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HOUSE BILL NO. 1039

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 16.1-269.1, 17.1-805, 18.2-513, and 19.2-392.02 of the Code of Virginia and to repeal § 18.2-33 of the Code of Virginia, relating to felony homicide; repeal.

Patrons—Rasoul and Scott

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-269.1, 17.1-805, 18.2-513, and 19.2-392.02 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;

2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than 20 years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of intellectual disability or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision 4.

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59 B. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or
60 older is charged with murder in violation of § 18.2-31, 18.2-32 or 18.2-40, or aggravated malicious
61 wounding in violation of § 18.2-51.2.

62 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or
63 older is charged with ~~murder in violation of § 18.2-33~~; felonious injury by mob in violation of
64 § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious
65 wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of
66 § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of § 18.2-58 or
67 carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of
68 § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving,
69 distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or
70 an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously
71 adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications
72 occurred after the juvenile was at least 14 years of age; manufacturing, selling, giving, distributing, or
73 possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of §
74 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of
75 violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least 14 years of
76 age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture,
77 sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously
78 adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications
79 occurred after the juvenile was at least 14 years of age, provided the attorney for the Commonwealth
80 gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with
81 the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented
82 by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect
83 to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the
84 Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification
85 of the charge to the grand jury, he may proceed as provided in subsection A.

86 D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the
87 juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification
88 shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this
89 subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and
90 ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

91 If the court does not find probable cause to believe that the juvenile has committed the violent
92 juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by
93 dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the
94 circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney
95 for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

96 If the court finds that the juvenile was not 14 years of age or older at the time of the alleged
97 commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been
98 met, the case shall proceed as otherwise provided for by law.

99 E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile
100 court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the
101 Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

102 **§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.**

103 A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines ~~which that~~
104 shall become effective on January 1, 1995. The initial recommended sentencing range for each felony
105 offense shall be determined first, by computing the actual time-served distribution for similarly situated
106 offenders, in terms of their conviction offense and prior criminal history, released from incarceration
107 during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by
108 eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended
109 sentencing range shall be the median time served for the middle two quartiles and subject to the
110 following additional enhancements:

111 1. The midpoint of the initial recommended sentencing range for first degree murder, second degree
112 murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual
113 battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous
114 conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously
115 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years;
116 or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony
117 offense punishable by a maximum punishment of 40 years or more, except that the recommended
118 sentence for a defendant convicted of first degree murder who has previously been convicted of a
119 violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be
120 imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense ~~which~~ *that* would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, or the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any felony violation of § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, *or* 18.2-32.2, *former* § 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or 18.2-41; any violation of clause (c) (i) or (ii) of subsection B of § 18.2-46.3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1, or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of § 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, *or* 18.2-67.2, *former* § 18.2-67.2:1, *or* § 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85, 18.2-89, 18.2-90, 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1, 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of *former* § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-370, or 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any felony violation of § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-481, or 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any conspiracy or attempt to commit any offense specified in this subsection, or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories.

§ 18.2-513. Definitions.

As used in this chapter:

"Criminal street gang" means the same as that term is defined in § 18.2-46.1.

182 "Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business
183 trust, criminal street gang; or other group of three or more individuals associated for the purpose of
184 criminal activity.

185 "Proceeds" means the same as that term is defined in § 18.2-246.2.

186 "Racketeering activity" means to commit, attempt to commit, or conspire to commit or to solicit,
187 coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§
188 18.2-46.1 et seq.) of Chapter 4, § 18.2-460; a felony offense of § 3.2-4212, 3.2-4219, 10.1-1455,
189 18.2-31, 18.2-32, 18.2-32.1, ~~18.2-33~~, or 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4,
190 § 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59,
191 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-95, Article 4 (§ 18.2-111
192 et seq.) of Chapter 5, Article 1 (§ 18.2-168 et seq.) of Chapter 6, § 18.2-178 or 18.2-186, Article 6
193 (§ 18.2-191 et seq.) of Chapter 6, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6, § 18.2-246.13, Article 1
194 (§ 18.2-247 et seq.) of Chapter 7, § 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1,
195 18.2-328, 18.2-346, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-368,
196 18.2-369, or 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9, Article 1 (§ 18.2-434 et seq.) of
197 Chapter 10, Article 2 (§ 18.2-438 et seq.) of Chapter 10, Article 3 (§ 18.2-446 et seq.) of Chapter 10,
198 Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017,
199 or 58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District of
200 Columbia, or the United States or its territories.

201 **§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**
202 **employees or volunteers providing care to children or the elderly or disabled.**

203 A. For purposes of this section:

204 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
205 18.2-32.1, *or* 18.2-32.2, *former* § 18.2-33, *or* § 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, *or*
206 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, *or* 18.2-46.3:3; any violation of
207 § 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
208 § 18.2-48, 18.2-49, *or* 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4,
209 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, 18.2-54.2, 18.2-55, 18.2-55.1,
210 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, 18.2-58, 18.2-58.1, 18.2-59,
211 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,
212 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,
213 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83,
214 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, *or* 18.2-88; any felony violation of § 18.2-279, 18.2-280,
215 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, *or* 18.2-287.2; any violation of § 18.2-289, 18.2-290,
216 18.2-300, 18.2-308.4, *or* 18.2-314; any felony violation of § 18.2-346, 18.2-348, *or* 18.2-349; any
217 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;
218 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,
219 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,
220 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,
221 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,
222 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,
223 *or* 53.1-203; *or* any substantially similar offense under the laws of another jurisdiction; (ii) any violation
224 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 under
225 the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02,
226 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,
227 18.2-258.02, 18.2-258.1, *or* 18.2-258.2 *or* any substantially similar offense under the laws of another
228 jurisdiction; (iv) any felony violation of § 18.2-250 *or* any substantially similar offense under the laws of
229 another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to
230 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any
231 finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et
232 seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register
233 with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially
234 similar offense under the laws of another jurisdiction; *or* any offense for which registration in a sex
235 offender and crimes against minors registry is required under the laws of the jurisdiction where the
236 offender was convicted; *or* (vi) any other felony not included in clause (i), (ii), (iii), (iv), *or* (v) unless
237 five years have elapsed from the date of the conviction.

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

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

"Department" means the Department of State Police.

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

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt pursuant to subdivision A 7 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:

1. Been fingerprinted; and
2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled for whom the qualified entity provides care.

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

D. Any background check conducted pursuant to this section for a provider employed by a private entity shall be screened by the Department of State Police. If the provider has been convicted of or is under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

E. Any background check conducted pursuant to this section for a provider employed by a governmental entity shall be provided to that entity.

F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a national criminal background check, the Department and the Federal Bureau of Investigation may each charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted with the fingerprints.

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

H. (Expires July 1, 2020) Notwithstanding any provisions in this section to the contrary, a spouse of a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for adoption of such child in circuit court may request the Department of State Police to conduct a national criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242.

305 Such background checks shall otherwise be conducted in accordance with the provisions of this section.
306 2. That § 18.2-33 of the Code of Virginia is repealed.