

19102124D

HOUSE BILL NO. 2043

Offered January 9, 2019

Prefiled January 7, 2019

A *BILL to amend and reenact §§ 19.2-389, 63.2-1720.1, as it is currently effective and as it shall become effective, and 63.2-1724, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to child care providers; background checks; portability.*

Patron—McGuire

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 63.2-1720.1, as it is currently effective and as it shall become effective, and 63.2-1724, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the 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;

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

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

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

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

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

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

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the

INTRODUCED

HB2043

59 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
60 with a conviction record would be compatible with the nature of the employment under consideration;

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

68 9. To the extent permitted by federal law or regulation, public service companies as defined in
69 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
70 personal contact with the public or when past criminal conduct of an applicant would be incompatible
71 with the nature of the employment under consideration;

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

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

81 12. Administrators and board presidents of and applicants for licensure or registration as a child
82 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
83 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
84 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved
85 by family day systems, and foster and adoptive parent applicants of private child-placing agencies,
86 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction
87 that the data shall not be further disseminated by the facility or agency to any party other than the data
88 subject, the Commissioner of Social Services' representative, or a federal or state authority or court as
89 may be required to comply with an express requirement of law for such further dissemination; *however,*
90 *nothing in this subdivision shall be construed to prohibit the Commissioner of Social Services'*
91 *representative from issuing written certifications regarding the results of prior background checks in*
92 *accordance with subsection J of § 63.2-1720.1 or § 63.2-1724;*

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

96 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
97 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
98 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

106 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth
107 in § 4.1-103.1;

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

111 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
112 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
113 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

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

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

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

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, 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;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, 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;

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

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

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

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

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

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,

182 or have accepted a position related to the provision of transportation services to enrollees in the
183 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
184 program administered by the Department of Medical Assistance Services;

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

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

194 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
195 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
196 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
197 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

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

205 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
206 a juvenile's household when completing a predispositional or postdispositional report required by §
207 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

208 45. Other entities as otherwise provided by law.

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

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

221 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
222 section shall be limited to the purposes for which it was given and may not be disseminated further,
223 *except as otherwise provided in subdivision A 12.*

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

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

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

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

242 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
243 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the

definition of barrier crime in § 19.2-392.02.

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

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

§ 63.2-1720.1. (For expiration date, see Acts 2018, cc. 146 and 278) Child day centers, family day homes, and family day systems; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 63.2-1716, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or a local department to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a background check in accordance with subsection B prior to employment or beginning to serve as a volunteer and every five years thereafter.

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

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

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

3. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 and any child abuse and neglect registry or equivalent registry maintained by any other state in which the individual has resided in the preceding five years for any founded complaint of child abuse or neglect against him.

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

C. The child day center, family day home, or family day system described in subsection A shall inform every individual required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the individual's eligibility to have responsibility for the safety and well-being of children.

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

E. Further dissemination of the background check information is prohibited (i) 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 or (ii) except as provided in subsection J.

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.

305 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
306 employment persons who have been convicted of not more than one misdemeanor offense under
307 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
308 elapsed following the conviction, unless the person committed such offense while employed in a child
309 day center or the object of the offense was a minor.

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

312 I. Any individual required to undergo a background check pursuant to subsection A who is (i)
313 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded
314 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
315 center, family day home, or family day system described in subsection A of such conviction or finding.

316 *J. Notwithstanding the provisions of subsection A, a background check shall not be required for any*
317 *individual who has completed a background check under the provisions of this section within the*
318 *previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the*
319 *results of such background check indicated that the individual had not been convicted of any barrier*
320 *crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or*
321 *neglect within or outside the Commonwealth; and (iii) the individual is currently or has been, within the*
322 *previous 180 days, employed by or a volunteer at a child welfare agency described in subsection A.*
323 *Prior to hiring or allowing to volunteer any individual required to undergo a background check*
324 *pursuant to subsection A without the completion of a background check under the provisions of*
325 *subsection B, the child welfare agency shall, upon the individual's written consent, obtain written*
326 *certification from the Department that such individual satisfies all requirements set forth in this*
327 *subsection and is eligible to serve as an employee or volunteer at the child welfare agency. If the*
328 *individual meets all requirements set forth in this subsection and is eligible to serve as an employee or*
329 *volunteer at the child welfare agency, the written certification shall also state the next date by which*
330 *another background check for such person shall be completed in accordance with subsection B. Such*
331 *written certifications shall not reveal the nature of any disqualifying barrier crime or founded complaint*
332 *of child abuse or neglect or any other information about the individual.*

333 **§ 63.2-1720.1. (For effective date, see Acts 2018, cc. 146 and 278) Licensed child day centers**
334 **and licensed family day homes; employment for compensation or use as volunteers of persons**
335 **convicted of or found to have committed certain offenses prohibited; national background check**
336 **required; penalty.**

337 A. No child day center or family day home licensed in accordance with the provisions of this chapter
338 shall hire for compensated employment, continue to employ, or permit to serve as a volunteer in a
339 position that is involved in the day-to-day operations of the child day center or family day home or in
340 which the employee or volunteer will be alone with, in control of, or supervising children any person
341 who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a
342 founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for
343 employment or to serve as volunteers shall undergo a background check in accordance with subsection
344 B.

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

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

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

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

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

364 C. The child day center or family day home shall inform every applicant for compensated
365 employment or to serve as a volunteer required to undergo a background check pursuant to this section
366 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and

completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children.

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

E. Further dissemination of the background check information is prohibited (i) 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 or (ii) *except as provided in subsection J*.

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 section shall 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 any barrier crime as defined in § 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.

J. Notwithstanding the provisions of subsection A, a background check shall not be required for any individual who has completed a background check under the provisions of this section within the previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the results of such background check indicated that the individual had not been convicted of any barrier crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and (iii) the individual is an employee or volunteer of any child welfare agency set forth in subsection A or has been separated from such employment or volunteer position for not more than 180 days. Prior to hiring or allowing to volunteer any individual without the completion of a background check under the provisions of subsection B, the child welfare agency shall, upon the individual's written consent, obtain written certification from the Department that such individual satisfies all requirements set forth in this subsection and is eligible to serve as an employee or volunteer at the child welfare agency. If the individual meets all requirements set forth in this subsection and is eligible to serve as an employee or volunteer at the child welfare agency, the written certification shall also state the next date upon which such individual must undergo another background check in accordance with the provisions of subsection B. Such written certifications shall not reveal the nature of any disqualifying barrier crime or founded complaint of child abuse or neglect or any other information about the individual.

§ 63.2-1724. (For expiration date, see Acts 2018, cc. 146 and 278) Records check by unlicensed child day center; penalty.

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require all applicants for employment, employees, applicants to serve as volunteers, and volunteers and any other person who is expected to be alone with one or more children enrolled in the child day center to obtain a background check in accordance with § 63.2-1720.1. A child day center that is exempt from licensure pursuant to § 63.2-1716 shall refuse employment or service to any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Further dissemination of the information provided to the facility is prohibited, *except as otherwise provided in subsection J of § 63.2-1720.1*.

§ 63.2-1724. (For effective date, see Acts 2018, cc. 146 and 278) Records check by unlicensed child day center; penalty.

A. Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within 30 days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded

428 complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of
429 § 19.2-389. However, no employee shall be permitted to work in a position that involves direct contact
430 with a child until an original criminal record clearance or original criminal history record has been
431 received, unless such person works under the direct supervision of another employee for whom a
432 background check has been completed in accordance with the requirements of this section. A child day
433 center that is exempt from licensure pursuant to § 63.2-1716 shall refuse employment or service to any
434 person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject
435 of a founded complaint of child abuse or neglect within or outside the Commonwealth. Such center shall
436 also require a prospective employee or volunteer or any other person who is expected to be alone with
437 one or more children in the child day center to provide a sworn statement or affirmation disclosing
438 whether or not the applicant has ever been (a) the subject of a founded complaint of child abuse or
439 neglect, or (b) convicted of a crime or is the subject of pending criminal charges for any offense within
440 the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall
441 not apply to a parent or guardian who may be left alone with his own child. For purposes of this
442 section, convictions shall include prior adult convictions and juvenile convictions or adjudications of
443 delinquency based on a crime that would have been a felony if committed by an adult within or outside
444 the Commonwealth. Any person making a materially false statement regarding any such offense is guilty
445 of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from
446 the central registry or convictions appearing on his criminal history record, the child day center shall
447 provide a copy of the information obtained from the central registry or Central Criminal Records
448 Exchange or both to the applicant. ~~Further~~ *Except as otherwise provided in subsection B*, dissemination
449 of the information provided to the facility is prohibited.

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

457 *B. Notwithstanding the provisions of subsection A, a background check shall not be required for any*
458 *prospective employee or volunteer or any other person who is expected to be alone with one or more*
459 *children in the child day center if the individual has completed a background check under the provisions*
460 *of subsection A within the previous five years, provided that (i) such background check was conducted*
461 *after July 1, 2017; (ii) the results of such background check indicated that the individual had not been*
462 *convicted of any barrier crime as defined in § 19.2-392.02 and was not the subject of a founded*
463 *complaint of child abuse or neglect within or outside the Commonwealth; and (iii) the individual (a) is*
464 *an employee or volunteer of any child day center that is exempt from licensure pursuant to § 63.2-1716*
465 *or any child welfare agency set forth in subsection A of § 63.2-1720.1 or (b) has been separated from*
466 *such employment or volunteer position for not more than 180 days. Prior to hiring, allowing to*
467 *volunteer, or allowing to be alone with one or more children any individual without the completion of a*
468 *background check under the provisions of subsection A, the child day center shall, upon the individual's*
469 *written consent, obtain written certification from the Department that such individual satisfies all*
470 *requirements set forth in this subsection and is eligible to serve as an employee or volunteer or*
471 *otherwise be alone with children at the child day center. Such written certifications shall not reveal the*
472 *nature of any disqualifying barrier crime or founded complaint of child abuse or neglect or any other*
473 *information about the individual.*