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**HOUSE BILL NO. 479**

Offered January 10, 2018

Prefiled January 8, 2018

*A BILL to amend and reenact §§ 37.2-416 and 37.2-506 of the Code of Virginia, relating to barrier crimes; adult substance abuse and mental health treatment providers.*

Patrons—McQuinn, Boysko, Gooditis, Hope, Hurst, Plum, Rasoul, Simon, Tyler and Watts; Senator: Vogel

Referred to Committee on Health, Welfare and Institutions

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

**1. That §§ 37.2-416 and 37.2-506 of the Code of Virginia are amended and reenacted as follows:**

**§ 37.2-416. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case 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 or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health 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 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 position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance 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 developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

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

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 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;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 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 to be a sponsored residential service provider or (b) such applicant 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; or

3. Permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause

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58 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause  
59 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a  
60 shared living arrangement or (b) such person continues on probation or parole or has failed to pay  
61 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
62 § 19.2-392.02.

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

71 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
72 at adult substance abuse or adult mental health treatment facilities a person who was convicted of any  
73 violation of ~~§ 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of~~  
74 ~~§ 18.2-57; any violation of § 18.2-60, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the~~  
75 ~~definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of~~  
76 ~~§ 18.2-248; offense described in subdivision B 1~~ or any substantially similar offense under the laws of  
77 another jurisdiction, if the hiring provider determines, based upon a screening assessment *conducted in*  
78 *accordance with subsection D*, that the criminal behavior was substantially related to the applicant's  
79 substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk  
80 to individuals receiving services based on his criminal history background and his substance abuse or  
81 mental illness history.

82 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
83 at adult substance abuse treatment facilities a person who has been convicted of not more than one  
84 offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another  
85 jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in  
86 Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more  
87 than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a  
88 screening assessment, that the criminal behavior was substantially related to the applicant's substance  
89 abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving  
90 services based on his criminal history background and his substance abuse history.

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

104 F. E. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated  
105 employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a  
106 shared living arrangement persons who have been convicted of not more than one misdemeanor offense  
107 under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,  
108 if 10 years have elapsed following the conviction, unless the person committed the offense while  
109 employed in a direct care position. A provider may also approve a person as a sponsored residential  
110 service provider if (a) any adult living in the home of an applicant or (b) any person employed by the  
111 applicant to provide services in the home in which sponsored residential services are provided has been  
112 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially  
113 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,  
114 unless the person committed the offense while employed in a direct care position.

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

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

I. H. 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.

**§ 37.2-506. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case 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 or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application 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 position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance 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 developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or E, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier 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) 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.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the 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, 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 executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, ~~the~~ a community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of ~~§ 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of 18.2-60, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; offense described in subsection B~~ or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment *conducted in accordance with subsection D*, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been

181 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history  
182 background and his substance abuse or mental illness history.

183 D. Notwithstanding the provisions of subsection B, the community services board may hire for  
184 compensated employment at adult substance abuse treatment programs a person who has been convicted  
185 of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense  
186 under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense  
187 was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of  
188 another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring  
189 community services board determines, based upon a screening assessment, that the criminal behavior  
190 was substantially related to the applicant's substance abuse and that the person has been successfully  
191 rehabilitated and is not a risk to individuals receiving services based on his criminal history background  
192 and his substance abuse history.

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

206 F. E. Notwithstanding the provisions of subsection B, a community services board may (i) hire for  
207 compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter  
208 into a shared living arrangement persons who have been convicted of not more than one misdemeanor  
209 offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another  
210 jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense  
211 while employed in a direct care position. A community services board may also approve a person as a  
212 sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any  
213 person employed by the applicant to provide services in the home in which sponsored residential  
214 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or  
215 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have  
216 elapsed following the conviction, unless the person committed the offense while employed in a direct  
217 care position.

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

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

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