

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 747

An Act to amend and reenact §§ 19.2-389, 63.1-197, 63.1-198, 63.1-198.1, 63.1-199, and 63.1-248.7:2 of the Code of Virginia, relating to criminal history record checks.

[S 365]

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 63.1-197, 63.1-198, 63.1-198.1, 63.1-199, and 63.1-248.7:2 of the Code of Virginia are amended and reenacted as follows:

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

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

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

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

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

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

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

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

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

11. A person requesting a copy of his own criminal history record information as defined in § 9-169 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, or (iv) with the Volunteer Emergency Families for Children;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'

representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);

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

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

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

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning; ~~and~~

20. *Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services; and*

21. Other entities as otherwise provided by law.

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

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

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

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

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

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

F. Criminal history information provided to licensed adult care residences, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 63.1-173.2, 63.1-189.1 or

§ 63.1-194.13.

§ 63.1-197. Form and requisites of application for license.

Each application for a license, or for a renewal thereof, shall be made to the Commissioner, in such form as he may prescribe. It shall contain a statement of the name and address of the applicant, and, if the applicant is an association, partnership or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with such other pertinent information as the Commissioner may require. The applicant and, if the applicant is an association, partnership or corporation, its officers and agents, shall also provide the Commissioner with a sworn statement or affirmation disclosing whether or not the applicant 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 of any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. Further dissemination of the information provided is prohibited. The Commissioner or his designated agents shall, upon request, consult with, advise and assist any person interested in securing and maintaining any license prescribed in § 63.1-196.

The provisions of this section referring to a sworn statement or affirmation shall not apply to any child-caring institution licensed pursuant to § 63.1-196 which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.

§ 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. The character and reputation investigation shall include a criminal history records check, pursuant to § 19.2-389, of the applicant; 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; 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; 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; 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.

The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense specified in § 63.1-198.1 shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.

§ 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

On or after July 1, 1992, a child welfare agency licensed or registered in accordance with the provisions of this chapter shall not hire for compensated or voluntary employment nor shall private child-placing agencies approve as foster or adoptive parents or family day systems approve as caretakers persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child or obscenity offenses as set out in § 18.2-374.1, or abuse and neglect of incapacitated adults as set out in § 18.2-369 or convicted under § 18.2-379.

Any person desiring to work or volunteer at a child welfare agency or desiring to be a foster or adoptive parent with a private child-placing agency or desiring to be a family day home provider approved by a family day system shall provide the hiring or approving facility or agency with a sworn statement or affirmation disclosing whether or not the applicant has ever been convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth. Further dissemination of the information provided is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor.

A child welfare agency shall obtain for any compensated employees and any volunteers within twenty-one days of employment or commencement of volunteer service, an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. Prior to the approval of the applicant, licensed private child-placing agencies and family day systems shall obtain a criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange for all persons applying to be foster or adoptive parents or family day home providers and any other adult living in the home of the family day home provider. Failure to obtain a criminal record clearance or criminal history record from the Central Criminal Records Exchange for each employee, volunteer, foster or adoptive parent, family day home provider and any other adult living in the home of the family day home provider and the disclosure statement required by this section shall be grounds for denial, suspension or revocation of a license or registration pursuant to this chapter. If an applicant is denied employment or approval because of convictions appearing on his criminal history record, the child welfare agency shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

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

The provisions of this section shall not apply to local boards of public welfare or social services which place children in foster or adoptive homes pursuant to § 63.1-56.

The provisions of this section shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.

§ 63.1-199. Issuance or refusal of license; notification.

Upon completion of such investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the children over whom he may have custody or control, (ii) the applicant has submitted satisfactory documentation of financial responsibility such as, but not limited to, a letter of credit, a certified financial statement, or similar documents, and (iii) he, or the officers and agents of the applicant if it is an association, partnership or corporation, is of good character and reputation. Otherwise, the license shall be denied. A license shall not be granted to any applicant who has been convicted of any offense specified in § 63.1-198.1. If an applicant is denied licensure because of convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

The provisions of this section referring to a conviction for any offense specified in § 63.1-198.1 shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.

§ 63.1-248.7:2. Background check required; residential facilities for juveniles.

A. As a condition of employment, volunteering or providing services on a regular basis, every residential facility for juveniles which is regulated or operated by the Department of Social Services, the Department of Education, ~~the Department of Youth and Family Services~~ or the Department of Mental Health, Mental Retardation and Substance Abuse Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 1994, (ii) volunteers ~~at~~ *for* such a facility *on a regular basis* and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 1994, ~~and~~ *or* (iii) provides *contractual* services ~~at~~ *directly to a juvenile* for such facility on a regular basis and will be alone with ~~any~~ a juvenile in the performance of his duties who did not provide such services prior to July 1, 1994; to submit to fingerprinting and to 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 for the purpose of obtaining criminal history record information regarding such applicant. *The residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's fitness to have responsibility for the safety and well-being of children. The applicant shall provide the residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. Prior to permitting an applicant to begin his duties, the residential facility shall obtain the statement or affirmation from the applicant and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange.*

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local record-keeping systems are available in order to obtain complete data. The state agency shall submit a report to the facility whether the applicant meets the criteria to have responsibility for the safety and well-being of children based on whether or not the applicant has ever been convicted of or is the subject of pending charges for the following crimes: murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, abduction for immoral purposes as set out in § 18.2-48, assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, extortion by threat as set out in § 18.2-60, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 of Chapter 8 of Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If an individual the applicant is denied employment, or the opportunity to volunteer or provide services at a facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the facility state agency shall provide a copy of the information obtained from the Central Criminal Records Exchange to the individual furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the report, the residential facility is not precluded from suspending the applicant from his position or denying the applicant unsupervised access to clients pending a final determination of the applicant's fitness to have responsibility for the safety and well-being of children. The information provided to the facility shall not be disseminated except as provided in this section.

B. Those individuals listed in clauses (i), (ii) and (iii) of subsection A shall also provide authorize the facility with to obtain a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him. *The applicant shall provide the residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The facility shall submit the request for information to the central registry prior to permitting an applicant to begin his duties. The facility shall obtain a copy of the information from the central registry within twenty-one days of the applicant beginning his duties. The provisions of this subsection also shall apply to every residential facility for juveniles which is regulated or operated by the Department of Youth and Family Services.*

C. The Boards of Social Services, Education, Youth and Family Services and Mental Health, Mental Retardation and Substance Abuse Services may promulgate regulations to comply with the provisions of this section. Copies of any information received by a facility pursuant to this section shall be available to the agency that regulates or operates the facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the juvenile facility, at its option, decides to pay the cost.