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HOUSE BILL NO. 536

Offered January 13, 2016

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A BILL to amend and reenact §§ 19.2-389, 37.2-416, and 37.2-506 of the Code of Virginia, relating to sponsored residential and shared living services; background checks.

Patrons—Hope and Kory

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 37.2-416, and 37.2-506 of the Code of Virginia are amended and reenacted as follows:

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

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59 8. Public or private agencies when authorized or required by federal or state law or interstate
60 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
61 adult members of that individual's household, with whom the agency is considering placing a child or
62 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
63 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
64 the data shall not be further disseminated to any party other than a federal or state authority or court as
65 may be required to comply with an express requirement of law;

66 9. To the extent permitted by federal law or regulation, public service companies as defined in
67 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
68 personal contact with the public or when past criminal conduct of an applicant would be incompatible
69 with the nature of the employment under consideration;

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

72 11. A person requesting a copy of his own criminal history record information as defined in
73 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
74 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
75 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
76 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
77 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
78 Solvers or Crime Line program as defined in § 15.2-1713.1;

79 12. Administrators and board presidents of and applicants for licensure or registration as a child
80 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
81 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
82 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved
83 by family day systems, and foster and adoptive parent applicants of private child-placing agencies,
84 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction
85 that the data shall not be further disseminated by the facility or agency to any party other than the data
86 subject, the Commissioner of Social Services' representative or a federal or state authority or court as
87 may be required to comply with an express requirement of law for such further dissemination;

88 13. The school boards of the Commonwealth for the purpose of screening individuals who are
89 offered or who accept public school employment and those current school board employees for whom a
90 report of arrest has been made pursuant to § 19.2-83.1;

91 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
92 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
93 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

94 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
95 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
96 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject
97 to the limitations set out in subsection E;

98 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
99 investigations of applicants for compensated employment in licensed assisted living facilities and
100 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

101 17. (Effective until July 1, 2018) The Alcoholic Beverage Control Board for the conduct of
102 investigations as set forth in § 4.1-103.1;

103 17. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the conduct of
104 investigations as set forth in § 4.1-103.1;

105 18. The State Board of Elections and authorized officers and employees thereof and general registrars
106 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
107 voter registration, limited to any record of felony convictions;

108 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
109 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
110 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

111 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
112 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
113 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

114 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
115 Department of Education, or the Department of Behavioral Health and Developmental Services for the
116 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
117 services;

118 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
119 Department for the purpose of determining an individual's fitness for employment pursuant to
120 departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, *approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver* pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, *approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver* pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position *or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver* has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening

182 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
183 or have accepted a position related to the provision of transportation services to enrollees in the
184 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
185 program administered by the Department of Medical Assistance Services;

186 38. The State Corporation Commission for the purpose of investigating individuals who are current
187 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
188 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any
189 other provision of law, if an application is denied based in whole or in part on information obtained
190 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the
191 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or
192 its designee;

193 39. The Department of Professional and Occupational Regulation for the purpose of investigating
194 individuals for initial licensure pursuant to § 54.1-2106.1;

195 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
196 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
197 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
198 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

199 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

200 42. The State Treasurer for the purpose of determining whether a person receiving compensation for
201 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

202 43. The Department of Social Services and directors of local departments of social services for the
203 purpose of screening individuals seeking to enter into a contract with the Department of Social Services
204 or a local department of social services for the provision of child care services for which child care
205 subsidy payments may be provided;

206 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
207 a juvenile's household when completing a predispositional or postdispositional report required by §
208 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

209 45. Other entities as otherwise provided by law.

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

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

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

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

226 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
227 Exchange prior to dissemination of any criminal history record information on offenses required to be
228 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
229 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
230 where time is of the essence and the normal response time of the Exchange would exceed the necessary
231 time period. A criminal justice agency to whom a request has been made for the dissemination of
232 criminal history record information that is required to be reported to the Central Criminal Records
233 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
234 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
235 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

236 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
237 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
238 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

239 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
240 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange
241 for any offense specified in § 63.2-1720.

242 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
243 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 37.2-416. Background checks required.

A. As used in this section, ~~the term "direct:~~

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

~~As used in this section, "hire~~ *"Hire for compensated employment"* does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. ~~As used in this section, "hire~~ *"Hire for compensated employment"* includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with intellectual or developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded 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 applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall (a) hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314; (b) approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of an offense listed in subsection B of § 37.2-314; or (c) permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of an offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the 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 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse or adult mental health treatment facilities a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or (iii) assault and battery, as set out in subsection A of § 18.2-57; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools,

as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 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 the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment for all applicants, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. 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.

§ 37.2-506. Background checks required.

A. As used in this section, the term "direct:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire" "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. As used in this section, "hire" "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with intellectual or

developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded 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 applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a share living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant 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 executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; (iii) assault and battery, as set out in subsection A of § 18.2-57; or (iv) assault and battery against a family or household member, as set out in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

428 F. Notwithstanding the provisions of subsection B, a community services board may hire for
429 compensated employment persons who have been convicted of not more than one misdemeanor offense
430 under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person
431 committed the offense while employed in a direct care position.

432 G. Community services boards also shall require, as a condition of employment ~~for all applicants~~ ,
433 *approval as a sponsored residential service provider, or permission to enter into a shared living*
434 *arrangement with a person receiving medical assistance services pursuant to a waiver*, written consent
435 and personal information necessary to obtain a search of the registry of founded complaints of child
436 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

437 H. The cost of obtaining the criminal history record and search of the child abuse and neglect
438 registry record shall be borne by the applicant, unless the community services board decides to pay the
439 cost.

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