

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 63.2-1719, and 63.2-1726 of the Code of Virginia, relating to barrier crimes.*

[H 971]

Approved

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

**1. That §§ 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 63.2-1719, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of *a felony violation of a protective order as set out in § 16.1-253.2*, 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 or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults 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*, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, *a felony violation of a protective order as set out in § 18.2-60.4*, 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, 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 in § 18.2-361, incest as set out in § 18.2-366, 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, 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, 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 (§ 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. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within 30 days of employment, obtain for any compensated employees 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. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

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

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; drug testing; suspension or revocation of license.

ENROLLED

HB971ER

57 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization  
 58 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in  
 59 § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of *a felony*  
 60 *violation of a protective order as set out in § 16.1-253.2*, murder or manslaughter as set out in Article 1  
 61 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41,  
 62 abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in  
 63 § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title  
 64 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*  
 65 *in § 18.2-59*, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in  
 66 § 18.2-60.3, *a felony violation of a protective order as set out in § 18.2-60.4*, sexual assault as set out in  
 67 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.)  
 68 of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime  
 69 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  
 70 sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out  
 71 in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in  
 72 § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and  
 73 neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as  
 74 set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as  
 75 set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and  
 76 neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an  
 77 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in  
 78 § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in  
 79 § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

80 However, a home care organization or hospice may hire an applicant convicted of one misdemeanor  
 81 specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

82 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any  
 83 home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any  
 84 licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or  
 85 affirmation disclosing any criminal convictions or any pending criminal charges, whether within or  
 86 without the Commonwealth. Any person making a materially false statement when providing such sworn  
 87 statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1  
 88 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited  
 89 other than to a federal or state authority or court as may be required to comply with an express  
 90 requirement of law for such further dissemination.

91 Such home care organization or hospice shall, within 30 days of employment, obtain for any  
 92 compensated employees an original criminal record clearance with respect to convictions for offenses  
 93 specified in this section or an original criminal history record from the Central Criminal Records  
 94 Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is  
 95 denied employment because of convictions appearing on his criminal history record, the home care  
 96 organization or hospice shall provide a copy of the information obtained from the Central Criminal  
 97 Records Exchange to the applicant.

98 The provisions of this section shall not apply to volunteers who work with the permission or under  
 99 the supervision of a person who has received a clearance pursuant to this section.

100 B. A licensed home care organization as defined in § 32.1-162.7 or any home care organization  
 101 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining  
 102 a drug-free workplace, which may include drug testing when the employer has cause to believe that the  
 103 person has engaged in the use of illegal drugs and periodically during the course of employment. All  
 104 positive results from drug testing administered pursuant to this section shall be reported to the health  
 105 regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

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

109 D. A licensed home care organization or hospice shall notify and provide all students a copy of the  
 110 provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such  
 111 home care organization or hospice.

112 § 37.2-314. Background check required.

113 A. As a condition of employment, the Department shall require any individual who (i) accepts a  
 114 position of employment at a state facility and was not employed by that state facility prior to July 1,  
 115 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the  
 116 Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to  
 117 fingerprinting and provide personal descriptive information to be forwarded along with the applicant's

fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the individual.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been (i) *a felony violation of a protective order as set out in § 16.1-253.2*; convicted of 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 or B of § 18.2-47; 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; carjacking, as set out § 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; *a felony violation of a protective order as set out in § 18.2-60.4*; 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 in § 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 failing 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; (ii) 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, in the five years prior to the application date for employment; or (iii) 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.

C. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

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

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

§ 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, 2008, 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 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: *a felony violation of a protective order as set out in § 16.1-253.2*; 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 or B 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; *a felony violation of a protective order as set out in § 18.2-60.4*; 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 employment, volunteer, or contractual services.

If the applicant is denied employment, or the opportunity to volunteer or provide services, at a children's residential 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 state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those individuals listed in clauses (i), (ii), and (iii) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant

shall provide the children's 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 children's residential facility shall receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Department shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect.

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

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of *a felony violation of a protective order as set out in § 16.1-253.2*, 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 or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults 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*, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, *a felony violation of a protective order as set out in § 18.2-60.4*, 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, 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 in § 18.2-361, incest as set out in § 18.2-366, 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, 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, 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 (§ 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. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 63.2-1726. 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 Departments of Social Services; Education; Military Affairs; or Behavioral Health and Developmental 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, 2007, (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, 2007; 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.

301 The results of the criminal history background check must be received prior to permitting an applicant  
 302 to work with children.

303 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
 304 record exists, shall forward it to the state agency which operates or regulates the children's residential  
 305 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's  
 306 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are  
 307 available in order to obtain complete data. The state agency shall report to the children's facility whether  
 308 the applicant is eligible to have responsibility for the safety and well-being of children. Except as  
 309 otherwise provided in subsection B, no children's residential facility regulated or operated by the  
 310 Departments of Education; Behavioral Health and Developmental Services; Military Affairs; or Social  
 311 Services shall hire for compensated employment or allow to volunteer or provide contractual services  
 312 persons who have been (i) convicted of or are the subject of pending charges for the following crimes: *a*  
 313 *felony violation of a protective order as set out in § 16.1-253.2*, murder or manslaughter as set out in  
 314 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in  
 315 § 18.2-41; abduction as set out in *subsection A or B of § 18.2-47 A*; abduction for immoral purposes as  
 316 set out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter  
 317 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  
 318 as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in  
 319 § 18.2-60.3; *a felony violation of a protective order as set out in § 18.2-60.4*, sexual assault as set out in  
 320 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.)  
 321 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;  
 322 any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of  
 323 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  
 324 violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a  
 325 sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out  
 326 in § 18.2-355; crimes against nature involving children as set out § 18.2-361; taking indecent liberties  
 327 with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in  
 328 § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314;  
 329 obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in  
 330 § 18.2-374.1.1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in  
 331 § 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a  
 332 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of  
 333 Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape  
 334 from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense  
 335 in another state; or (ii) convicted of any felony violation relating to possession of drugs set out in  
 336 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for  
 337 employment, to be a volunteer, or to provide contractual services; or (iii) convicted of any felony  
 338 violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title  
 339 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of  
 340 this section also shall apply to structured residential programs, excluding secure detention facilities,  
 341 established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition  
 342 before the court that alleges the juvenile is delinquent or in need of services or supervision.

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

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

357 C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the  
 358 children's residential facility to obtain a copy of information from the central registry maintained  
 359 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant  
 360 shall provide the children's residential facility with a written statement or affirmation disclosing whether  
 361 he has ever been the subject of a founded case of child abuse or neglect within or outside the

362 Commonwealth. The children's residential facility shall receive the results of the central registry search  
363 prior to permitting an applicant to work alone with children. Children's residential facilities regulated or  
364 operated by the Departments of Education; Behavioral Health and Developmental Services; Military  
365 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide  
366 contractual services, persons who have a founded case of child abuse or neglect. Every residential  
367 facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be  
368 authorized to obtain a copy of the information from the central registry.

369 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and  
370 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with  
371 the provisions of this section. Copies of any information received by a children's residential facility  
372 pursuant to this section shall be available to the agency that regulates or operates such facility but shall  
373 not be disseminated further. The cost of obtaining the criminal history record and the central registry  
374 information shall be borne by the employee or volunteer unless the children's residential facility, at its  
375 option, decides to pay the cost.