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SENATE BILL NO. 472

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 8, 2008)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-408.1 and 66-24.1, relating to regulation of group homes and residential facilities for children.

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 37.2-408.1 and 66-24.1 as follows:

§ 22.1-323.2. Licensure of services delivered in group homes and residential facilities for children.

A. The Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing and certification of residential schools for students with disabilities, regarding educational programs offered in group homes and residential facilities in the Commonwealth. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.

B. The Board's regulations shall address the educational services required to be provided in such group homes and residential schools/facilities as it may deem appropriate to ensure the education and safety of the students. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the students; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

D. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and

5. Modify the term of the license at any time during the term of the license based on a change in compliance.

§ 37.2-408. Regulation of services delivered in group homes and residential facilities for children.

A. The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The Board shall adopt regulations that shall allow the Department to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation and assistance among agencies licensing similar programs.

B. The Board's regulations shall establish the Department as the single licensing agency, with the exception of educational programs licensed by the Department of Education, for group homes or

60 *residential facilities providing mental health, mental retardation, brain injury, or substance abuse*
61 *services. Such regulations shall* address the services required to be provided in group homes and
62 residential facilities for children as it may deem appropriate to ensure the health and safety of the
63 children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications
64 for the structure and accommodations of such homes and facilities according to the needs of the children
65 to be placed; (ii) rules concerning allowable activities, local government- and home- or facility-imposed
66 curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a
67 community liaison who shall be responsible for facilitating cooperative relationships with the neighbors,
68 the school system, local law enforcement, local government officials, and the community at large.

69 C. Pursuant to the procedures set forth in subsection D, the Commissioner may issue a summary
70 order of suspension of the license of a group home or residential facility for children licensed pursuant
71 to the Board's regulations under subsection A, in conjunction with any proceeding for revocation, denial,
72 or other action, when conditions or practices exist in the home or facility that pose an immediate and
73 substantial threat to the health, safety, and welfare of the children who are residents and the
74 Commissioner believes the operation should be suspended during the pendency of such proceeding.

75 D. The summary order of suspension shall take effect upon its issuance and shall be served on the
76 licensee or its designee as soon as practicable thereafter by personal service and certified mail, return
77 receipt requested, to the address of record of the licensee. The order shall state the time, date, and
78 location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no
79 later than three business days after the issuance of the summary order of suspension and shall be
80 convened by the Commissioner or his designee.

81 After such hearing, the Commissioner may issue a final order of summary suspension or may find
82 that such summary suspension is not warranted by the facts and circumstances presented. A final order
83 of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to
84 the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before
85 the court shall be whether the Department had reasonable grounds to require the licensee to cease
86 operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent
87 revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the
88 appropriateness of the summary suspension.

89 The willful and material failure to comply with the summary order of suspension or final order of
90 summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the
91 cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who
92 are residents of a home or facility whose license has been summarily suspended pursuant to this section
93 and in any other actions necessary to reduce the risk of further harm to children.

94 E. In addition to the requirements set forth above, the Board's regulations shall require, as a
95 condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally
96 interviewed by Department personnel to determine the qualifications of the owner or operator before
97 granting an initial license; (ii) provide evidence of having relevant prior experience before any initial
98 license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff
99 participation in training on appropriate siting of the residential facilities for children, good neighbor
100 policies, and community relations; and (iv) be required to screen residents prior to admission to exclude
101 individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant
102 residential facility.

103 F. In addition, the Department shall:

104 1. Notify relevant local governments and placing and funding agencies, including the Office of
105 Comprehensive Services, of multiple health and safety or human rights violations in residential facilities
106 for which the Department serves as lead licensure agency when such violations result in the lowering of
107 the licensure status of the facility to provisional;

108 2. Post on the Department's website information concerning the application for initial licensure of or
109 renewal, denial, or provisional licensure of any residential facility for children located in the locality;

110 3. Require all licensees to self-report lawsuits against or settlements with residential facility operators
111 relating to the health and safety or human rights of residents and any criminal charges that may have
112 been made relating to the health and safety or human rights of residents;

113 4. Require proof of contractual agreements or staff expertise to provide educational services,
114 counseling services, psychological services, medical services, or any other services needed to serve the
115 residents in accordance with the facility's operational plan; ~~and~~

116 5. Modify the term of the license at any time during the term of the license based on a change in
117 compliance; *and*

118 6. *Disseminate to local governments, or post on the Department's website, an accurate (updated*
119 *weekly or monthly as necessary) list of licensed and operating group homes and other residential*
120 *facilities for children by locality with information on services and identification of the lead licensure*
121 *agency.*

§ 37.2-408.1. Background check required; children's residential facilities.

A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department 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, 2008, (ii) volunteers 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, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2008 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 children's 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 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's 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. The results of the criminal history background check must be received prior to permitting an applicant to work alone with children.

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 that operates or regulates the children's residential 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 recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (a) convicted of or are the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assault and bodily woundings 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; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; 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; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300; 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 or neglect of children as set out in § 18.2-371.1, including 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; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or 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 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (b) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (c) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his

183 employment, volunteer, or contractual services.

184 If the applicant is denied employment, or the opportunity to volunteer or provide services, at a
185 children's residential facility because of information appearing on his criminal history record, and the
186 applicant disputes the information upon which the denial was based, upon written request of the
187 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
188 record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties
189 that do not involve contact with children pending receipt of the report, the children's residential facility
190 is not precluded from suspending the applicant from his position pending a final determination of the
191 applicant's eligibility to have responsibility for the safety and well-being of children. The information
192 provided to the children's residential facility shall not be disseminated except as provided in this section.

193 C. Those individuals listed in clauses (i), (ii), and (iii) of subsection A also shall authorize the
194 children's residential facility to obtain a copy of information from the central registry maintained
195 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant
196 shall provide the children's residential facility with a written statement or affirmation disclosing whether
197 he has ever been the subject of a founded case of child abuse or neglect within or outside the
198 Commonwealth. The children's residential facility shall receive the results of the central registry search
199 prior to permitting an applicant to work alone with children. Children's residential facilities regulated
200 or operated by the Department shall not hire for compensated employment or allow to volunteer or
201 provide contractual services, persons who have a founded case of child abuse or neglect.

202 D. The cost of obtaining the criminal history record and the central registry information shall be
203 borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay
204 the cost.

205 § 63.2-1737. Licensure of group homes and residential facilities for children.

206 A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other
207 state departments in fulfilling their respective licensing and certification responsibilities ~~and in reducing~~
208 ~~and simplifying the regulations involved in such licensing and certification~~ of children's residential
209 facilities. The Board shall adopt regulations *establishing the Department as the single licensing agency,*
210 *with the exception of educational programs licensed by the Department of Education,* for the
211 ~~interdepartmental~~ regulation of children's residential facilities, including group homes, *providing social*
212 *services programs that shall allow the Department to assist and cooperate with other state departments in*
213 ~~fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the~~
214 ~~regulations involved in such licensing and certification.~~ Notwithstanding any other provisions of this
215 chapter, licenses issued to children's residential facilities ~~pursuant to cooperative efforts described in this~~
216 ~~section~~ may be issued for periods of up to 36 successive months.

217 B. The Board's regulations for the ~~interdepartmental~~ regulation of children's residential facilities shall
218 address the services required to be provided in such facilities as it may deem appropriate to ensure the
219 health and safety of the children. In addition, the Board's regulations shall include, but shall not be
220 limited to (i) specifications for the structure and accommodations of such facilities according to the
221 needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed
222 curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a
223 community liaison who shall be responsible for facilitating cooperative relationships with the neighbors,
224 the school system, local law enforcement, local government officials, and the community at large.

225 C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as
226 a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under
227 minimum standards for licensed child-caring institutions as adopted by the Board and in effect on
228 January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the
229 ~~interdepartmental~~ regulations for children's residential facilities.

230 D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other
231 disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of
232 the license of any group home or residential facility for children, in conjunction with any proceeding for
233 revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an
234 immediate and substantial threat to the health, safety, and welfare of the children who are residents and
235 the Commissioner believes the operation of the home or facility should be suspended during the
236 pendency of such proceeding.

237 E. The summary order of suspension shall take effect upon its issuance and shall be served on the
238 licensee or its designee as soon as practicable thereafter by personal service and certified mail, return
239 receipt requested, to the address of record of the licensee. The order shall state the time, date, and
240 location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no
241 later than three business days after the issuance of the summary order of suspension and shall be
242 convened by the Commissioner or his designee.

243 After such hearing, the Commissioner may issue a final order of summary suspension or may find
244 that such summary suspension is not warranted by the facts and circumstances presented. A final order

of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

F. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

G. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;

5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and

6. Modify the term of the license at any time during the term of the license based on a change in compliance.

§ 66-24. Community group homes and other residential facilities for certain juveniles; licensure; personnel; summary suspension under certain circumstances; penalty.

A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities ~~and in reducing and simplifying the regulations involved in the licensing or certification of children's residential facilities.~~ The Board shall promulgate regulations that shall allow the Department to so assist and cooperate with other state departments. *The Board's regulations shall establish the Department as the single licensing agency, with the exception of educational programs licensed by the Department of Education, for group homes or residential facilities providing care of juveniles in direct state care.*

B. The Department is authorized to establish and maintain such a system of community group homes or other residential care facilities as the Department may from time to time acquire, construct, contract for or rent for the care of juveniles in direct state care, pending development of more permanent placement plans. Any community group home or other residential care facility that the Department may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.

Any more permanent placement plans shall consider adequate care and treatment, and suitable education, training and employment for such juveniles, as is appropriate.

C. The Department is further authorized to employ necessary personnel for community group homes or other residential care facilities or to contract with private entities for their operation.

D. The Board shall promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care pursuant to subsection B.

306 The Board's regulations shall address the services required to be provided in such facilities as it may
307 deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations
308 shall include, but need not be limited to (i) specifications for the structure and accommodations of such
309 facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules
310 concerning allowable activities, local government- and group home- or residential care facility-imposed
311 curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility
312 have a community liaison who shall be responsible for facilitating cooperative relationships with the
313 neighbors, the school system, local law enforcement, local government officials, and the community at
314 large.

315 E. Pursuant to the procedures set forth in subsection F and in addition to any other legally authorized
316 disciplinary actions, the Director may issue a summary order of suspension of the license or certificate
317 of any group home or residential facility so regulated by the Department, in conjunction with any
318 proceeding for revocation, denial, or other action, when conditions or practices exist in the home or
319 facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles
320 who are residents and the Director believes the operation of the home or facility should be suspended
321 during the pendency of such proceeding.

322 F. The summary order of suspension shall take effect upon its issuance and shall be served on the
323 licensee or certificate holder or its designee as soon as practicable thereafter by personal service and
324 certified mail, return receipt requested, to the address of record of the licensee or certificate holder. The
325 order shall state the time, date, and location of a hearing to determine whether the suspension is
326 appropriate. Such hearing shall be held no later than three business days after the issuance of the
327 summary order of suspension and shall be convened by the Director or his designee.

328 After such hearing, the Director may issue a final order of summary suspension or may find that
329 such summary suspension is not warranted by the facts and circumstances presented. A final order of
330 summary suspension shall include notice that the licensee or certificate holder may appeal the Director's
331 decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole
332 issue before the court shall be whether the Director had reasonable grounds to require the licensee to
333 cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The
334 concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing
335 on the appropriateness of the summary suspension.

336 The willful and material failure to comply with the summary order of suspension or final order of
337 summary suspension shall be punishable as a Class 2 misdemeanor. The Director may require the
338 cooperation of any other agency or subdivision of the Commonwealth in the relocation of the juveniles
339 who are residents of a home or facility whose license or certificate has been summarily suspended
340 pursuant to this section and in any other actions necessary to reduce the risk of further harm to such
341 residents.

342 G. In addition to the requirements set forth above, the Board's regulations shall require, as a
343 condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally
344 interviewed by Department personnel to determine the qualifications of the owner or operator before
345 granting an initial license; (ii) provide evidence of having relevant prior experience before any initial
346 license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff
347 participation in training on appropriate siting of the residential facilities for children, good neighbor
348 policies, and community relations; and (iv) be required to screen residents prior to admission to exclude
349 individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant
350 residential facility.

351 H. In addition, the Department shall:

352 1. Notify relevant local governments and placing and funding agencies, including the Office of
353 Comprehensive Services, of multiple health and safety or human rights violations in residential facilities
354 ~~for which the Department serves as lead agency licensed by the Department~~ when such violations result
355 in the lowering of the licensure or certification status of the facility to provisional;

356 2. Post on the Department's website information concerning the application for initial licensure or
357 certification of or renewal, denial, or provisional licensure or certification of any residential facility for
358 children located in the locality;

359 3. Require all licensees or certificate holders to self-report lawsuits against or settlements with
360 residential facility operators relating to the health and safety or human rights of residents and any
361 criminal charges that may have been made relating to the health and safety or human rights of residents;

362 4. Require proof of contractual agreements or staff expertise to provide educational services,
363 counseling services, psychological services, medical services, or any other services needed to serve the
364 residents in accordance with the facility's operational plan; ~~and~~

365 5. Modify the term of the license or certificate at any time during the term of the license or
366 certificate based on a change in compliance; *and*

367 6. *Disseminate to local governments, or post on the Department's website, an accurate (updated*

weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency.

§ 66-24.1. Background check required; children's residential facilities.

A. As a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department 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, 2008, (ii) volunteers 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, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2008 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 children's 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 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's 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. The results of the criminal history background check must be received prior to permitting an applicant to work alone with children.

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 children's residential 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 recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (a) convicted of or are the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assault and bodily woundings 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; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; 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; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300; 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 or neglect of children as set out in § 18.2-371.1, including 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; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or 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 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (b) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (c) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for

429 compensated employment or for volunteer or contractual service purposes persons who have been
430 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have
431 elapsed following the conviction, unless the person committed such offense in the scope of his
432 employment, volunteer, or contractual services.

433 If the applicant is denied employment, or the opportunity to volunteer or provide services at a
434 children's residential facility because of information appearing on his criminal history record, and the
435 applicant disputes the information upon which the denial was based, upon written request of the
436 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
437 record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties
438 that do not involve contact with children pending receipt of the report, the children's residential facility
439 is not precluded from suspending the applicant from his position pending a final determination of the
440 applicant's eligibility to have responsibility for the safety and well-being of children. The information
441 provided to the children's residential facility shall not be disseminated except as provided in this section.

442 C. Those individuals listed in clauses (i), (ii), and (iii) of subsection A also shall authorize the
443 children's residential facility to obtain a copy of information from the central registry maintained
444 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant
445 shall provide the children's residential facility with a written statement or affirmation disclosing whether
446 he has ever been the subject of a founded case of child abuse or neglect within or outside the
447 Commonwealth. The children's residential facility shall receive the results of the central registry search
448 prior to permitting an applicant to work alone with children. Children's residential facilities regulated
449 or operated by the Department shall not hire for compensated employment or allow to volunteer or
450 provide contractual services, persons who have a founded case of child abuse or neglect. Every
451 residential facility for juveniles that is regulated or operated by the Department shall be authorized to
452 obtain a copy of the information from the central registry.

453 D. Copies of any information received by a children's residential facility pursuant to this section
454 shall be available to the agency that regulates or operates such facility but shall not be disseminated
455 further. The cost of obtaining the criminal history record and the central registry information shall be
456 borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay
457 the cost.