2023 SESSION

ENROLLED

[S 846]

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VIRGINIA ACTS OF ASSEMBLY - CHAPTER

2 An Act to amend and reenact §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia, relating to background checks; peer recovery specialists; barrier crime exceptions.

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Approved

Be it enacted by the General Assembly of Virginia:

7 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 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.

23 C. Notwithstanding the provisions of subsection B, the Department may hire for compensated 24 employment at an adult substance abuse or adult mental health treatment program a person who was 25 convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or 26 subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of 27 § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 28 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, 29 except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense 30 under the laws of another jurisdiction, if the Department determines, based upon a screening assessment, 31 that the criminal behavior was substantially related to the applicant's substance abuse or mental illness 32 and that the person has been successfully rehabilitated and is not a risk to individuals receiving services 33 based on his criminal history background and his substance abuse or mental illness history. In addition, 34 where the employment at an adult substance abuse treatment program is as a peer recovery specialist, 35 the Department may hire any person eligible under this subsection or who was convicted any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 if the Department determines, 36 37 based upon a screening assessment, that the criminal behavior was substantially related to the person's 38 substance abuse or mental illness and that the person has been successfully rehabilitated and is not a 39 risk to individuals receiving services based on his criminal history background and his substance abuse 40 or mental illness history.

For the purposes of this subsection, "peer recovery specialist" means any person who has completed
 a peer recovery specialist training course approved by the Department of Behavioral Health and
 Developmental Services.

44 D. The Department and a screening contractor designated by the Department shall screen applicants 45 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 46 backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the 47 48 applicant shall have completed all prison or jail terms; shall not be under probation or parole 49 supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and 50 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 51 contractor may require or the applicant may wish to present, the applicant shall provide to the screening 52 53 contractor a statement from his most recent probation or parole officer, if any, outlining his period of 54 supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony 55 conviction. The cost of this screening shall be paid by the applicant, unless the Department decides to 56 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 *or record* 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 the information upon which the denial was based, the Central Criminal Records Exchange shall,
upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history
record from the FBI. The information provided to the state facility or Department shall not be
disseminated except as provided in this section.

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

67 G. The Board may adopt regulations to comply with the provisions of this section. Copies of any 68 information received by the state facility or Department pursuant to this section shall be available to the 69 Department and to the applicable state facility but shall not be disseminated further, except as permitted 70 by state or federal law. The cost of obtaining the criminal history record and the central registry 71 information shall be borne by the applicant, unless the Department or state facility decides to pay the 72 cost.

§ 37.2-416. Background checks required.

A. As used in this section:

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

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse 78 79 or adult mental health treatment position to another such position within the same licensee licensed 80 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed 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 adult substance abuse treatment position to any mental health or developmental services direct care 83 84 85 position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee 86 87 licensed pursuant to this article for which the person has previously worked in an adult substance abuse 88 treatment position.

89 "Peer recovery specialist" means any person who has completed a peer recovery specialist training
 90 course approved by the Department of Behavioral Health and Developmental Services.

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

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts 96 97 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service 98 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential 99 service provider, (iv) any person employed by a sponsored residential service provider to provide 100 services in the home, (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under contract with the 101 102 provider to serve in a direct care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of 103 104 Investigation (FBI) for the purpose of obtaining national criminal history record information regarding 105 the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to 106 this article shall:

107 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth 108 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth 109 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the 110 application date for employment or (b) if such person continues on probation or parole or has failed to 111 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in 112 § 19.2-392.02;

113 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) if such applicant

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118 continues on probation or parole or has failed to pay required court costs for such offense set forth in 119 clause (iv) of the definition of barrier crime in § 19.2-392.02;

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 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; or

4. Allow any person under contract with the provider to serve in a direct care position who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in 132 clause (iv) of the definition of barrier crime in § 19.2-392.02.

133 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no 134 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed 135 pursuant to this article. If any applicant is denied employment because of information appearing on the 136 criminal history record and the applicant disputes the information upon which the denial was based, the 137 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures 138 for obtaining a copy of the criminal history record from the FBI. The information provided to the 139 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated 140 except as provided in this section.

141 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 142 or permit any person under contract with the provider to serve in a direct care position or permit any 143 person employed by a temporary agency that has entered into a contract with the provider to provide 144 direct care services on behalf of the provider at adult substance abuse or adult mental health treatment 145 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 146 147 § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of 148 § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier 149 crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any 150 substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, 151 based upon a screening assessment, that the criminal behavior was substantially related to the applicant's 152 substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk 153 to individuals receiving services based on his criminal history background and his substance abuse or 154 mental illness history. In addition, where the employment at an adult substance abuse treatment 155 program is as a peer recovery specialist, the provider may hire any person eligible under this 156 subsection or who was convicted any offense set forth in clause (iv) of the definition of barrier crime in 157 § 19.2-392.02 if the hiring provider determines, based upon a screening assessment, that the criminal 158 behavior was substantially related to the person's substance abuse or mental illness and that the person 159 has been successfully rehabilitated and is not a risk to individuals receiving services based on his 160 criminal history background and his substance abuse or mental illness history.

161 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 162 or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide 163 164 direct care services on behalf of the provider at adult substance abuse treatment facilities a person who 165 has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially 166 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 167 168 the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the 169 hiring provider determines, based upon a screening assessment, that the criminal behavior was 170 substantially related to the applicant's substance abuse and that the person has been successfully 171 rehabilitated and is not a risk to individuals receiving services based on his criminal history background 172 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 179 costs for any prior convictions, and shall have been free of parole or probation for at least five years for 180 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 181 182 statement from his most recent probation or parole officer, if any, outlining his period of supervision 183 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The 184 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

185 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated 186 employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared 187 living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care 188 position on behalf of the provider or permit any person employed by a temporary agency that has 189 entered into a contract with the provider to provide direct care services on behalf of the provider persons 190 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 191 192 193 position. A provider may also approve a person as a sponsored residential service provider if (a) any 194 adult living in the home of an applicant or (b) any person employed by the applicant to provide services 195 in the home in which sponsored residential services are provided has been convicted of not more than 196 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 197 198 committed the offense while employed in a direct care position.

199 G. Providers licensed pursuant to this article also shall require, as a condition of employment, 200 approval as a sponsored residential service provider, permission to enter into a shared living arrangement 201 with a person receiving medical assistance services pursuant to a waiver, or permission for any person 202 under contract with the provider to serve in a direct care position, written consent and personal 203 information necessary to obtain a search of the registry of founded complaints of child abuse and 204 neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect 205 206 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article 207 decides to pay the cost.

208 I. A person who complies in good faith with the provisions of this section shall not be liable for any 209 civil damages for any act or omission in the performance of duties under this section unless the act or 210 omission was the result of gross negligence or willful misconduct.

211 J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that 212 provides services to individuals receiving services under the state plan for medical assistance services or 213 any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a 214 criminal history background check has been completed for a person described in subsection B for whom 215 a criminal history background check is required and (ii) whether the person described in subsection B is 216 eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person 217 218 receiving medical assistance services pursuant to a waiver.

219 K. Any person employed by a temporary agency that has entered into a contract with the provider 220 and who will serve in a direct care position on behalf of the provider licensed pursuant to this article 221 shall undergo a background check that shall include:

222 1. A criminal history records check through the Central Criminal Records Exchange pursuant to 223 § 19.2-389; and

224 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of 225 child abuse and neglect.

226 Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article 227 shall permit any person employed by a temporary agency that has entered into a contract with the 228 provider to provide direct care services on behalf of the provider if that person has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) 229 230 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five 231 years prior to the application date for employment or (b) if such person continues on probation or parole 232 or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of 233 barrier crime in § 19.2-392.02. 234

§ 37.2-506. Background checks required.

A. As used in this section:

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236 "Direct care position" means any position that includes responsibility for (i) treatment, case 237 management, health, safety, development, or well-being of an individual receiving services or (ii) 238 immediately supervising a person in a position with this responsibility.

239 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse

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240 or adult mental health treatment position to another such position within the same community services 241 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in 242 another office or program of the same community services board if the person employed prior to July 1, 243 1999, had no convictions in the five years prior to the application date for employment. "Hire for 244 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment 245 position to any mental health or developmental services direct care position within the same community 246 services board or (b) new employment in any mental health or developmental services direct care 247 position in another office or program of the same community services board for which the person has 248 previously worked in an adult substance abuse treatment position.

249 "Peer recovery specialist" means any person who has completed a peer recovery specialist training
 250 course approved by the Department of Behavioral Health and Developmental Services.

251 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance 252 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and 253 providing companionship, support, and other limited, basic assistance to a person with developmental 254 disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal 255 responsibility.

256 B. Every community services board shall require (i) any applicant who accepts employment in any 257 direct care position with the community services board, (ii) any applicant for approval as a sponsored 258 residential service provider, (iii) any adult living in the home of an applicant for approval as a 259 sponsored residential service provider, (iv) any person employed by a sponsored residential service 260 provider to provide services in the home, (v) any person who enters into a shared living arrangement 261 with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under 262 contract to serve in a direct care position on behalf of the community services board to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal 263 264 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national 265 criminal history record information regarding the applicant. Except as otherwise provided in subsection 266 C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, permit to enter into a shared living arrangement with a person 267 268 receiving medical assistance services pursuant to a waiver, or permit any person under contract to serve 269 in a direct care position on behalf of the community services board persons who have been convicted of 270 (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or 271 (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five 272 years prior to the application date for employment, the application date to be a sponsored residential 273 service provider, or entering into a shared living arrangement or (2) if such person continues on 274 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of 275 the definition of barrier crime in § 19.2-392.02.

276 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no 277 record exists, shall submit a report or record to the requesting executive director or personnel director of 278 the community services board. If any applicant is denied employment because of information appearing 279 on his criminal history record and the applicant disputes the information upon which the denial was 280 based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the 281 procedures for obtaining a copy of the criminal history record from the FBI. The information provided 282 to the executive director or personnel director of any community services board shall not be 283 disseminated except as provided in this section.

284 C. Notwithstanding the provisions of subsection B, the community services board may hire for 285 compensated employment or permit any person under contract to serve in a direct care position on 286 behalf of the community services board or permit any person employed by a temporary agency that has 287 entered into a contract with the community services board to provide direct care services on behalf of 288 the community services board at adult substance abuse or adult mental health treatment programs a 289 person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 290 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 291 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in 292 clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection 293 H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if 294 the hiring community services board determines, based upon a screening assessment, that the criminal 295 behavior was substantially related to the applicant's substance abuse or mental illness and that the person 296 has been successfully rehabilitated and is not a risk to individuals receiving services based on his 297 criminal history background and his substance abuse or mental illness history. In addition, where the 298 employment at an adult substance abuse treatment program is as a peer recovery specialist, the 299 community services board may hire any person eligible under this subsection or who was convicted any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring community 300

services board determines, based upon a screening assessment, that the criminal behavior was
substantially related to the person'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.

305 D. Notwithstanding the provisions of subsection B, the community services board may hire for 306 compensated employment or permit any person under contract to serve in a direct care position on 307 behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of 308 309 the community services board at adult substance abuse treatment programs a person who has been 310 convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar 311 offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the 312 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 313 314 hiring community services board determines, based upon a screening assessment, that the criminal 315 behavior was substantially related to the applicant's substance abuse and that the person has been 316 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history 317 background and his substance abuse history.

318 E. The community services board and a screening contractor designated by the Department shall 319 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants 320 have been rehabilitated successfully and are not a risk to individuals receiving services based on their 321 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such 322 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or 323 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, 324 and court costs for any prior convictions, and shall have been free of parole or probation for at least 325 five years for all convictions. In addition to any supplementary information the community services 326 board or screening contractor may require or the applicant may wish to present, the applicant shall 327 provide to the screening contractor a statement from his most recent probation or parole officer, if any, 328 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in 329 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless 330 the board decides to pay the cost.

331 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for 332 compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter 333 into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care 334 position on behalf of the community services board or permit any person employed by a temporary 335 agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board 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 336 337 another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the 338 339 offense while employed in a direct care position. A community services board may also approve a 340 person as a sponsored residential service provider if (a) any adult living in the home of an applicant or 341 (b) any person employed by the applicant to provide services in the home in which sponsored residential 342 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 343 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have 344 elapsed following the conviction, unless the person committed the offense while employed in a direct 345 care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract to serve in a direct care position on behalf of the community services board, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

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

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

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362 receiving medical assistance services pursuant to a waiver.

J. 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.

K. Any person employed by a temporary agency that has entered into a contract with a community
 services board and who will serve in a direct care position on behalf of the community services board
 shall undergo a background check that shall include:

369 1. A criminal history records check through the Central Criminal Records Exchange pursuant to **370** § 19.2-389; and

371 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of372 child abuse and neglect.

373 Except as otherwise provided in subsection C, D, or F, no community services board shall permit 374 any person employed by a temporary agency that has entered into a contract with the community 375 services board to provide direct care services on behalf of the community services board if that person 376 has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime 377 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, the application date to 378 379 be a sponsored residential service provider, or entering into a shared living arrangement or (b) if such 380 person continues on probation or parole or has failed to pay required court costs for such offense set 381 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.