2016 SESSION

ENROLLED

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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 37.2-408.1, 63.2-1719, and 63.2-1726 of the Code of Virginia, relating to barrier crimes.

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Approved

6 Be it enacted by the General Assembly of Virginia:

7 1. That §§ 37.2-408.1, 63.2-1719, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:

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

10 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 11 12 the Department shall require any person 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 13 basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such 14 15 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 16 17 provide such services prior to July 1, 2008, to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the person's fingerprints through the Central 18 19 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the person. The children's residential facility shall inform the person 20 21 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 22 23 the person's eligibility to have responsibility for the safety and well-being of children. The person shall 24 provide the children's residential facility with a written statement or affirmation disclosing whether he 25 has ever been convicted of or is the subject of pending charges for any offense within or outside the 26 Commonwealth. The results of the criminal history background check must be received prior to 27 permitting a person to work with children.

28 The Central Criminal Records Exchange, upon receipt of a person's record or notification that no 29 record exists, shall forward it to the state agency that operates or regulates the children's residential 30 facility with which the person is affiliated. The state agency shall, upon receipt of a person's record 31 lacking disposition data, conduct research in whatever state and local recordkeeping systems are 32 available in order to obtain complete data. The state agency shall report to the children's facility whether 33 the person is eligible to have responsibility for the safety and well-being of children. Except as 34 otherwise provided in subsection B, no children's residential facility regulated or operated by the 35 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: 36 a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in 37 38 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in 39 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set 40 out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of 41 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 42 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 43 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 44 45 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 46 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 47 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 48 49 50 § 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, 51 including failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity 52 53 offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; 54 electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or 55 neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an 56 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in

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57 § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in 58 § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or 59 (b) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et 60 seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state, in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (c) convicted 61 62 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; 63 64 or (d) convicted of any offense set forth in § 9.1-902 or have been the subject of a finding of not guilty 65 by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense 66 set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any other state. The 67 provisions of this section also shall apply to structured residential programs, excluding secure detention 68 facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in 69 70 a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

71 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for 72 compensated employment or for volunteer or contractual service purposes persons who have been 73 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have 74 elapsed following the conviction, unless the person committed such offense in the scope of his 75 employment, volunteer, or contractual services.

76 If the person is denied employment, or the opportunity to volunteer or provide services, at a 77 children's residential facility because of information appearing on his criminal history record, and the 78 person disputes the information upon which the denial was based, upon written request of the person the 79 state agency shall furnish the person the procedures for obtaining his criminal history record from the 80 Federal Bureau of Investigation. If the person 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 81 82 from suspending the person from his position pending a final determination of the person's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's 83 84 residential facility shall not be disseminated except as provided in this section.

85 C. Those persons 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 86 87 § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide 88 the children's residential facility with a written statement or affirmation disclosing whether he has ever 89 been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The 90 children's residential facility shall receive the results of the central registry search prior to permitting a 91 person to work alone with children. Children's residential facilities regulated or operated by the 92 Department shall not hire for compensated employment, or allow to volunteer or provide contractual 93 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 person unless the children's residential facility, at its option, decides to pay the cost.

§ 63.2-1719. Definitions.

97 As used in this subtitle:

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98 "Barrier crime" means a conviction of a felony violation of a protective order as set out in 99 § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 100 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of 101 § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set 102 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 103 104 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 105 106 107 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 108 109 in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving 110 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 111 112 to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in 113 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of 114 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in 115 § 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 116 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in 117

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\$ 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.

123 "Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive 124 homes approved by child-placing agencies, (i) a conviction of any offense set forth in § 9.1-902 or a 125 finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 126 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to 127 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar 128 registry in any other state; (ii) a conviction of any other felony not included in the definition of barrier crime or described in clause (i) unless five years have elapsed since conviction; and (ii) (iii) a founded 129 130 complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare 131 agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include 132 prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that 133 would be a felony if committed by an adult within or outside the Commonwealth.

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§ 63.2-1726. Background check required; children's residential facilities.

135 A. As a condition of employment, volunteering, or providing services on a regular basis, every 136 children's residential facility that is regulated or operated by the Departments of Social Services, 137 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any 138 individual who (i) accepts a position of employment at such a facility who was not employed by that 139 facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with 140 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 141 will be alone with a juvenile in the performance of his duties who did not provide such services prior to 142 143 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 144 145 Federal Bureau of Investigation for the purpose of obtaining criminal history record information 146 regarding such applicant. The children's residential facility shall inform the applicant that he is entitled 147 to obtain a copy of any background check report and to challenge the accuracy and completeness of any 148 such report and obtain a prompt resolution before a final determination is made of the applicant's 149 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the 150 children's residential facility with a written statement or affirmation disclosing whether he has ever been 151 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. 152 The results of the criminal history background check must be received prior to permitting an applicant 153 to work with children.

154 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no 155 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 156 157 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are 158 available in order to obtain complete data. The state agency shall report to the children's facility whether 159 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 160 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social 161 162 Services 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: 163 164 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 165 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set 166 167 out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of 168 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 169 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 170 felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 171 (§ 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 172 173 violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of 174 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 175 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 176 177 § 18.2-355; crimes against nature involving children as set out in § 18.2-361; taking indecent liberties 178 with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in

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179 § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314; 180 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 181 182 183 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of 184 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 185 jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in 186 another state; (b) convicted of any felony violation relating to possession of drugs as set out in Article 1 187 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state, in the five 188 years prior to the application date for employment, to be a volunteer, or to provide contractual services; 189 Θ (c) convicted of any felony violation relating to possession of drugs as set out in Article 1 190 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay 191 required court costs; or (d) convicted of any offense set forth in § 9.1-902 or have been the subject of a 192 finding of not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any 193 194 195 other state. The provisions of this section also shall apply to residential programs established pursuant to 196 § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that 197 alleges the juvenile is delinquent or in need of services or supervision, and to local secure detention 198 facilities provided, however, that the provisions of this section related to local secure detention facilities 199 shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at 200 such local secure detention facility, volunteers at such local secure detention facility on a regular basis 201 and will be alone with a juvenile in the performance of his duties, or provides contractual services 202 directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a 203 juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local 204 agency that regulates or operates the local secure detention facility shall process the criminal history 205 record information regarding such applicant in accordance with this subsection and subsection B.

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.

211 If the applicant is denied employment or the opportunity to volunteer or provide services at a 212 children's residential facility because of information appearing on his criminal history record, and the 213 applicant disputes the information upon which the denial was based, upon written request of the 214 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history 215 record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties 216 that do not involve contact with children pending receipt of the report, the children's residential facility 217 is not precluded from suspending the applicant from his position pending a final determination of the 218 applicant's eligibility to have responsibility for the safety and well-being of children. The information 219 provided to the children's residential facility shall not be disseminated except as provided in this section.

220 C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the 221 children's residential facility to obtain a copy of information from the central registry maintained 222 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant 223 shall provide the children's residential facility with a written statement or affirmation disclosing whether 224 he has ever been the subject of a founded case of child abuse or neglect within or outside the 225 Commonwealth. The children's residential facility shall receive the results of the central registry search 226 prior to permitting an applicant to work alone with children. Children's residential facilities regulated or 227 operated by the Departments of Education; Behavioral Health and Developmental Services; Military 228 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide 229 contractual services, persons who have a founded case of child abuse or neglect. Every residential 230 facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be 231 authorized to obtain a copy of the information from the central registry.

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