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SENATE BILL NO. 1176

Offered January 13, 2021

Prefiled January 8, 2021

A BILL to amend and reenact §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia, relating to the Department of Behavioral Health and Developmental Services; barrier crimes.

Patron—Ruff

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-314. Background check required.

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

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have 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 (a) in the 10 years prior to the application date for employment, and may hire a person who has been convicted of such offenses more than 10 years prior only if he has not been convicted of any other crime or suffered from drug addiction or alcohol abuse in the 10 years prior to the application date for employment, or (b) if such person continues on probation or parole or has failed to pay required court costs for such offenses 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) if 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.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; 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; or any substantially similar offense under the laws of another jurisdiction, if the Department determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

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

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

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

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

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

72 **§ 37.2-416. Background checks required.**

73 A. As used in this section:

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

77 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
78 or adult mental health treatment position to another such position within the same licensee licensed
79 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health
80 treatment position in another office or program licensed pursuant to this article if the person employed
81 prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application
82 date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an
83 adult substance abuse treatment position to any mental health or developmental services direct care
84 position within the same licensee licensed pursuant to this article or (b) new employment in any mental
85 health or developmental services direct care position in another office or program of the same licensee
86 licensed pursuant to this article for which the person has previously worked in an adult substance abuse
87 treatment position.

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

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

103 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
104 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 (a) *in the 10 years prior to*
105 *the application date for employment, and may only hire a person who has been convicted of such*
106 *offenses more than 10 years prior if he has not been convicted of any other crime or suffered from drug*
107 *addiction or alcohol abuse in the 10 years prior to the application date for employment, or (b) if such*
108 *person continues on probation or parole or has failed to pay required court costs for such offenses set*
109 *forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set*
110 *forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the*
111 *application date for employment or (b) if such person continues on probation or parole or has failed to*
112 *pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in*
113 *§ 19.2-392.02;*

114 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
115 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
116 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 (a) *in*
117 *the 10 years prior to the application date to be a sponsored residential service provider, and may only*
118 *approve an application for person who has been convicted of such offenses more than 10 years prior if*
119 *he has not been convicted of any other crime or suffered from drug addiction or alcohol abuse in the*
120 *10 years prior to the application date, or (b) if such person continues on probation or parole or has*

failed to pay required court costs for such offenses 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) if 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 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 (a) in the 10 years prior to entering into a shared living arrangement, and may only permit a person to enter into a shared living arrangement who has been convicted of such offenses more than 10 years prior if he has not been convicted of any other crime or suffered from drug addiction or alcohol abuse in the 10 years prior to entering into a shared living arrangement, or (b) if such person continues on probation or parole or has failed to pay required court costs for such offenses 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 entering into a shared living arrangement or (b) if 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 authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal 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 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider 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; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

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

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

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a shared living arrangement persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,

182 if 10 years have elapsed following the conviction, unless the person committed the offense while
183 employed in a direct care position. A provider may also approve a person as a sponsored residential
184 service provider if (a) any adult living in the home of an applicant or (b) any person employed by the
185 applicant to provide services in the home in which sponsored residential services are provided has been
186 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
187 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
188 unless the person committed the offense while employed in a direct care position.

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

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

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

200 J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that
201 provides services to individuals receiving services under the state plan for medical assistance services or
202 any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a
203 criminal history background check has been completed for a person described in subsection B for whom
204 a criminal history background check is required and (ii) whether the person described in subsection B is
205 eligible for employment, to provide sponsored residential services, to provide services in the home of a
206 sponsored residential service provider, or to enter into a shared living arrangement with a person
207 receiving medical assistance services pursuant to a waiver.

208 **§ 37.2-506. Background checks required.**

209 A. As used in this section:

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

213 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
214 or adult mental health treatment position to another such position within the same community services
215 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
216 another office or program of the same community services board if the person employed prior to July 1,
217 1999, had no convictions in the five years prior to the application date for employment. "Hire for
218 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
219 position to any mental health or developmental services direct care position within the same community
220 services board or (b) new employment in any mental health or developmental services direct care
221 position in another office or program of the same community services board for which the person has
222 previously worked in an adult substance abuse treatment position.

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

228 B. Every community services board shall require (i) any applicant who accepts employment in any
229 direct care position with the community services board, (ii) any applicant for approval as a sponsored
230 residential service provider, (iii) any adult living in the home of an applicant for approval as a
231 sponsored residential service provider, (iv) any person employed by a sponsored residential service
232 provider to provide services in the home, and (v) any person who enters into a shared living
233 arrangement with a person receiving medical assistance services pursuant to a waiver to submit to
234 fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal
235 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national
236 criminal history record information regarding the applicant. Except as otherwise provided in subsection
237 C, D, or F, no community services board shall hire for compensated employment, approve as a
238 sponsored residential service provider, or permit to enter into a shared living arrangement with a person
239 receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any
240 offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 (1) in the
241 10 years prior to the application date for employment, the application date to be a sponsored residential
242 service provider, or entering into a shared living arrangement, and may only hire a person who has
243 been convicted of such offenses more than 10 years prior if he has not been convicted of any other

crime or suffered from drug addiction or alcohol abuse in the 10 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) if such person continues on probation or parole or has failed to pay required court costs for such offenses 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) if 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 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; any 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, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; 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; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

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

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

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

305 elapsed following the conviction, unless the person committed the offense while employed in a direct
306 care position.

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

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

315 I. Notwithstanding any other provision of law, a community services board that provides services to
316 individuals receiving services under the state plan for medical assistance services or any waiver thereto
317 may disclose to the Department of Medical Assistance Services (i) whether a criminal history
318 background check has been completed for a person described in subsection B for whom a criminal
319 history background check is required and (ii) whether the person described in subsection B is eligible
320 for employment, to provide sponsored residential services, to provide services in the home of a
321 sponsored residential service provider, or to enter into a shared living arrangement with a person
322 receiving medical assistance services pursuant to a waiver.

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