

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *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*  
 3 *of the Code of Virginia, relating to criminal history record checks.*

4 [S 365]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **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**  
 8 **Virginia are amended and reenacted, as follows:**

9 § 19.2-389. Dissemination of criminal history record information.

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

12 1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes  
 13 of the administration of criminal justice and the screening of an employment application or review of  
 14 employment by a criminal justice agency with respect to its own employees or applicants, and  
 15 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
 16 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
 17 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

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

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

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

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

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

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

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

46 9. To the extent permitted by federal law or regulation, public service companies as defined in  
 47 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
 48 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
 49 with the nature of the employment under consideration;

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

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

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57 12. Administrators and board presidents of and applicants for licensure or registration as a child  
58 welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'  
59 representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and  
60 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes  
61 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing  
62 agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further  
63 disseminated by the facility or agency to any party other than the data subject, the Commissioner of  
64 Social Services' representative or a federal or state authority or court as may be required to comply with  
65 an express requirement of law for such further dissemination;

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

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

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

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

77 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
78 § 4.1-103.1;

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

82 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse  
83 Services for those individuals who are committed to the custody of the Commissioner pursuant to  
84 §§ 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  
85 the purpose of placement, evaluation, and treatment planning; ~~and~~

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

90 21. Other entities as otherwise provided by law.

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

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

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

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

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

117 E. Criminal history information provided to licensed nursing homes and to home care organizations

118 pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any  
119 offense specified in §§ 32.1-126.01 and 32.1-162.9:1.

120 F. Criminal history information provided to licensed adult care residences, licensed district homes for  
121 adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the  
122 convictions on file with the Exchange for any offense specified in §§ 63.1-173.2, 63.1-189.1 or  
123 63.1-194.13.

124 § 63.1-197. Form and requisites of application for license.

125 Each application for a license, or for a renewal thereof, shall be made to the Commissioner, in such  
126 form as he may prescribe. It shall contain a statement of the name and address of the applicant, and, if  
127 the applicant is an association, partnership or corporation, the names and addresses of its officers and  
128 agents. The application shall also contain a description of the activities proposed to be engaged in and  
129 the facilities and services to be employed, together with such other pertinent information as the  
130 Commissioner may require. The applicant and, if the applicant is an association, partnership or  
131 corporation, its officers and agents, shall also provide the Commissioner with a sworn statement or  
132 affirmation disclosing whether or not the applicant has ever been convicted of or is the subject of  
133 pending charges for any offense specified in § 63.1-198.1 within the Commonwealth or of any  
134 equivalent offense outside the Commonwealth. Any person making a materially false statement regarding  
135 any such offense shall be guilty of a Class 1 misdemeanor. Further dissemination of the information  
136 provided is prohibited. The Commissioner or his designated agents shall, upon request, consult with,  
137 advise and assist any person interested in securing and maintaining any license prescribed in § 63.1-196.

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

141 § 63.1-198. Investigation on receipt of application.

142 Upon receipt of the application, the Commissioner shall cause an investigation to be made of the  
143 applicant's activities, services, facilities, financial responsibility, and character and reputation. The  
144 character and reputation investigation shall include a criminal history records check, pursuant to  
145 § 19.2-389, of the applicant; his agents and board members who are involved in the day-to-day  
146 operations of the child welfare agency or who are alone with, in control of, or supervising one or more  
147 of the children; and any other adult living in the home of an applicant for licensure or registration as a  
148 family day home. The applicant shall submit the request for a criminal history record check to the  
149 Central Criminal Records Exchange and shall forward the original notification of criminal record  
150 clearance or original criminal history record to the Commissioner's representative prior to issuance of a  
151 license or approval of registration. All applicants for licensure or registration shall provide the  
152 Commissioner's representative with a sworn statement or affirmation disclosing whether the applicant;  
153 his agents and board members who are involved in the day-to-day operations of the child welfare  
154 agency or who are alone with, in control of, or supervising one or more of the children; or any other  
155 adult living in the home of an applicant for licensure or registration as a family day home has ever been  
156 convicted of or is the subject of pending charges for any offense specified in § 63.1-198.1 within the  
157 Commonwealth or any equivalent offense outside the Commonwealth. The Commissioner shall not issue  
158 a license or registration to any child welfare agency if the applicant; his agents and board members who  
159 are involved in the day-to-day operations of the child welfare agency or who are alone with, in control  
160 of, or supervising one or more of the children; or any other adult living in the home of an applicant for  
161 licensure or registration as a family day home has been convicted of one of the crimes specified in  
162 § 63.1-198.1. No applicant, agent or board member of the applicant shall be involved in the day-to-day  
163 operations of the child welfare agency or shall be alone with, in control of, or supervising one or more  
164 of the children without first having a criminal history records check and a sworn disclosure statement or  
165 affirmation showing that he has not been convicted of or is not the subject of pending charges for one  
166 of the crimes specified in § 63.1-198.1. Any person making a materially false statement regarding any  
167 such offense shall be guilty of a Class 1 misdemeanor.

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

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

175 § 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of certain  
176 offenses prohibited; criminal records check required; suspension or revocation of license.

177 On or after July 1, 1992, a child welfare agency licensed or registered in accordance with the  
178 provisions of this chapter shall not hire for compensated or voluntary employment nor shall private

179 child-placing agencies approve as foster or adoptive parents or family day systems approve as caretakers  
180 persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-48,  
181 sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, pandering as set out  
182 in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties  
183 with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in  
184 § 18.2-371.1, including failing to secure medical attention for an injured child or obscenity offenses as  
185 set out in § 18.2-374.1, or abuse and neglect of incapacitated adults as set out in § 18.2-369 or convicted  
186 under § 18.2-379.

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

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

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

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

221 *The provisions of this section shall not apply to any child-caring institution licensed pursuant to*  
222 *§ 63.1-196, which instead shall comply with the background investigation requirements contained in*  
223 *§ 63.1-248.7:2.*

224 § 63.1-199. Issuance or refusal of license; notification.

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

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

239 § 63.1-248.7:2. Background check required; residential facilities for juveniles.

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

261 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
 262 record exists, *shall forward it to the state agency which operates or regulates the facility with which the*  
 263 *applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition*  
 264 *data, conduct research in whatever state and local record-keeping systems are available in order to*  
 265 *obtain complete data. The state agency shall submit a report to the facility whether the applicant meets*  
 266 *the criteria to have responsibility for the safety and well-being of children based on whether or not the*  
 267 *applicant has ever been convicted of or is the subject of pending charges for the following crimes:*  
 268 *murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, abduction for immoral*  
 269 *purposes as set out in § 18.2-48, assault and bodily wounding as set out in Article 4 (§ 18.2-51 et*  
 270 *seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, extortion by threat as set out in*  
 271 *§ 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*  
 272 *set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2*  
 273 *(§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, possession or distribution of drugs as set out in Article 1*  
 274 *(§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature*  
 275 *involving children as set out § 18.2-361, taking indecent liberties with children as set out in § 18.2-370*  
 276 *or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical*  
 277 *attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1,*  
 278 *abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to*  
 279 *assist in an act constituting an offense under Article 5 of Chapter 8 of Title 18.2, as set out in*  
 280 *§ 18.2-379, or an equivalent offense in another state. If an individual the applicant is denied*  
 281 *employment, or the opportunity to volunteer or provide services at a facility because of information*  
 282 *appearing on his criminal history record, and the applicant disputes the information upon which the*  
 283 *denial was based, upon written request of the applicant the facility state agency shall provide a copy of*  
 284 *the information obtained from the Central Criminal Records Exchange to the individual furnish the*  
 285 *applicant the procedures for obtaining his criminal history record from the Federal Bureau of*  
 286 *Investigation. If the applicant has been permitted to provide services pending receipt of the report, the*  
 287 *residential facility is not precluded from suspending the applicant from his position or denying the*  
 288 *applicant unsupervised access to clients pending a final determination of the applicant's fitness to have*  
 289 *responsibility for the safety and well-being of children. The information provided to the facility shall not*  
 290 *be disseminated except as provided in this section.*

291 B. Those individuals listed in clauses (i), (ii) and (iii) of subsection A shall also ~~provide~~ *authorize*  
 292 *the facility with to obtain a copy of information from the central registry maintained pursuant to*  
 293 *§ 63.1-248.8 on any investigation of child abuse or neglect undertaken on him. The applicant shall*  
 294 *provide the residential facility with a written statement or affirmation disclosing whether he has ever*  
 295 *been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The*  
 296 *facility shall submit the request for information to the central registry prior to permitting an applicant*  
 297 *to begin his duties. The facility shall obtain a copy of the information from the central registry within*  
 298 *twenty-one days of the applicant beginning his duties. The provisions of this subsection also shall apply*  
 299 *to every residential facility for juveniles which is regulated or operated by the Department of Youth and*  
 300 *Family Services.*

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