 18.2-51.3; a misdemeanor violation relating to (i) unlawful 873 hazing, as set out in of § 18.2-56; (ii) reckless handling of a firearm, as set out in § or 18.2-56.1; (iii) assault and battery, as set out in, subsection A of § 18.2-57; or (iv) assault and battery against a family 874 or household member, as set out in subsection A of, or § 18.2-57.2; or any misdemeanor or felony 875 876 violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; 877 (b) threat, as set out in § of 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in §, 18.2-92; or (d) possession of burglarious tools, as set out in §, or 878 879 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 880 et seq.) of Chapter 7 of Title 18.2 offense set forth in clause (iii) of the definition of barrier crime in 881 § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or an equivalent any 882 substantially similar offense in under the laws of another state jurisdiction, if the hiring community 883 services board determines, based upon a screening assessment, that the criminal behavior was 884 substantially related to the applicant's substance abuse or mental illness and that the person has been 885 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history 886 background and his substance abuse or mental illness history.

887 D. Notwithstanding the provisions of subsection B, the community services board may hire for 888 compensated employment at adult substance abuse treatment programs a person who has been convicted 889 of not more than one offense of assault and battery of a law enforcement officer under subsection C of 890 § 18.2-57, or an equivalent any substantially similar offense in under the laws of another state 891 jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in 892 Virginia, or the equivalent if the offense person was committed in convicted under the laws of another 893 state jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring 894 community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully 895 896 rehabilitated and is not a risk to individuals receiving services based on his criminal history background 897 and his substance abuse history.

898 E. The community services board and a screening contractor designated by the Department shall 899 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants 900 have been rehabilitated successfully and are not a risk to individuals receiving services based on their 901 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such 902 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or 903 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, 904 and court costs for any prior convictions, and shall have been free of parole or probation for at least 905 five years for all convictions. In addition to any supplementary information the community services 906 board or screening contractor may require or the applicant may wish to present, the applicant shall 907 provide to the screening contractor a statement from his most recent probation or parole officer, if any, 908 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in 909 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless 910 the board decides to pay the cost.

911 F. Notwithstanding the provisions of subsection B, a community services board may hire for 912 compensated employment persons who have been convicted of not more than one misdemeanor offense 913 under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, 914 if 10 years have elapsed following the conviction, unless the person committed the offense while 915 employed in a direct care position.

916 G. Community services boards also shall require, as a condition of employment, approval as a 917 sponsored residential service provider, or permission to enter into a shared living arrangement with a 918 person receiving medical assistance services pursuant to a waiver, written consent and personal 919 information necessary to obtain a search of the registry of founded complaints of child abuse and 920 neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

921 H. The cost of obtaining the criminal history record and search of the child abuse and neglect 922 registry record shall be borne by the applicant, unless the community services board decides to pay the 923 cost.

924 I. A person who complies in good faith with the provisions of this section shall not be liable for any 925 civil damages for any act or omission in the performance of duties under this section unless the act or 926 omission was the result of gross negligence or willful misconduct. 927

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

928 A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations 929 adopted by the Board, criminal history record information from the Central Criminal Records Exchange 930 and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results 931 of a search of the child abuse and neglect central registry of any individual with whom the local board 932 or licensed child-placing agency is considering placing a child on an emergency, temporary or 933 permanent basis, including the birth parent of a child in foster care placement, unless the birth parent 934 has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth 935 parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such 936 937 background checks on all adult household members residing in the home of the individual with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be 938 939 at no cost to the individual. The local board or licensed child-placing agency shall pay for the national 940 fingerprint criminal history record check or may require such individual to pay the cost of the 941 fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees 942 assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for 943 responding to requests required by this section. 944

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

945 1. A sworn statement or affirmation disclosing whether or not the individual has a criminal 946 conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the individual has been the subject of a founded complaint of child abuse or neglect 947 948 within or outside the Commonwealth;

949 2. That the individual submit to fingerprinting and provide personal descriptive information to be 950 forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The 951 952 local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a 953 copy of any background check report and to challenge the accuracy and completeness of any such report 954 and obtain a prompt resolution before a final decision is made of the individual's fitness to have 955 responsibility for the safety and well-being of children.

956 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no 957 record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an 958 individual's record lacking disposition data, conduct research in whatever state and local recordkeeping 959 systems are available in order to obtain complete data. The state agency shall report to the local board 960 or licensed child-placing agency whether the individual meets the criteria for having responsibility for 961 the safety and well-being of children based on whether or not the individual has ever been convicted of 962 or is the subject of pending charges set forth for any barrier crime as defined in § 63.2-1719 or an equivalent set forth in another state 19.2-392.02. Copies of any information received by a local board or 963 964 licensed child-placing agency pursuant to this section shall be available to the state agency that regulates 965 or operates such a child-placing agency but shall not be disseminated further; and

966 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of 967 child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any 968 other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in 969 which a prospective parent or other adult in the home has resided in the preceding five years.

970 C. In emergency circumstances, each local board may obtain, from a criminal justice agency, 971 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau 972 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records 973 search authorized by this section. Within three days of placing a child, the local board shall require the 974 individual for whom a criminal history record information check was requested to submit to 975 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints 976 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose 977 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed 978 from the home immediately if any adult resident fails to provide such fingerprints and written 979 permission to perform a criminal history record check when requested.

980 D. Any individual with whom the local board is considering placing a child on an emergency basis 981 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh 982 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or 983 neglect. The search of the central registry must occur prior to emergency placement. Such central 984 registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall 985 provide a written statement of affirmation disclosing whether he has ever been the subject of a founded 986 case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not 987 approve individuals with a founded complaint of child abuse as foster or adoptive parents.

988 E. The child-placing agency shall not approve a foster or adoptive home if any individual has a record of an offense been convicted of any barrier crime as defined in § 63.2-1719 19.2-392.02 or is the subject of 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 who has been convicted of not more than one misdemeanor as set out in § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10 years have elapsed following the conviction.

995 F. A local board or child-placing agency may approve as a kinship foster care parent an applicant 996 who has been convicted of the following offenses, provided that 10 years have elapsed from the date of 997 the conviction and the local board or child-placing agency makes a specific finding that approving the **998** kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a 999 felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of 1000 Title 18.2, but not including a felony conviction for possession of drugs with the intent to distribute; any 1001 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 or (ii) a any misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; 1002 OF (iii) an equivalent offense under § 18.2-80, 18.2-81, 18.2-83, 18.2-87, 18.2-87, 18.2-88, or any 1003 1004 substantially similar offense in under the laws of another state jurisdiction.

§ 63.2-1601.1. Criminal history check for agency approved providers of services to adults.

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1006 A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal 1007 history record information from the Central Criminal Records Exchange of any individual the local board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on 1008 1009 1010 all adult household members residing in the home of the individual with whom the adult is to be placed. 1011 The local board shall not hire for compensated employment any persons who have been convicted of an 1012 any offense as defined set forth in clause (i) of the definition of barrier crime in § 63.2-1719 19.2-392.02. If approval as an agency approved provider is denied because of information obtained 1013 1014 through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy 1015 of the information obtained to the individual who is the subject of the search. Further dissemination of 1016 the criminal history record information is prohibited.

B. In emergency circumstances, each local board may obtain from a criminal justice agency the criminal history record information from the Central Criminal Records Exchange for the criminal records search authorized by this section. The provision of home-based services shall be immediately terminated or the adult shall be removed from the home immediately, if any adult resident has been convicted of a *any offense set forth in clause (i) of the definition of* barrier crime as described in § 63.2-1719 1922 19.2-392.02.

1023 § 63.2-1717. Certification of preschool or nursery school programs operated by accredited 1024 private schools; provisional certification; annual statement and documentary evidence required; 1025 enforcement; injunctive relief.

A. A preschool or nursery school program operated by a private school accredited by a statewide
accrediting organization recognized by the Board of Education or a private school or preschool that
offers to preschool-aged children a program accredited by the National Association for the Education of
Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools
International; the American Association of Christian Schools; the National Early Childhood Program
Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and
Programs; the International Academy for Private Education; the American Montessori Society; the

1033 International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the 1034 National Accreditation Commission and is recognized by the Board of Education, shall be exempt from 1035 licensure under this subtitle if it complies with the provisions of this section and meets the requirements 1036 of subsection B, C or D.

1037 B. A school described in subsection A shall meet the following conditions in order to be exempt 1038 under this subsection:

1039 1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory 1040 school attendance laws, and children below the age of compulsory school attendance also participate in 1041 such instructional programs;

1042 2. The instructional programs for children of and below the age of eligibility for school attendance 1043 share (i) a specific verifiable common pedagogy, (ii) education materials, (iii) methods of instruction, 1044 and (iv) professional training and individual teacher certification standards, all of which are required by 1045 a state-recognized accrediting organization;

3. The instructional programs described in subdivisions 1 and 2 have mixed age groups of 1046 1047 three-year-old to six-year-old children and the number of pupils in the preschool program does not exceed 15 pupils for each instructional adult: 1048

1049 4. The instructional program contemplates a three-to-four-year learning cycle under a common 1050 pedagogy; and

1051 5. Children below the age of eligibility for kindergarten attendance do not attend the instructional 1052 program for more than four hours per day.

1053 C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment 1054 ratio at any one time during the current school year of five children age five or above to one 1055 four-year-old child as long as no child in attendance is under age four and the number of pupils in the 1056 preschool program does not exceed 12 pupils for each instructional adult.

D. A private school or preschool described in subsection A shall meet the following conditions in 1057 1058 order to be exempt under this subsection: 1059

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

1060 2. The school does not hold itself out as a child care center, child day center, or child day program.

1061 3. Children enrolled in the school are at least three years of age and do not attend more than (i) 1062 three hours per day and (ii) five days per week. 1063

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

5. The school maintains a certificate or permit issued pursuant to a local government ordinance that 1064 1065 addresses health, safety and welfare of the children, such as but not limited to space requirements, and 1066 requires annual inspections.

1067 E. The school shall file with the Commissioner, prior to the beginning of the school year or calendar 1068 year, as the case may be, and thereafter, annually, a statement which includes the following: 1069

1. Intent to operate a certified preschool program;

1070

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

1071 3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having 1072 charge of a child enrolled in the school's preschool program the fact of the program's exemption from 1073 licensure;

1074 4. Documentary evidence that the physical facility in which the preschool program will be conducted 1075 has been inspected (i) before initial certification by the local building official and (ii) within the 1076 12-month period prior to initial certification and at least annually thereafter by the local health 1077 department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an 1078 inspection report which documents that the facility is in compliance with applicable laws and regulations 1079 pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire 1080 Prevention Code or the Uniform Statewide Building Code;

1081 5. Documentation that the school has disclosed the following in writing to the parents, guardians, or 1082 persons having charge of a child enrolled in the school's preschool program, and in a written statement 1083 available to the general public: (i) the school facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the 1084 1085 Statewide Fire Prevention Code or the Uniform Statewide Building Code, (ii) the preschool program's 1086 maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff 1087 health requirements, and (iv) a description of the school's public liability insurance, if any; 1088

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

1089 7. Documentary evidence that the private school requires all employees of the preschool and other 1090 school employees who have contact with the children enrolled in the preschool program to obtain a 1091 criminal record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or 1092 continued employment. The school shall not hire or continue employment of any such person who has an offense specified in § 63.2-1719. 1093

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1094 All accredited private schools seeking certification of preschool programs shall file such information 1095 on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of 1096 accredited private schools which comply with the provisions of subsection A.

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

1100 The Commissioner shall issue a provisional certificate to a private school which provides 1101 documentation to the Commissioner that it has initiated the accreditation process. The provisional 1102 certificate shall permit the school to operate its preschool program during the accreditation process 1103 period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A 1104 provisional certificate may be renewed up to an additional year if the accrediting organization provides a 1105 statement indicating it has visited the school within the previous six months and the school has made 1106 sufficient progress. Such programs shall not be subject to licensure during the provisional certification 1107 period.

1108 G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure.

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

1114 I. The revocation or denial of the certification of a preschool program shall be subject to appeal 1115 pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a 1116 final agency decision shall be in accordance with the provisions of the Administrative Process Act.

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

1123 K. Upon receipt of a complaint concerning a certified preschool program of an accredited private 1124 school, or of a private school to which provisional certification has been issued, if for good cause shown 1125 there is reason to suspect that the school is in noncompliance with any provision of this section or the 1126 health or safety of the children attending the preschool program is in danger, the Commissioner shall 1127 cause an investigation to be made, including on-site visits as he deems necessary of the services, 1128 personnel, and facilities of the school's program. The school shall afford the Commissioner reasonable 1129 opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool program. If, 1130 1131 upon completion of the investigation, it is determined that the school is in noncompliance with the 1132 provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of 1133 its noncompliance and thereafter may take appropriate action as provided by law, including a suit to 1134 enjoin the operation of the preschool program.

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

1139 M. If a private school operates a child day program outside the scope of its instructional classes 1140 during the school year or operates a child day program during the summer, the child day program shall 1141 be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

1142 N. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices of 1143 a private school from obtaining a license pursuant to this subtitle.

1144 § 63.2-1719. Barrier crime; construction.

1145 As used in this subtitle:

1146 "Barrier crime" means a conviction of a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 1147 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of 1148 1149 § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking 1150 1151 as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as 1152 1153 set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set 1154

1155 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 1156 of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children 1157 1158 1159 as set out in § 18.2-370 or 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure 1160 to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in 1161 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in 1162 1163 <u>§ 18.2-369</u>, employing or permitting a minor to assist in an act constituting an offense under Article 5 1164 (§ 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 1165 § 53.1-203, or an equivalent offense in another state. In the case of child welfare agencies and foster and 1166 adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation 1167 1168 relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of 1169 1170 Title 18.2, or an equivalent offense in another state.

1171 "Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive 1172 homes approved by child-placing agencies, (i) a conviction of any offense set forth in § 9.1-902 or a 1173 finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et 1174 seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register 1175 with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry 1176 in any other state; (ii) a conviction of any other felony not included in the definition of barrier crime or 1177 described in clause (i) unless five years have elapsed since conviction; and (iii) a founded complaint of 1178 child abuse or neglect within or outside the Commonwealth. In For purposes of this chapter, in the case 1179 of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions for any barrier crime as defined in § 19.2-392.02 shall include prior adult convictions and juvenile 1180 1181 convictions or adjudications of delinquency based on a crime that would be a felony if committed by an 1182 adult within or outside the Commonwealth.

§ 63.2-1720. (Effective until July 1, 2017) Employment for compensation of persons or use of 1183 1184 volunteers convicted of certain offenses prohibited; background check required; penalty.

1185 A. An assisted living facility, or adult day care center or child welfare agency licensed or registered 1186 in accordance with the provisions of this chapter, or family day homes approved by family day systems, 1187 shall not hire for compensated employment or continue to employ persons who have an been convicted 1188 of any offense as defined set forth in clause (i) of the definition of barrier crime in $\frac{63.2-1719}{63.2-1719}$ 1189 19.2-392.02. A child welfare agency licensed or registered in accordance with the provisions of this 1190 chapter or a family day home approved by a family day system shall not hire for compensated employment or continue to employ persons who (i) have been convicted of any barrier crime as defined 1191 1192 in § 19.2-392.02 or (ii) are the subject of a founded complaint of child abuse or neglect within or 1193 outside the Commonwealth. Such employees shall undergo background checks pursuant to subsection D. 1194 In the case of child welfare agencies, the provisions of this section shall apply to employees who are 1195 involved in the day-to-day operations of such agency or who are alone with, in control of, or 1196 supervising one or more children.

1197 B. A licensed assisted living facility or adult day care center may hire an applicant who has been 1198 convicted of one misdemeanor barrier crime not involving abuse or neglect, or any substantially similar 1199 offense under the laws of another jurisdiction, if five years have elapsed following the conviction.

1200 C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated 1201 employment persons who have been convicted of not more than one misdemeanor offense under 1202 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have 1203 elapsed following the conviction, unless the person committed such offense while employed in a child 1204 day center or the object of the offense was a minor. 1205

D. Background checks pursuant to this section require:

1206 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the 1207 subject of any pending criminal charges within or outside the Commonwealth and, in the case of child 1208 welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse 1209 or neglect within or outside the Commonwealth;

1210 2. A criminal history record check through the Central Criminal Records Exchange pursuant to 1211 § 19.2-389; and

1212 3. In the case of child welfare agencies, a search of the central registry maintained pursuant to 1213 § 63.2-1515 for any founded complaint of child abuse and neglect.

1214 E. Any person desiring to work as a compensated employee at a licensed assisted living facility, 1215 licensed adult day care center, a licensed or registered child welfare agency, or a family day home

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approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be is guilty of a Class 1 misdemeanor.

1220 F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child 1221 welfare agency, or a family day home approved by a family day system shall obtain for any 1222 compensated employees within 30 days of employment (i) an original criminal record clearance with 1223 respect to convictions for offenses specified any offense set forth in clause (i) of the definition of barrier 1224 crime in § 63.2-1719 19.2-392.02 or an original criminal history record from the Central Criminal 1225 Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day 1226 homes approved by family day systems, (a) an original criminal record clearance with respect to any 1227 barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central 1228 Criminal Records Exchange and (b) a copy of the information from the central registry. However, no 1229 employee shall be permitted to work in a position that involves direct contact with a person or child 1230 receiving services until an original criminal record clearance or original criminal history record has been 1231 received, unless such person works under the direct supervision of another employee for whom a 1232 background check has been completed in accordance with the requirements of this section. If an 1233 applicant is denied employment because of information from the central registry or convictions 1234 appearing on his criminal history record, the assisted living facility, adult day care center or child 1235 welfare agency shall provide a copy of the information obtained from the central registry or the Central 1236 Criminal Records Exchange or both to the applicant.

1237 G. No volunteer who (i) has an offense been convicted of any barrier crime as defined in § 1238 63.2-1719 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or 1239 outside the Commonwealth shall be permitted to serve in a licensed or registered child welfare agency or 1240 a family day home approved by a family day system. Any person desiring to volunteer at such a child 1241 welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1242 1. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of 1243 volunteer service, a copy of (i) (a) the information from the central registry and (ii) (b) an original 1244 criminal record clearance with respect to offenses specified any barrier crime defined in § 63.2-1719 1245 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. Any 1246 person making a materially false statement regarding the sworn statement or affirmation provided 1247 pursuant to subdivision D 1 shall be is guilty of a Class 1 misdemeanor. If a volunteer is denied service 1248 because of information from the central registry or convictions appearing on his criminal history record, 1249 such child welfare agency shall provide a copy of the information obtained from the central registry or 1250 the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall 1251 apply only to volunteers who will be alone with any child in the performance of their duties and shall 1252 not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a 1253 family day home approved by a family day system, whether or not such parent-volunteer will be alone 1254 with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more 1255 1256 than four hours per day, provided that the parent-volunteer works under the direct supervision of a 1257 person who has received a clearance pursuant to this section.

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

1261 I. Further dissemination of the background check information is prohibited other than to the
 1262 Commissioner's representative or a federal or state authority or court as may be required to comply with
 1263 an express requirement of law for such further dissemination.

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

1267 K. The provisions of this section shall not apply to any children's residential facility licensed
1268 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements
1269 contained in § 63.2-1726.

1270 L. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

1273 § 63.2-1720. (Effective July 1, 2017) Assisted living facilities and adult day care centers; 1274 employment for compensation of persons or use of volunteers convicted of certain offenses 1275 prohibited; background check required; penalty.

1276 A. No assisted living facility, or adult day care center, child-placing agency, independent foster

1277 home, or family day system licensed in accordance with the provisions of this chapter, or registered 1278 family day homes or family day homes approved by family day systems, shall hire for compensated 1279 employment or continue to employ persons who have an been convicted of any offense as defined set 1280 forth in clause (i) of the definition of barrier crime in § 63.2-1719 19.2-392.02. A child-placing agency 1281 or independent foster home licensed in accordance with the provisions of this chapter shall not hire for 1282 compensated employment or continue to employ persons who (i) have been convicted of any barrier 1283 crime as defined in § 19.2-392.02 or (ii) are the subject of a founded complaint of child abuse or 1284 neglect within or outside the Commonwealth. All applicants for employment shall undergo background 1285 checks pursuant to subsection C.

1286 B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one 1287 misdemeanor barrier crime not involving abuse or neglect, or any substantially similar offense under the 1288 laws of another jurisdiction, if five years have elapsed following the conviction. 1289

C. Background checks pursuant to subsection A require:

1290 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 1291 1292 licensed child-placing agencies, independent foster homes, and family day systems, registered family day 1293 homes, and family day homes approved by family day systems, whether or not the person has been the 1294 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

1295 2. A criminal history records check through the Central Criminal Records Exchange pursuant to 1296 § 19.2-389; and

1297 3. In the case of licensed child-placing agencies, independent foster homes, and family day systems, 1298 registered family day homes, and family day homes approved by family day systems, a search of the 1299 central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and 1300 neglect.

1301 D. Any person making a materially false statement regarding the sworn statement or affirmation 1302 provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor.

1303 E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, 1304 licensed independent foster home, licensed family day system, registered family day home, or family 1305 day home approved by a family day system shall obtain for any compensated employees within 30 days 1306 of employment (i) an original criminal record clearance with respect to convictions for offenses specified 1307 any offense set forth in clause (i) of the definition of barrier crime in § 63.2-1719 19.2-392.02 or an 1308 original criminal history record from the Central Criminal Records Exchange and (ii) in the case of 1309 licensed child-placing agencies, independent foster homes, and family day systems, registered family day 1310 homes, and family day homes approved by family day systems, (a) an original criminal record 1311 clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history 1312 record from the Central Criminal Records Exchange and (b) a copy of the information from the central 1313 registry for any compensated employee within 30 days of employment. However, no employee shall be 1314 permitted to work in a position that involves direct contact with a person or child receiving services 1315 until an original criminal record clearance or original criminal history record has been received, unless 1316 such person works under the direct supervision of another employee for whom a background check has 1317 been completed in accordance with the requirements of this section. If an applicant is denied 1318 employment because of information from the central registry or convictions appearing on his criminal 1319 history record, the licensed assisted living facility, adult day care center, child-placing agency, 1320 independent foster home, or family day system, registered family day home, or family day home 1321 approved by a family day system shall provide a copy of the information obtained from the central 1322 registry or the Central Criminal Records Exchange or both to the applicant.

1323 F. No volunteer who (i) has an offense been convicted of any barrier crime as defined in § 1324 63.2-1719 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or 1325 outside the Commonwealth shall be permitted to serve in a licensed child-placing agency, independent 1326 foster home, or family day system, registered family day home, or family day home approved by a 1327 family day system. Any person desiring to volunteer at a licensed child-placing agency, independent 1328 foster home, or family day system, registered family day home, or family day home approved by a 1329 family day system shall provide the agency, system, or home with a sworn statement or affirmation 1330 pursuant to subdivision C 1. Such licensed child-placing agency, independent foster home, or family day 1331 system, registered family day home, or family day home approved by a family day system shall obtain 1332 for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) (a) the 1333 information from the central registry and (ii) (b) an original criminal record clearance with respect to 1334 offenses specified any barrier crime as defined in § 63.2-1719 19.2-392.02 or an original criminal 1335 history record from the Central Criminal Records Exchange. Any person making a materially false 1336 statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry 1337

1338 or convictions appearing on his criminal history record, such licensed child-placing agency, independent 1339 foster home, or family day system, registered family day home, or family day home approved by a 1340 family day system shall provide a copy of the information obtained from the central registry or the 1341 Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall 1342 apply only to volunteers who will be alone with any child in the performance of their duties and shall 1343 not apply to a parent-volunteer of a child attending a licensed child-placing agency, independent foster 1344 home, or family day system, registered family day home, or family day home approved by a family day 1345 system, whether or not such parent-volunteer will be alone with any child in the performance of his 1346 duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the 1347 parent-volunteer's own child in a program that operates no more than four hours per day, provided that 1348 the parent-volunteer works under the direct supervision of a person who has received a clearance 1349 pursuant to this section.

1350 G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day 1351 care center without the permission or under the supervision of a person who has received a clearance 1352 pursuant to this section.

1353 H. Further dissemination of the background check information is prohibited other than to the 1354 Commissioner's representative or a federal or state authority or court as may be required to comply with 1355 an express requirement of law for such further dissemination.

1356 I. A licensed assisted living facility shall notify and provide all students a copy of the provisions of 1357 this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living 1358 facility.

1359 J. A person who complies in good faith with the provisions of this section shall not be liable for any 1360 civil damages for any act or omission in the performance of duties under this section unless the act or 1361 omission was the result of gross negligence or willful misconduct.

1362 § 63.2-1720.1. (Effective July 1, 2017) Licensed child day centers and licensed family day 1363 homes; employment for compensation or use as volunteers of persons convicted of or found to 1364 have committed certain offenses prohibited; national background check required; penalty.

1365 A. No child day center or family day home licensed in accordance with the provisions of this chapter 1366 shall hire for compensated employment, continue to employ, or permit to serve as a volunteer in a position that is involved in the day-to-day operations of the child day center or family day home or in 1367 1368 which the employee or volunteer will be alone with, in control of, or supervising children any person 1369 who (i) has an offense been convicted of any barrier crime as defined in $\frac{63.2-1719}{19.2-392.02}$ or (ii) 1370 is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All 1371 applicants for employment or to serve as volunteers shall undergo a background check in accordance 1372 with subsection B. 1373

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

1374 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is 1375 the subject of pending charges for any offense within or outside the Commonwealth and whether he has 1376 been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; 1377

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 1378 of § 19.2-392.02; and

1379 3. Authorize the child day center or family day home to obtain a copy of information from the 1380 central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect 1381 undertaken on him.

1382 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2 1383 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of 1384 Investigation for the purpose of obtaining national criminal history record information regarding such 1385 applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal 1386 Records Exchange shall forward the information to the Department, and the Department shall report to 1387 the child day center or family day home whether the applicant is eligible to have responsibility for the 1388 safety and well-being of children. In cases in which the record forwarded to the Department is lacking 1389 disposition data, the Department shall conduct research in whatever state and local recordkeeping 1390 systems are available in order to obtain complete data before reporting to the child day center or family 1391 day home.

1392 C. The child day center or family day home shall inform every applicant for compensated 1393 employment or to serve as a volunteer required to undergo a background check pursuant to this section 1394 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and 1395 completeness of any such report and obtain a prompt resolution before a final determination is made of 1396 the applicant's eligibility to have responsibility for the safety and well-being of children.

1397 D. Any person making a materially false statement regarding the sworn statement or affirmation 1398 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, or any substantially similar offense under the laws of another jurisdiction, 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 sectionshall not exceed the actual cost to the state of such processing and administration.

I. Any person employed for compensation at a licensed child day center or family day home or permitted to serve as a volunteer at a licensed child day center or family day home in a position that is involved in the day-to-day operations of the child day center or family day home or in which he will be alone with, in control of, or supervising children who is (i) convicted of an offense any barrier crime as defined in § 63.2-1719 within or outside of the Commonwealth 19.2-392.02 or (ii) found to be the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day center or family day home of such conviction or finding.

\$ 63.2-1721. (Effective until July 1, 2017) Background check upon application for licensure or
registration as child welfare agency; background check of foster or adoptive parents approved by
child-placing agencies and family day homes approved by family day systems; penalty.

1422 A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) 1423 agents at the time of application who are or will be involved in the day-to-day operations of the child 1424 welfare agency or who are or will be alone with, in control of, or supervising one or more of the 1425 children; and (iii) any other adult living in the home of an applicant for licensure or registration as a 1426 family day home shall undergo a background check. Upon application for licensure as an assisted living 1427 facility, all applicants shall undergo a background check. In addition, foster or adoptive parents 1428 requesting approval by child-placing agencies and operators of family day homes requesting approval by 1429 family day systems, and any other adult residing in the family day home or existing employee or 1430 volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to 1431 their approval.

B. Background checks pursuant to this section require:

1432

1433 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
1434 subject of any pending criminal charges within or outside the Commonwealth and whether or not the
1435 person has been the subject of a founded complaint of child abuse or neglect within or outside the
1436 Commonwealth;

1437 2. A criminal history record check through the Central Criminal Records Exchange pursuant to 1438 § 19.2-389; and

1439 3. In the case of child welfare agencies or adoptive or foster parents, a search of the central registry1440 maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

1441 C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the 1442 1443 background check information required in subsection B to the Commissioner's representative prior to 1444 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an 1445 assisted living facility, shall provide an original criminal record clearance with respect to offenses 1446 specified any barrier crime as defined in § 63.2-1719 19.2-392.02 or an original criminal history record 1447 from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility 1448 shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of 1449 the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central 1450 Criminal Records Exchange. Any person making a materially false statement regarding the sworn 1451 statement or affirmation provided pursuant to subdivision B 1 shall be is guilty of a Class 1 1452 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an 1453 assisted living facility, required to have a background check (i) has been convicted of any offense 1454 barrier crime as defined in § 63.2-1719 19.2-392.02 or (ii) is the subject of a founded complaint of 1455 child abuse or neglect within or outside the Commonwealth, and such person has not been granted a 1456 waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsections E, 1457 F, G, or H (i), (a) the Commissioner shall not issue a license or registration to a child welfare agency; 1458 (ii) the Commissioner shall not issue a license to an assisted living facility; (iii), (b) a child-placing 1459 agency shall not approve an adoptive or foster home, or (iv) (c) a family day system shall not approve

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1460 a family day home. If any applicant for licensure as an assisted living facility required to have a 1461 background check has been convicted of any offense set forth in clause (i) of the definition of barrier 1462 crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

1463 D. No person specified in subsection A shall be involved in the day-to-day operations of a child 1464 welfare agency; be alone with, in control of, or supervising one or more children receiving services from 1465 a child welfare agency; or be permitted to work in a position that involves direct contact with a person 1466 receiving services without first having completed background checks pursuant to subsection B, unless 1467 such person is directly supervised by another person for whom a background check has been completed 1468 in accordance with the requirements of this section.

1469 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency 1470 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one 1471 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of 1472 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years 1473 have elapsed following the conviction.

1474 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency 1475 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking 1476 and entering a dwelling home or other structure with intent to commit larceny, or any substantially 1477 similar offense under the laws of another jurisdiction, who has had his civil rights restored by the 1478 Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

1479 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency 1480 may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, any 1481 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil 1482 rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed 1483 following the conviction.

1484 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency 1485 may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs with 1486 intent to distribute any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02 1487 who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 1488 years have elapsed following the conviction.

1489 I. If an applicant is denied licensure, registration or approval because of information from the central 1490 registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy 1491 of the information obtained from the central registry or the Central Criminal Records Exchange or both 1492 to the applicant.

1493 J. Further dissemination of the background check information is prohibited other than to the 1494 Commissioner's representative or a federal or state authority or court as may be required to comply with 1495 an express requirement of law for such further dissemination.

1496 K. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on 1497 the issuance of a license for any offense shall not apply to any children's residential facility licensed 1498 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements 1499 contained in § 63.2-1726.

1500 § 63.2-1721. (Effective July 1, 2017) Background check upon application for licensure as a 1501 child-placing agency, etc.; penalty.

1502 A. Upon application for licensure as a child-placing agency, independent foster home, or family day 1503 system or registration as a family day home, (i) all applicants; (ii) agents at the time of application who 1504 are or will be involved in the day-to-day operations of the child-placing agency, independent foster 1505 home, family day system, or family day home or who are or will be alone with, in control of, or 1506 supervising one or more of the children; and (iii) any other adult living in the home of an applicant for 1507 registration as a family day home shall undergo a background check pursuant to subsection B. Upon 1508 application for licensure as an assisted living facility, all applicants shall undergo a background check 1509 pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing 1510 agencies and operators of family day homes requesting approval by family day systems, and any other 1511 adult residing in the family day home or existing employee or volunteer of the family day home, shall 1512 undergo background checks pursuant to subsection B prior to their approval. 1513

B. Background checks pursuant to subsection A require:

1514 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the 1515 subject of any pending criminal charges within or outside the Commonwealth and whether or not the 1516 person has been the subject of a founded complaint of child abuse or neglect within or outside the 1517 Commonwealth;

1518 2. A criminal history records check through the Central Criminal Records Exchange pursuant to 1519 § 19.2-389; and

1520 3. In the case of child-placing agencies, independent foster homes, family day systems, and family 1521 day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to1522 § 63.2-1515 for any founded complaint of child abuse and neglect.

1523 C. The person required to have a background check pursuant to subsection A shall submit the 1524 background check information required in subsection B to the Commissioner's representative prior to 1525 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an 1526 assisted living facility, shall provide an original criminal record clearance with respect to offenses specified any barrier crime as defined in § 63.2-1719 19.2-392.02 or an original criminal history record 1527 1528 from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility 1529 shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of 1530 the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central 1531 Criminal Records Exchange. Any person making a materially false statement regarding the sworn 1532 statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any 1533 person specified in subsection A, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any offense barrier crime as defined in § 1534 1535 63.2-1719 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or 1536 outside the Commonwealth, and such person has not been granted a waiver by the Commissioner 1537 pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, G, or H, (i) (a) the 1538 Commissioner shall not issue a license to a child-placing agency, independent foster home, or family 1539 day system or a registration to a family day home; (ii) the Commissioner shall not issue a license to an 1540 assisted living facility; (iii) (b) a child-placing agency shall not approve an adoptive or foster home; or 1541 (iv) (c) a family day system shall not approve a family day home. If any applicant for licensure as an 1542 assisted living facility required to have a background check has been convicted of any offense set forth 1543 in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a 1544 license to an assisted living facility.

1545 D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed 1546 child-placing agency, independent foster home, or family day system or a registered family day home; 1547 be alone with, in control of, or supervising one or more children receiving services from a licensed 1548 child-placing agency, independent foster home, or family day system or a registered family day home; 1549 or be permitted to work in a position that involves direct contact with a person receiving services 1550 without first having completed background checks pursuant to subsection B unless such person is 1551 directly supervised by another person for whom a background check has been completed in accordance 1552 with the requirements of this section.

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

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

1563 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
1564 may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, any
1565 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil
1566 rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed
1567 following the conviction.

H. 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 with intent to distribute any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02
who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

1573 I. If an applicant is denied licensure, registration or approval because of information from the central 1574 registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy 1575 of the information obtained from the central registry or the Central Criminal Records Exchange or both 1576 to the applicant.

1577 J. Further dissemination of the background check information is prohibited other than to the
 1578 Commissioner's representative or a federal or state authority or court as may be required to comply with
 1579 an express requirement of law for such further dissemination.

1580 § 63.2-1721.1. (Effective July 1, 2017) Background check upon application for licensure as child 1581 day center or family day home; penalty.

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1582 A. Every (i) applicant for licensure as a child day center or family day home; (ii) agent of an 1583 applicant for licensure as a child day center or family day home at the time of application who is or 1584 will be involved in the day-to-day operations of the child day center or family day home or who is or 1585 will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in the 1586 family day home shall undergo a background check in accordance with subsection B prior to issuance of 1587 a license as a child day center or family day home. 1588

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

1589 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is 1590 the subject of any pending criminal charges for any offense within or outside the Commonwealth and 1591 whether or not he has been the subject of a founded complaint of child abuse or neglect within or 1592 outside the Commonwealth;

1593 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 1594 of § 19.2-392.02; and

1595 3. Authorize the Department to obtain a copy of information from the central registry maintained 1596 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

1597 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be 1598 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the 1599 purpose of obtaining national criminal history record information regarding the individual. Upon receipt 1600 of an applicant's record or notification that no record exists, the Central Criminal Records Exchange 1601 shall forward the information to the Department. In cases in which the record forwarded to the 1602 Department is lacking disposition data, the Department shall conduct research in whatever state and local 1603 recordkeeping systems are available in order to obtain complete data.

1604 C. If any person specified in subsection A required to have a background check (i) has an offense 1605 been convicted of any barrier crime as defined in § 63.2-1719 19.2-392.02 or (ii) is the subject of a 1606 founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has 1607 not been granted a waiver by the Commissioner pursuant to § 63.2-1723, no license as a child day 1608 center or family day home shall be granted.

1609 D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized 1610 in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center 1611 or family day home.

1612 E. No person specified in subsection A shall be involved in the day-to-day operations of the child 1613 day center or family day home, or shall be alone with, in control of, or supervising one or more 1614 children without first having completed any required background check pursuant to subsection B.

1615 F. Any person making a materially false statement regarding the sworn statement or affirmation 1616 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

1617 G. If an applicant is denied licensure because of information from the central registry or convictions 1618 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. 1619

1620 H. Further dissemination of the background check information is prohibited other than to the 1621 Commissioner's representative or a federal or state authority or court as may be required to comply with 1622 an express requirement of law for such further dissemination.

1623 I. Fees charged for the processing and administration of background checks pursuant to this section 1624 shall not exceed the actual cost to the state of such processing and administration.

1625 § 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain 1626 background check.

1627 A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare 1628 agency, assisted living facility, or adult day care center; a child-placing agency may revoke the approval 1629 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, 63.2-1720.1, 63.2-1721, or 63.2-1721.1 required 1630 1631 1632 to have a background check (i) has an offense been convicted of any barrier crime as defined in § 1633 63.2-1719 19.2-392.02 or (ii) in the case of a child welfare agency, foster home, or family day home, is 1634 the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and 1635 such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not 1636 subject to the exceptions in subsection B of § 63.2-1720, subsection G of § 63.2-1720.1, or subsection E, 1637 F, or G of § 63.2-1721.1, and the facility, center, or agency refuses to separate such person from employment or service. 1638

1639 B. Failure to obtain background checks pursuant to §§ 63.2-1720, 63.2-1720.1, 63.2-1721, and 1640 63.2-1721.1 shall be grounds for denial or revocation of a license, registration, or approval. No violation 1641 shall occur if the assisted living facility, adult day care center, child-placing agency, independent foster home, family day system, family day home, or child day center has applied for the background check 1642

1643 timely and it has not been obtained due to administrative delay. The provisions of this section shall be 1644 enforced by the Department. 1645

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

1646 A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is 1647 disqualified because of a criminal conviction or a criminal conviction in the background check of any 1648 other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 1649 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 1650 1651 person is of good moral character and reputation and (ii) the waiver would not adversely affect the 1652 safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any 1653 person who has been convicted of a any barrier crime as defined in § 63.2-1719 19.2-392.02. However, 1654 the Commissioner may grant a waiver to a family day home licensed or registered by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one 1655 misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws 1656 1657 of another jurisdiction, provided that (a) five years have elapsed following the conviction and (b) the 1658 Department has conducted a home study that includes, but is not limited to, (1) an assessment of the 1659 safety of children placed in the home and (2) a determination that the offender is now a person of good 1660 moral character and reputation. The waiver shall not be granted if the adult living in the home is an 1661 assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both 1662 §§ 18.2-57 and 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction. 1663 Any waiver granted under this section shall be available for inspection by the public. The child welfare 1664 agency shall notify in writing every parent and guardian of the children in its care of any waiver granted 1665 for its operators, employees or volunteers.

1666 1667 B. The Board shall adopt regulations to implement the provisions of this section.

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

1668 Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a 1669 prospective employee or volunteer or any other person who is expected to be alone with one or more 1670 children enrolled in the child day center to obtain within 30 days of employment or commencement of 1671 volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded 1672 complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of 1673 § 19.2-389. However, no employee shall be permitted to work in a position that involves direct contact 1674 with a child until an original criminal record clearance or original criminal history record has been 1675 received, unless such person works under the direct supervision of another employee for whom a 1676 background check has been completed in accordance with the requirements of this section. A child day 1677 center that is exempt from licensure pursuant to § 63.2-1716 shall refuse employment or service to any 1678 person who (i) has been convicted of any offense barrier crime as defined in § 63.2-1719 19.2-392.02 1679 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the 1680 *Commonwealth.* Such center shall also require a prospective employee or volunteer or any other person 1681 who is expected to be alone with one or more children in the child day center to provide a sworn 1682 statement or affirmation disclosing whether or not the applicant has ever been (i) (a) the subject of a 1683 founded complaint of child abuse or neglect, or (ii) (b) convicted of a crime or is the subject of pending 1684 criminal charges for any offense within the Commonwealth or any equivalent offense outside the 1685 Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone 1686 with his or her own child. For purposes of this section, convictions shall include prior adult convictions 1687 and juvenile convictions or adjudications of delinquency based on a crime that would have been a 1688 felony if committed by an adult within or outside the Commonwealth. Any person making a materially 1689 false statement regarding any such offense shall be is guilty of a Class 1 misdemeanor. If an applicant is 1690 denied employment or service because of information from the central registry or convictions appearing 1691 on his criminal history record, the child day center shall provide a copy of the information obtained 1692 from the central registry or Central Criminal Records Exchange or both to the applicant. Further 1693 dissemination of the information provided to the facility is prohibited.

1694 The provisions of this section referring to volunteers shall apply only to volunteers who will be alone 1695 with any child in the performance of their duties and shall not apply to a parent-volunteer of a child 1696 attending the child day center whether or not such parent-volunteer will be alone with any child in the 1697 performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children 1698 which includes the parent-volunteer's own child, in a program which operates no more than four hours 1699 per day, where the parent-volunteer works under the direct supervision of a person who has received a 1700 clearance pursuant to this section.

§ 63.2-1725. Child day centers or family day homes receiving federal, state, or local child care 1701 1702 funds; eligibility requirements.

1703 A. Whenever any child day center or family day home that has not met the requirements of

§§ 63.2-1720, 63.2-1721, and 63.2-1724 applies to enter into a contract with the Department or a local 1704 1705 department to provide child care services to clients of the Department or local department, the 1706 Department or local department shall require a criminal records check pursuant to subdivision A 43 of 1707 § 19.2-389, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child 1708 abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents 1709 involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or 1710 more of the children; and any other adult living in a family day home. The applicant shall provide the 1711 Department or local department with copies of these records checks. The child day center or family day 1712 home shall not be permitted to enter into a contract with the Department or a local department for child 1713 care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved 1714 in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or 1715 any other adult living in a family day home (i) has been convicted of any offense barrier crime as defined in § 63.2-1719 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or 1716 1717 neglect within or outside the Commonwealth. The child day center or family day home shall also require 1718 the above individuals to provide a sworn statement or affirmation disclosing whether or not the person 1719 has ever been (i) (a) the subject of a founded case of child abuse or neglect or (ii) (b) convicted of a 1720 crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent 1721 offense outside the Commonwealth. Any person making a materially false statement regarding any such 1722 offense shall be is guilty of a Class 1 misdemeanor. If a person is denied employment or work because 1723 of information from the central registry or convictions appearing on his criminal history record, the child 1724 day center or family day program shall provide a copy of such information obtained from the central 1725 registry or Central Criminal Records Exchange or both to the person. Further dissemination of the 1726 information provided to the facility, beyond dissemination to the Department, agents of the Department, 1727 or the local department, is prohibited.

1728 B. Every child day center or family day home that enters into a contract with the Department or a 1729 local department to provide child care services to clients of the Department or local departments that is 1730 funded, in whole or in part, by the Child Care and Development Block Grant, shall comply with all 1731 requirements established by federal law and regulations. 1732

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

1733 A. As a condition of employment, volunteering, or providing services on a regular basis, every 1734 children's residential facility that is regulated or operated by the Departments of Social Services, 1735 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any 1736 individual who (i) accepts a position of employment at such a facility who was not employed by that 1737 facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with 1738 a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 1739 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 1740 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 1741 1742 1743 Federal Bureau of Investigation for the purpose of obtaining criminal history record information 1744 regarding such applicant. The children's residential facility shall inform the applicant that he is entitled 1745 to obtain a copy of any background check report and to challenge the accuracy and completeness of any 1746 such report and obtain a prompt resolution before a final determination is made of the applicant's 1747 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the 1748 children's residential facility with a written statement or affirmation disclosing whether he has ever been 1749 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. 1750 The results of the criminal history background check must be received prior to permitting an applicant 1751 to work with children.

1752 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no 1753 record exists, shall forward it to the state agency which operates or regulates the children's residential 1754 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's 1755 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are 1756 available in order to obtain complete data. The state agency shall report to the children's facility whether 1757 the applicant is eligible to have responsibility for the safety and well-being of children. Except as 1758 otherwise provided in subsection B, no children's residential facility regulated or operated by the 1759 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social 1760 Services shall hire for compensated employment or allow to volunteer or provide contractual services 1761 persons who have been (a) convicted of or are the subject of pending charges for the following erimes: a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in 1762 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in 1763 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set 1764

out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of 1765 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 1766 1767 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 1768 felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 1769 (§ 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 1770 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 1771 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 1772 1773 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 1774 1775 § 18.2-355; crimes against nature involving children as set out in § 18.2-361; taking indecent liberties 1776 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; 1777 obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1; incest as set out in § 18.2-374.1; 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 1778 1779 1780 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of 1781 1782 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 1783 jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in 1784 another state; (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in 1785 \$ 19.2-392.02 or (b) convicted of any felony violation relating to possession of drugs as set out in 1786 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state, set 1787 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the 1788 application date for employment, to be a volunteer, or to provide contractual services; (c) convicted of 1789 any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of 1790 Chapter 7 of Title 18.2 and continue or (2) such person continues on probation or parole or have has 1791 failed to pay required court costs; or (d) convicted of any offense set forth in § 9.1-902 or have been the 1792 subject of a finding of not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et 1793 seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register 1794 with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry 1795 in any other state for such offense set forth in clause (iv) of the definition of barrier crime in 1796 § 19.2-392.02. The provisions of this section also shall apply to residential programs established 1797 pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the 1798 court that alleges the juvenile is delinquent or in need of services or supervision, and to local secure 1799 detention facilities, provided, however, that the provisions of this section related to local secure detention 1800 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 1801 1802 regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual 1803 services directly to a juvenile at a local secure detention facility on a regular basis and will be alone 1804 with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state 1805 or local agency that regulates or operates the local secure detention facility shall process the criminal 1806 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, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

1813 If the applicant is denied employment or the opportunity to volunteer or provide services at a 1814 children's residential facility because of information appearing on his criminal history record, and the 1815 applicant disputes the information upon which the denial was based, upon written request of the 1816 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 1817 1818 that do not involve contact with children pending receipt of the report, the children's residential facility 1819 is not precluded from suspending the applicant from his position pending a final determination of the 1820 applicant's eligibility to have responsibility for the safety and well-being of children. The information 1821 provided to the children's residential facility shall not be disseminated except as provided in this section.

1822 C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the
1823 children's residential facility to obtain a copy of information from the central registry maintained
1824 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant
1825 shall provide the children's residential facility with a written statement or affirmation disclosing whether

1826 he has ever been the subject of a founded case of child abuse or neglect within or outside the 1827 Commonwealth. The children's residential facility shall receive the results of the central registry search 1828 prior to permitting an applicant to work alone with children. Children's residential facilities regulated or 1829 operated by the Departments of Education; Behavioral Health and Developmental Services; Military 1830 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide 1831 contractual services, persons who have a founded case of child abuse or neglect. Every residential 1832 facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be 1833 authorized to obtain a copy of the information from the central registry.

1834 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and
1835 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with
1836 the provisions of this section. Copies of any information received by a children's residential facility
1837 pursuant to this section shall be available to the agency that regulates or operates such facility but shall
1838 not be disseminated further. The cost of obtaining the criminal history record and the central registry
1839 information shall be borne by the employee or volunteer unless the children's residential facility, at its
1840 option, decides to pay the cost.