

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 401

An Act to amend and reenact §§ 63.1-195 and 63.1-198 of the Code of Virginia, relating to criminal history records checks.

[H 2480]

Approved March 18, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-195 and 63.1-198 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-195. Definitions.

As used in this chapter:

"Adoptive home" means any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Child" means any natural person under eighteen years of age.

"Child-caring institution" means any institution maintained for the purpose of receiving children for full-time care, maintenance, protection and guidance separated from their parents or guardians, except:

1. A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by Title 35.1; and
3. A bona fide hospital legally maintained as such.

"Child day center" means a child day program offered to (i) two or more children under the age of thirteen in a facility that is not the residence of the provider or of any of the children in care or (ii) thirteen or more children at any location.

"Child day center system" means any person who is voluntarily licensed as such who operates, manages, or accredits as members of its system, fifty or more child day center sites in the Commonwealth.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.1-205 or a local board of public welfare or social services that places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204 and 63.1-220.2.

"Child-welfare agency" means a child day center, child day center system, child-placing agency, child-caring institution, family day home, family day system, or independent foster home.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of thirteen, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. From July 1, 1993, until July 1, 1996, family day homes serving nine through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through

an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of a local board pursuant to § 16.1-293.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or child welfare agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Group home" means a child-caring institution which is operated by any person at any place other than in an individual's family home or residence and which does not care for more than twelve children.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision 13 of § 16.1-278.8.

"Independent living placement" means placement of a child at least sixteen years of age who is in the custody of a local board or licensed child-placing agency or has been placed by a local board in a living arrangement in which he does not have daily substitute parental supervision.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" includes the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Person" means any natural person, or any association, partnership or corporation *or other legal entity*.

"Registered family day home" means any family day home which has met the standards for voluntary registration for such homes pursuant to regulations promulgated by the State Board of Social Services and which has obtained a certificate of registration from the Commissioner.

§ 63.1-198. Investigation on receipt of application.

Upon receipt of the application, the Commissioner shall cause an investigation to be made of the applicant's activities, services, facilities, financial responsibility, and character and reputation ~~or, if the applicant is an association, partnership or corporation, the character and reputation of its officers and agents~~. The character and reputation investigation shall include a criminal history records check, pursuant to § 19.2-389, of the applicant ~~or the officers and~~ ; *his agents of the applicant and board members who are involved in the day-to-day operations of the child welfare agency or who are alone with, in control of, or supervising one or more of the children;* and any other adult living in the home of an applicant for licensure or registration as a family day home. The applicant shall submit the request for a criminal history record check to the Central Criminal Records Exchange and shall forward the original notification of criminal record clearance or original criminal history record to the Commissioner's representative prior to issuance of a license or approval of registration. All applicants for licensure or registration shall provide the Commissioner's representative with a sworn statement or affirmation disclosing whether the applicant, ~~the applicant's officers or~~ ; *his agents, and board members who are involved in the day-to-day operations of the child welfare agency or who are alone with, in control of, or supervising one or more of the children;* or any other adult living in the home of an applicant for licensure or registration as a family day home has ever been convicted of or is the subject of pending charges for any offense specified in § 63.1-198.1 within the Commonwealth or any equivalent offense outside the Commonwealth. The Commissioner shall not issue a license or registration to any child welfare agency if the applicant, ~~the applicant's officers or~~ ; *his agents, and board members who are involved in the day-to-day operations of the child welfare agency or who are alone with, in control of, or supervising one or more of the children;* or any other adult living in the

home of an applicant for licensure or registration as a family day home has been convicted of one of the crimes specified in § 63.1-198.1. *No applicant, agent or board member of the applicant shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having a criminal history records check and a sworn disclosure statement or affirmation showing that he has not been convicted of or is not the subject of pending charges for one of the crimes specified in § 63.1-198.1.* Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor.

The applicant shall afford the representatives of the Commissioner required to make the investigation reasonable opportunity to inspect all of the applicant's facilities, books and records, and to interview its agents and employees and any child or other person within its custody or control.