

19103722D

SENATE BILL NO. 1678

Offered January 11, 2019

A BILL to amend and reenact §§ 37.2-408.1 and 63.2-1726 of the Code of Virginia, relating to statutory alignment with federal Family First Prevention Services Act.

Patron—Mason

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 37.2-408.1 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.

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 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) is currently employed by such a facility, (iii) 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) (iv) provides contractual services directly to a juvenile for such a 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 person's fingerprints through the Central 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 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 person's eligibility to have responsibility for the safety and well-being of children. The person 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 a person to work with children in the children's residential facility.

The Central Criminal Records Exchange, upon receipt of a person'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 person is affiliated. The state agency shall, upon receipt of a person'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 person 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 convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. 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, or any substantially similar offense under the laws of another jurisdiction, 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 person 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 person disputes the information upon which the denial was based, upon written request of the person the state agency shall furnish the person the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the person has been permitted to assume duties that do not involve

INTRODUCED

SB1678

59 contact with children pending receipt of the report, the children's residential facility is not precluded
60 from suspending the person from his position pending a final determination of the person's eligibility to
61 have responsibility for the safety and well-being of children. The information provided to the children's
62 residential facility shall not be disseminated except as provided in this section.

63 C. Those persons listed in clauses (i), (ii), ~~and (iii)~~ *through (iv)* of subsection A also shall authorize
64 the children's residential facility to obtain a copy of information from the central registry maintained
65 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person
66 shall provide the children's residential facility with a written statement or affirmation disclosing whether
67 he has ever been the subject of a founded case of child abuse or neglect within or outside the
68 Commonwealth. The children's residential facility shall receive the results of the central registry search
69 prior to permitting a person to work ~~alone with children~~. Children's residential facilities regulated or
70 operated by the Department shall not hire for compensated employment, or allow to volunteer or provide
71 contractual services, persons who have a founded case of child abuse or neglect.

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

74 **§ 63.2-1726. Background check required; children's residential facilities.**

75 A. As a condition of employment, volunteering, or providing services on a regular basis, every
76 children's residential facility that is regulated or operated by the Departments of Social Services,
77 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any
78 individual who (i) accepts a position of employment at such a facility ~~who was not employed by that~~
79 ~~facility prior to July 1, 2007~~, (ii) *is employed by such a facility*, (iii) volunteers for such a facility ~~on a~~
80 ~~regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer~~
81 ~~at such facility prior to July 1, 2007~~, or (iii) (iv) provides contractual services directly to a juvenile for
82 ~~such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who~~
83 ~~did not provide such services prior to July 1, 2007~~, to submit to fingerprinting and to provide personal
84 descriptive information, to be forwarded along with the applicant's fingerprints through the Central
85 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal
86 history record information regarding such applicant. The children's residential facility shall inform the
87 applicant that he is entitled to obtain a copy of any background check report and to challenge the
88 accuracy and completeness of any such report and obtain a prompt resolution before a final
89 determination is made of the applicant's eligibility to have responsibility for the safety and well-being of
90 children. The applicant shall provide the children's residential facility with a written statement or
91 affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for
92 any offense within or outside the Commonwealth. The results of the criminal history background check
93 must be received prior to permitting an applicant to work ~~with children in the children's residential~~
94 ~~facility~~.

95 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
96 record exists, shall forward it to the state agency which operates or regulates the children's residential
97 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
98 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are
99 available in order to obtain complete data. The state agency shall report to the children's facility whether
100 the applicant is eligible to have responsibility for the safety and well-being of children. Except as
101 otherwise provided in subsection B, no children's residential facility regulated or operated by the
102 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social
103 Services shall hire for compensated employment or allow to volunteer or provide contractual services
104 persons who have been convicted of or are the subject of pending charges for (a) any offense set forth
105 in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set
106 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the
107 application date for employment, to be a volunteer, or to provide contractual services or (2) such person
108 continues on probation or parole or has failed to pay required court costs for such offense set forth in
109 clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of this section also shall
110 apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a
111 complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of
112 services or supervision and to local secure detention facilities, provided, however, that the provisions of
113 this section related to local secure detention facilities shall only apply to an individual who, on or after
114 July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such
115 local secure detention facility on a regular basis and will be alone with a juvenile in the performance of
116 his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a
117 regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal
118 Records Exchange and the state or local agency that regulates or operates the local secure detention
119 facility shall process the criminal history record information regarding such applicant in accordance with
120 this subsection and subsection B.

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

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

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

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

155 **2. That an emergency exists and this act is in force from its passage.**