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HOUSE BILL NO. 2303

Offered January 19, 2021

A BILL to amend and reenact §§ 16.1-278.9, 18.2-250, 18.2-251, 18.2-257, 18.2-477.2, 19.2-188.1, 19.2-392.02, as it is currently effective and as it shall become effective, 37.2-314, 37.2-416, 37.2-506, 53.1-203, 54.1-3401, 63.2-901.1, 63.2-1721, as it is currently effective and as it shall become effective, 63.2-1722, as it is currently effective and as it shall become effective, and 63.2-1726 of the Code of Virginia, relating to possession of controlled substances; penalties.

Patrons—Hudson, Scott, Adams, D.M., Carter, Guzman, Hope, Hurst, Kory, Levine, Rasoul, Samirah and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.9, 18.2-250, 18.2-251, 18.2-257, 18.2-477.2, 19.2-188.1, 19.2-392.02, as it is currently effective and as it shall become effective, 37.2-314, 37.2-416, 37.2-506, 53.1-203, 54.1-3401, 63.2-901.1, 63.2-1721, as it is currently effective and as it shall become effective, 63.2-1722, as it is currently effective and as it shall become effective, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a breath test in violation of § 18.2-268.2, (iii) a felony violation of § 18.2-248, ~~or 18.2-248.1 or 18.2-250~~, (iv) a misdemeanor violation of § 18.2-248, 18.2-248.1, or 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase, possession or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii), or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed

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58 for a period of not less than 30 days following the date he reaches the age of 16 and three months.

59 If the court finds a second or subsequent such offense, it may order the denial of a driver's license
60 for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the
61 child's ability to apply for a driver's license for a period of one year following the date he reaches the
62 age of 16 and three months, as may be appropriate.

63 A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation
64 of § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year
65 or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period
66 of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent
67 such offense.

68 B. Any child who has a driver's license at the time of the offense or at the time of the court's finding
69 as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be
70 held in the physical custody of the court during any period of license denial.

71 C. The court shall report any order issued under this section to the Department of Motor Vehicles,
72 which shall preserve a record thereof. The report and the record shall include a statement as to whether
73 the child was represented by or waived counsel or whether the order was issued pursuant to subsection
74 A1 or A2. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the
75 provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for
76 the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department
77 of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

78 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a
79 driver's license until such time as is stipulated in the court order or until notification by the court of
80 withdrawal of the order of denial under subsection E.

81 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
82 subsection A or a violation designated under subsection A2, the child may be referred to a certified
83 alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the
84 court may set forth. If the finding as to such child involves a violation designated under clause (iii),
85 (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or
86 educational services upon such terms and conditions as the court may set forth.

87 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a
88 restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the
89 offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes
90 set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted
91 license shall be issued for travel to and from home and school when school-provided transportation is
92 available and no restricted license shall be issued if the finding as to such child involves a violation
93 designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of
94 any offense designated in subsection A, a second finding by the court of failure to comply with school
95 attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by
96 the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted
97 permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall
98 specifically enumerate the restrictions imposed and contain such information regarding the child as is
99 reasonably necessary to identify him. The child may operate a motor vehicle under the court order in
100 accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions
101 imposed pursuant to this section is guilty of a violation of § 46.2-301.

102 E. Upon petition made at least 90 days after issuance of the order, the court may review and
103 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in
104 subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be
105 reviewed and withdrawn until one year after its issuance.

106 F. If the finding as to such child involves a first violation designated under clause (vii) of subsection
107 A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's
108 license has been restored, the court shall or, in the event the violation resulted in the injury or death of
109 any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of
110 subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal
111 under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be
112 retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill
113 such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves
114 a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed
115 pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or
116 § 18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of
117 subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of
118 under § 16.1-278.8.

119 **§ 18.2-250. Possession of controlled substances unlawful.**

A. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) Any person who violates this section with respect to any controlled substance classified in Schedule I ~~or~~, II, *or* III of the Drug Control Act shall be guilty of a Class 5 felony, ~~except that any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof who violates this section with respect to a cannabimimetic agent is guilty of a Class 1 misdemeanor.~~

(b) ~~Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III shall be guilty of a Class 4 misdemeanor.~~

~~(b1) Violation of this section with respect to a controlled substance classified in Schedule IV, V, or VI shall be punishable as a Class 2 4 misdemeanor.~~

~~(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.~~

~~(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.~~

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of a controlled substance or substances is necessary in the performance of their duties.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of ~~any criminal offense under this article a violation of § 18.2-248 or 18.2-250 or under a violation of any substantially similar statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, or~~ pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to ~~remain drug and alcohol free~~ *submit to drug and alcohol tests* during the period of probation ~~and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free,~~ (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

181 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
182 otherwise provided, *or in its discretion, proceed in any other manner provided by law*. Upon fulfillment
183 of the terms and conditions, and upon determining that the clerk of court has been provided with the
184 fingerprint identification information or fingerprints of such person, the court shall discharge the person
185 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
186 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
187 proceedings.

188 Notwithstanding any other provision of this section, whenever a court places an individual on
189 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
190 for purposes of § 22.1-315. The provisions of this paragraph shall not be applicable to any offense for
191 which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

192 **§ 18.2-257. Attempts.**

193 (a) Any person who attempts to commit any offense defined in this article or in the Drug Control
194 Act (§ 54.1-3400 et seq.) ~~which that~~ is a felony shall be ~~imprisoned for not less than one nor more than~~
195 ~~ten years; guilty of a Class 6 felony~~, provided, however, that any person convicted of attempting to
196 commit a felony for which a lesser punishment may be imposed may be punished according to such
197 lesser penalty.

198 (b) Any person who attempts to commit any offense defined in this article or in the Drug Control
199 Act which is a misdemeanor shall be guilty of a Class 2 misdemeanor; provided, however, that any
200 person convicted of attempting to commit a misdemeanor for which a lesser punishment may be
201 imposed may be punished according to such lesser penalty.

202 **§ 18.2-477.2. Punishment for certain offenses committed within a secure juvenile facility or**
203 **detention home.**

204 It shall be unlawful for a person committed to the Department of Juvenile Justice in any juvenile
205 correctional center or detained in a secure juvenile facility or detention home to commit any of the
206 offenses enumerated in § 53.1-203. A violation of this section shall be punishable as a ~~Class 6 felony~~;
207 ~~except that a violation of subdivision 6 of § 53.1-203 is a Class 5 felony provided for in § 53.1-203.~~

208 **§ 19.2-188.1. Testimony regarding identification of controlled substances.**

209 A. In any preliminary hearing on a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title
210 18.2 or a violation of subdivision 6 5 of § 53.1-203, any law-enforcement officer shall be permitted to
211 testify as to the results of field tests that have been approved by the Department of Forensic Science
212 pursuant to regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.),
213 regarding whether or not any substance the identity of which is at issue in such hearing is a controlled
214 substance, imitation controlled substance, or marijuana, as defined in § 18.2-247.

215 B. In any trial for a violation of § 18.2-250.1, any law-enforcement officer shall be permitted to
216 testify as to the results of any marijuana field test approved as accurate and reliable by the Department
217 of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act
218 (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity of which is at issue, is
219 marijuana provided the defendant has been given written notice of his right to request a full chemical
220 analysis. Such notice shall be on a form approved by the Supreme Court and shall be provided to the
221 defendant prior to trial.

222 In any case in which the person accused of a violation of § 18.2-250.1, or the attorney of record for
223 the accused, desires a full chemical analysis of the alleged plant material, he may, by motion prior to
224 trial before the court in which the charge is pending, request such a chemical analysis. Upon such
225 motion, the court shall order that the analysis be performed by the Department of Forensic Science in
226 accordance with the provisions of § 18.2-247 and shall prescribe in its order the method of custody,
227 transfer, and return of evidence submitted for chemical analysis.

228 **§ 19.2-392.02. (Effective until July 1, 2021) National criminal background checks by businesses**
229 **and organizations regarding employees or volunteers providing care to children or the elderly or**
230 **disabled.**

231 A. For purposes of this section:

232 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
233 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony
234 violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6,
235 or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or
236 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6,
237 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1,
238 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1;
239 any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1,
240 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1,
241 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86,
242 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282,

18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) ~~any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v)~~ any 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, including any finding that a person is 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; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or ~~(vi)~~ (v) any other felony not included in clause (i), (ii), (iii), or (iv); ~~or (v)~~ unless five years have elapsed from the date of the conviction.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children or the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt pursuant to subdivision A 7 of § 63.2-1715.

B. A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted; and
2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to

304 children or the elderly or disabled for whom the qualified entity provides care.

305 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
306 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in
307 subsection B, the Department shall make a determination whether the provider has been convicted of or
308 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
309 crime information, the Department shall access the national criminal history background check system,
310 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
311 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
312 Department. If the Department receives a background report lacking disposition data, the Department
313 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
314 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
315 within 15 business days.

316 D. Any background check conducted pursuant to this section for a provider employed by a private
317 entity shall be screened by the Department of State Police. If the provider has been convicted of or is
318 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not
319 qualified to work or volunteer in a position that involves unsupervised access to children or the elderly
320 or disabled.

321 E. Any background check conducted pursuant to this section for a provider employed by a
322 governmental entity shall be provided to that entity.

323 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
324 national criminal background check, the Department and the Federal Bureau of Investigation may each
325 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
326 with the fingerprints.

327 G. The failure to request a criminal background check pursuant to subsection B shall not be
328 considered negligence per se in any civil action.

329 H. [Expired.]

330 **§ 19.2-392.02. (Effective July 1, 2021) National criminal background checks by businesses and**
331 **organizations regarding employees or volunteers providing care to children or the elderly or**
332 **disabled.**

333 A. For purposes of this section:

334 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
335 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony
336 violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6,
337 or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or
338 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6,
339 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1,
340 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1;
341 any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1,
342 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1,
343 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86,
344 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282,
345 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or
346 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355,
347 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of §
348 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6,
349 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any
350 felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423,
351 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1,
352 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any
353 substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89,
354 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of
355 another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03,
356 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1,
357 or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) ~~any felony~~
358 ~~violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction;~~ (v)
359 any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex
360 Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person
361 is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2
362 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex
363 Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense
364 under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes
365 against minors registry is required under the laws of the jurisdiction where the offender was convicted;

or ~~(vi)~~ (v) any other felony not included in clause (i), (ii), (iii), or (iv); ~~or (v)~~ unless five years have elapsed from the date of the conviction.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children or the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt pursuant to subdivision A 7 of § 22.1-289.030.

B. A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted; and
2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled for whom the qualified entity provides care.

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

D. Any background check conducted pursuant to this section for a provider employed by a private entity shall be screened by the Department of State Police. If the provider has been convicted of or is under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

E. Any background check conducted pursuant to this section for a provider employed by a governmental entity shall be provided to that entity.

F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a national criminal background check, the Department and the Federal Bureau of Investigation may each

charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted with the fingerprints.

G. The failure to request a criminal background check pursuant to subsection B shall not be considered negligence per se in any civil action.

H. [Expired.]

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any applicant who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to 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 applicant.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of ~~(i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02~~ (a) in the five years prior to the application date for employment or (b) if 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.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the Department 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. The Department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C 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 Department 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 Department decides to pay the cost.

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an 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 state facility or Department shall not be disseminated except as provided in this section.

F. Those applicants 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.

G. 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.

§ 37.2-416. Background checks required.

A. As used in this section:

"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.

"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. "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 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:

1. Hire for compensated employment any person who has been convicted of ~~(i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if 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;~~

2. 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 ~~(i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) if such applicant 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;~~ or

3. 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 ~~(i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living arrangement or (b) if 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 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 programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in

550 clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections
551 H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if
552 the hiring provider determines, based upon a screening assessment, that the criminal behavior was
553 substantially related to the applicant's substance abuse or mental illness and that the person has been
554 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history
555 background and his substance abuse or mental illness history.

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

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

577 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated
578 employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a
579 shared living arrangement persons who have been convicted of not more than one misdemeanor offense
580 under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,
581 if 10 years have elapsed following the conviction, unless the person committed the offense while
582 employed in a direct care position. A provider may also approve a person as a sponsored residential
583 service provider if (a) any adult living in the home of an applicant or (b) any person employed by the
584 applicant to provide services in the home in which sponsored residential services are provided has been
585 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
586 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
587 unless the person committed the offense while employed in a direct care position.

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

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

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

599 J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that
600 provides services to individuals receiving services under the state plan for medical assistance services or
601 any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a
602 criminal history background check has been completed for a person described in subsection B for whom
603 a criminal history background check is required and (ii) whether the person described in subsection B is
604 eligible for employment, to provide sponsored residential services, to provide services in the home of a
605 sponsored residential service provider, or to enter into a shared living arrangement with a person
606 receiving medical assistance services pursuant to a waiver.

607 **§ 37.2-506. Background checks required.**

608 A. As used in this section:

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

"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. "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 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 shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) 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, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (2) if 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 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 any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, 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 under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (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

673 and his substance abuse history.

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

687 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
688 compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter
689 into a shared living arrangement persons who have been convicted of not more than one misdemeanor
690 offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another
691 jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense
692 while employed in a direct care position. A community services board may also approve a person as a
693 sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any
694 person employed by the applicant to provide services in the home in which sponsored residential
695 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or
696 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
697 elapsed following the conviction, unless the person committed the offense while employed in a direct
698 care position.

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

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

707 I. Notwithstanding any other provision of law, a community services board that provides services to
708 individuals receiving services under the state plan for medical assistance services or any waiver thereto
709 may disclose to the Department of Medical Assistance Services (i) whether a criminal history
710 background check has been completed for a person described in subsection B for whom a criminal
711 history background check is required and (ii) whether the person described in subsection B is eligible
712 for employment, to provide sponsored residential services, to provide services in the home of a
713 sponsored residential service provider, or to enter into a shared living arrangement with a person
714 receiving medical assistance services pursuant to a waiver.

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

718 **§ 53.1-203. Crimes by prisoners; penalties.**

719 It shall be unlawful for a prisoner in a state, local, or community correctional facility or in the
720 custody of an employee thereof to:

- 721 1. Escape from a correctional facility or from any person in charge of such prisoner;
- 722 2. Willfully break, cut, or damage any building, furniture, fixture, or fastening of such facility or any
723 part thereof for the purpose of escaping *therefrom*, aiding any other prisoner to escape therefrom, or
724 rendering such facility less secure as a place of confinement;
- 725 3. Make, procure, secrete, or have in his possession any instrument, tool, or other thing for the
726 purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;
- 727 4. Make, procure, secrete, or have in his possession a knife, instrument, tool, or other thing not
728 authorized by the superintendent or sheriff which is capable of causing death or bodily injury;
- 729 5. Procure; ~~or sell; secrete or have in his possession~~ any chemical compound ~~which~~ *that* he has not
730 lawfully received;
- 731 6. ~~Procure, sell, secrete~~ *Secrete* or have in his possession a controlled substance classified in
732 ~~Schedule III Schedules I through VI~~ of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana;
- 733 7. Introduce into a correctional facility or have in his possession firearms or ammunition for
734 firearms;

8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility;

9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system, equipment, or sprinklers within any correctional facility; or

10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.

For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be guilty of a Class 6 felony. For a violation of subdivision 6, he shall be ~~guilty of a Class 5 felony~~ *punished in accordance with the applicable penalties prescribed in § 18.2-250 or 18.2-250.1*. If the violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a mandatory minimum term of confinement of one year, which shall be served consecutively with any other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape shall be credited for the purpose of parole toward the sentence or sentences, the service of which is interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other sentence.

§ 54.1-3401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone.

"Animal" means any nonhuman animate being endowed with the power of voluntary action.

"Automated drug dispensing system" means a mechanical or electronic system that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.

"Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein other than a chemically synthesized polypeptide, or analogous product, or arsphenamine or any derivative of arsphenamine or any other trivalent organic arsenic compound, applicable to the prevention, treatment, or cure of a disease or condition of human beings.

"Biosimilar" means a biological product that is highly similar to a specific reference biological product, notwithstanding minor differences in clinically inactive compounds, such that there are no clinically meaningful differences between the reference biological product and the biological product that has been licensed as a biosimilar pursuant to 42 U.S.C. § 262(k) in terms of safety, purity, and potency of the product.

"Board" means the Board of Pharmacy.

"Bulk drug substance" means any substance that is represented for use, and that, when used in the compounding, manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug; however, "bulk drug substance" shall not include intermediates that are used in the synthesis of such substances.

"Change of ownership" of an existing entity permitted, registered, or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of 50 percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.

"Co-licensed partner" means a person who, with at least one other person, has the right to engage in

796 the manufacturing or marketing of a prescription drug, consistent with state and federal law.

797 "Compounding" means the combining of two or more ingredients to fabricate such ingredients into a
798 single preparation and includes the mixing, assembling, packaging, or labeling of a drug or device (i) by
799 a pharmacist, or within a permitted pharmacy, pursuant to a valid prescription issued for a medicinal or
800 therapeutic purpose in the context of a bona fide practitioner-patient-pharmacist relationship, or in
801 expectation of receiving a valid prescription based on observed historical patterns of prescribing and
802 dispensing; (ii) by a practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine as
803 an incident to his administering or dispensing, if authorized to dispense, a controlled substance in the
804 course of his professional practice; or (iii) for the purpose of, or as incident to, research, teaching, or
805 chemical analysis and not for sale or for dispensing. The mixing, diluting, or reconstituting of a
806 manufacturer's product drugs for the purpose of administration to a patient, when performed by a
807 practitioner of medicine or osteopathy licensed under Chapter 29 (§ 54.1-2900 et seq.), a person
808 supervised by such practitioner pursuant to subdivision A 6 or 19 of § 54.1-2901, or a person
809 supervised by such practitioner or a licensed nurse practitioner or physician assistant pursuant to
810 subdivision A 4 of § 54.1-2901 shall not be considered compounding.

811 "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI of
812 this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms
813 are defined or used in Title 3.2 or Title 4.1. *The term shall not include mere residue of any drug,*
814 *substance, or immediate precursor in Schedules I through VI of this chapter that is not a weighable*
815 *quantity or a countable dosage unit.* The term "controlled substance" includes a controlled substance
816 analog that has been placed into Schedule I or II by the Board pursuant to the regulatory authority in
817 subsection D of § 54.1-3443.

818 "Controlled substance analog" means a substance the chemical structure of which is substantially
819 similar to the chemical structure of a controlled substance in Schedule I or II and either (i) which has a
820 stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar
821 to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a
822 controlled substance in Schedule I or II or (ii) with respect to a particular person, which such person
823 represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous
824 system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect
825 on the central nervous system of a controlled substance in Schedule I or II. "Controlled substance
826 analog" does not include (a) any substance for which there is an approved new drug application as
827 defined under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355) or that is generally
828 recognized as safe and effective pursuant to §§ 501, 502, and 503 of the federal Food, Drug, and
829 Cosmetic Act (21 U.S.C. §§ 351, 352, and 353) and 21 C.F.R. Part 330; (b) with respect to a particular
830 person, any substance for which an exemption is in effect for investigational use for that person under
831 § 505 of the federal Food, Drug, and Cosmetic Act to the extent that the conduct with respect to that
832 substance is pursuant to such exemption; or (c) any substance to the extent not intended for human
833 consumption before such an exemption takes effect with respect to that substance.

834 "DEA" means the Drug Enforcement Administration, U.S. Department of Justice, or its successor
835 agency.

836 "Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by
837 this chapter, whether or not there exists an agency relationship, including delivery of a Schedule VI
838 prescription device to an ultimate user or consumer on behalf of a medical equipment supplier by a
839 manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesale distributor,
840 warehouse, nonresident warehouse, third-party logistics provider, or nonresident third-party logistics
841 provider at the direction of a medical equipment supplier in accordance with § 54.1-3415.1.

842 "Device" means instruments, apparatus, and contrivances, including their components, parts, and
843 accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in
844 man or animals or to affect the structure or any function of the body of man or animals.

845 "Dialysis care technician" or "dialysis patient care technician" means an individual who is certified
846 by an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§
847 54.1-2729.1 et seq.) and who, under the supervision of a licensed physician, nurse practitioner, physician
848 assistant, or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a
849 Medicare-certified renal dialysis facility.

850 "Dialysis solution" means either the commercially available, unopened, sterile solutions whose
851 purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal
852 dialysis, or commercially available solutions whose purpose is to be used in the performance of
853 hemodialysis not to include any solutions administered to the patient intravenously.

854 "Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the
855 lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or
856 compounding necessary to prepare the substance for that delivery. However, dispensing shall not include
857 the transportation of drugs mixed, diluted, or reconstituted in accordance with this chapter to other sites

operated by such practitioner or that practitioner's medical practice for the purpose of administration of such drugs to patients of the practitioner or that practitioner's medical practice at such other sites. For practitioners of medicine or osteopathy, "dispense" shall only include the provision of drugs by a practitioner to patients to take with them away from the practitioner's place of practice.

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

"Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii); or (v) a biological product. "Drug" does not include devices or their components, parts, or accessories.

"Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or therapeutically equivalent drug product name.

"Electronic prescription" means a written prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file; Schedule II through V prescriptions shall be transmitted in accordance with 21 C.F.R. Part 1300.

"Facsimile (FAX) prescription" means a written prescription or order that is transmitted by an electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy form.

"FDA" means the U.S. Food and Drug Administration.

"Immediate precursor" means a substance which the Board of Pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Interchangeable" means a biosimilar that meets safety standards for determining interchangeability pursuant to 42 U.S.C. § 262(k)(4).

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed, or graphic matter on an article or any of its containers or wrappers, or accompanying such article.

"Manufacture" means the production, preparation, propagation, conversion, or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include compounding.

"Manufacturer" means every person who manufactures, a manufacturer's co-licensed partner, or a repackager.

"Marijuana" means any part of a plant of the genus *Cannabis* whether growing or not, its seeds, or its resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, its resin, or any extract containing one or more cannabinoids. Marijuana does not include the mature stalks of such plant, fiber produced from such stalk, or oil or cake made from the seeds of such plant, unless such stalks, fiber, oil, or cake is combined with other parts of plants of the genus *Cannabis*. Marijuana does not include (i) industrial hemp, as defined in § 3.2-4112, that is possessed by a person registered pursuant to subsection A of § 3.2-4115 or his agent, or (ii) a hemp product, as defined in § 3.2-4112, containing a tetrahydrocannabinol concentration of no greater than 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or federal law.

"Medical equipment supplier" means any person, as defined in § 1-230, engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties that are used for the operation and cleaning of medical equipment, solutions for peritoneal dialysis, and sterile water or saline for irrigation.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative,

919 or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof
920 which is chemically equivalent or identical with any of the substances referred to in clause (i), but not
921 including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and
922 any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer,
923 derivative, or preparation thereof which is chemically equivalent or identical with any of these
924 substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain
925 cocaine or ecgonine.

926 "New drug" means (i) any drug, except a new animal drug or an animal feed bearing or containing a
927 new animal drug, the composition of which is such that such drug is not generally recognized, among
928 experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs,
929 as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling,
930 except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior
931 to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as
932 amended, and if at such time its labeling contained the same representations concerning the conditions
933 of its use, or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new
934 animal drug, the composition of which is such that such drug, as a result of investigations to determine
935 its safety and effectiveness for use under such conditions, has become so recognized, but which has not,
936 otherwise than in such investigations, been used to a material extent or for a material time under such
937 conditions.

938 "Nuclear medicine technologist" means an individual who holds a current certification with the
939 American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification
940 Board.

941 "Official compendium" means the official United States Pharmacopoeia National Formulary, official
942 Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

943 "Official written order" means an order written on a form provided for that purpose by the U.S. Drug
944 Enforcement Administration, under any laws of the United States making provision therefor, if such
945 order forms are authorized and required by federal law, and if no such order form is provided then on
946 an official form provided for that purpose by the Board of Pharmacy.

947 "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to
948 morphine or being capable of conversion into a drug having such addiction-forming or
949 addiction-sustaining liability. It does not include, unless specifically designated as controlled under
950 Article 4 (§ 54.1-3437 et seq.), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
951 (dextromethorphan). It does include its racemic and levorotatory forms.

952 "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

953 "Original package" means the unbroken container or wrapping in which any drug or medicine is
954 enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor
955 for use in the delivery or display of such article.

956 "Outsourcing facility" means a facility that is engaged in the compounding of sterile drugs and is
957 currently registered as an outsourcing facility with the U.S. Secretary of Health and Human Services and
958 that complies with all applicable requirements of federal and state law, including the Federal Food,
959 Drug, and Cosmetic Act.

960 "Person" means both the plural and singular, as the case demands, and includes an individual,
961 partnership, corporation, association, governmental agency, trust, or other institution or entity.

962 "Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application
963 for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in
964 a manner complying with the laws and regulations for the practice of pharmacy and the sale and
965 dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy
966 and the pharmacy's personnel as required by § 54.1-3432.

967 "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

968 "Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01,
969 licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified
970 optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32, veterinarian, scientific investigator,
971 or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and
972 administer, or conduct research with respect to a controlled substance in the course of professional
973 practice or research in the Commonwealth.

974 "Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue
975 a prescription.

976 "Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word
977 of mouth, telephone, telegraph, or other means of communication to a pharmacist by a duly licensed
978 physician, dentist, veterinarian, or other practitioner authorized by law to prescribe and administer such
979 drugs or medical supplies.

980 "Prescription drug" means any drug required by federal law or regulation to be dispensed only

pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353(b)).

"Production" or "produce" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance or marijuana.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted, or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name, or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law. However, this definition shall not include a drug that is only advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic, a drug that may be dispensed only upon prescription or the label of which bears substantially the statement "Warning — may be habit-forming," or a drug intended for injection.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Reference biological product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which a biological product is evaluated in an application submitted to the U.S. Food and Drug Administration for licensure of biological products as biosimilar or interchangeable pursuant to 42 U.S.C. § 262(k).

"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as an individual, proprietor, agent, servant, or employee.

"Therapeutically equivalent drug products" means drug products that contain the same active ingredients and are identical in strength or concentration, dosage form, and route of administration and that are classified as being therapeutically equivalent by the U.S. Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, otherwise known as the "Orange Book."

"Third-party logistics provider" means a person that provides or coordinates warehousing of or other logistics services for a drug or device in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of the drug or device but does not take ownership of the product or have responsibility for directing the sale or disposition of the product.

"USP-NF" means the current edition of the United States Pharmacopeia-National Formulary.

"Warehouser" means any person, other than a wholesale distributor, manufacturer, or third-party logistics provider, engaged in the business of (i) selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user or consumer and (ii) delivering Schedule VI prescription devices to the ultimate user or consumer pursuant to § 54.1-3415.1. No person shall be subject to any state or local tax by reason of this definition.

"Wholesale distribution" means (i) distribution of prescription drugs to persons other than consumers or patients and (ii) delivery of Schedule VI prescription devices to the ultimate user or consumer pursuant to § 54.1-3415.1, subject to the exemptions set forth in the federal Drug Supply Chain Security Act.

"Wholesale distributor" means any person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager that engages in wholesale distribution.

The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus, or glasses or lenses for the eyes.

The terms "pharmacist," "pharmacy," and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 (§ 54.1-3300 et seq.) unless the context requires a different meaning.

§ 63.2-901.1. Criminal history and central registry check for placements of children.

A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry of any individual with whom the local board or licensed child-placing agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians

1042 pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such
1043 background checks on all adult household members residing in the home of the individual with whom
1044 the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be
1045 at no cost to the individual. The local board or licensed child-placing agency shall pay for the national
1046 fingerprint criminal history record check or may require such individual to pay the cost of the
1047 fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees
1048 assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for
1049 responding to requests required by this section.

1050 B. Background checks pursuant to this section require the following:

1051 1. A sworn statement or affirmation disclosing whether or not the individual has a criminal
1052 conviction or is the subject of any pending criminal charges within or outside the Commonwealth and
1053 whether or not the individual has been the subject of a founded complaint of child abuse or neglect
1054 within or outside the Commonwealth;

1055 2. That the individual submit to fingerprinting and provide personal descriptive information to be
1056 forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the
1057 Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The
1058 local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a
1059 copy of any background check report and to challenge the accuracy and completeness of any such report
1060 and obtain a prompt resolution before a final decision is made of the individual's fitness to have
1061 responsibility for the safety and well-being of children.

1062 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
1063 record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an
1064 individual's record lacking disposition data, conduct research in whatever state and local recordkeeping
1065 systems are available in order to obtain complete data. The state agency shall report to the local board
1066 or licensed child-placing agency whether the individual meets the criteria for having responsibility for
1067 the safety and well-being of children based on whether or not the individual has ever been convicted of
1068 or is the subject of pending charges for any barrier crime as defined in § 19.2-392.02. Copies of any
1069 information received by a local board or licensed child-placing agency pursuant to this section shall be
1070 available to the state agency that regulates or operates such a child-placing agency but shall not be
1071 disseminated further; and

1072 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
1073 child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any
1074 other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in
1075 which a prospective parent or other adult in the home has resided in the preceding five years.

1076 C. In emergency circumstances, each local board may obtain, from a criminal justice agency,
1077 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau
1078 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records
1079 search authorized by this section. Within three days of placing a child, the local board shall require the
1080 individual for whom a criminal history record information check was requested to submit to
1081 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints
1082 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
1083 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed
1084 from the home immediately if any adult resident fails to provide such fingerprints and written
1085 permission to perform a criminal history record check when requested.

1086 D. Any individual with whom the local board is considering placing a child on an emergency basis
1087 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh
1088 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or
1089 neglect. The search of the central registry must occur prior to emergency placement. Such central
1090 registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall
1091 provide a written statement of affirmation disclosing whether he has ever been the subject of a founded
1092 case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not
1093 approve individuals with a founded complaint of child abuse as foster or adoptive parents.

1094 E. The child-placing agency shall not approve a foster or adoptive home if any individual has been
1095 convicted of any barrier crime as defined in § 19.2-392.02 or is the subject of a founded complaint of
1096 abuse or neglect as maintained in registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 et seq. A
1097 child-placing agency may approve as a foster parent an applicant who has been convicted of not more
1098 than one misdemeanor as set out in § 18.2-57, or any substantially similar offense under the laws of
1099 another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10
1100 years have elapsed following the conviction.

1101 F. A local board or child-placing agency may approve as a kinship foster care parent an applicant
1102 who has been convicted of the following offenses, provided that 10 years have elapsed from the date of
1103 the conviction and the local board or child-placing agency makes a specific finding that approving the

kinship foster care placement would not adversely affect the safety and well-being of the child: (i) ~~any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 or~~ (ii) any misdemeanor offense under § 18.2-80, 18.2-81, 18.2-83, 18.2-87, 18.2-87.1, or 18.2-88 or any substantially similar offense under the laws of another jurisdiction.

G. Any individual participating in the Fostering Futures program, which allows local departments to continue to provide foster care services to individuals who are 18 years of age or older but have not reached 21 years of age, who is placed in a foster home shall be subject to the background check requirements set forth in subsection B. The results of such background check shall be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the individual subject to the background check. The results of the background check shall not be used to terminate or suspend the approval of the foster home pursuant to subsection E. For purposes of this subsection, "individual participating in the Fostering Futures program" means a person who is 18 years of age or older but has not reached 21 years of age and is receiving foster care services through the Fostering Futures program.

§ 63.2-1721. (Effective until July 1, 2021) Background check upon application for licensure as a child-placing agency or independent foster home; penalty.

A. Upon application for licensure as a child-placing agency or independent foster home, all (i) applicants and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child-placing agency or independent foster home or who are or will be alone with, in control of, or supervising one or more of the children shall undergo a background check pursuant to subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The person required to have a background check pursuant to subsection A shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license or approval. The applicant, other than an applicant for licensure as an assisted living facility, shall provide an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, ~~or G;~~ ~~or H,~~ (a) the Commissioner shall not issue a license to a child-placing agency or independent foster home; or (b) a child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency or independent foster home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency or independent foster home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency

1165 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one
1166 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of
1167 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years
1168 have elapsed following the conviction.

1169 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
1170 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking
1171 and entering a dwelling home or other structure with intent to commit larceny, or any substantially
1172 similar offense under the laws of another jurisdiction, who has had his civil rights restored by the
1173 Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

1174 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
1175 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
1176 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
1177 Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, or
1178 eight years have elapsed following the conviction and the applicant (i) has complied with all obligations
1179 imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has
1180 completed a drug test administered by a laboratory or medical professional within 90 days prior to being
1181 approved, and such test returned with a negative result; and (iv) complies with any other obligations as
1182 determined by the Department.

1183 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
1184 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
1185 (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
1186 Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

1187 I. H. If an applicant is denied licensure or approval because of information from the central registry
1188 or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the
1189 information obtained from the central registry or the Central Criminal Records Exchange or both to the
1190 applicant.

1191 J. I. Further dissemination of the background check information is prohibited other than to the
1192 Commissioner's representative or a federal or state authority or court as may be required to comply with
1193 an express requirement of law for such further dissemination.

1194 **§ 63.2-1721. (Effective July 1, 2021) Background check upon application for licensure as a**
1195 **child-placing agency, etc.; penalty.**

1196 A. Upon application for licensure as a child-placing agency or independent foster home, (i) all
1197 applicants and (ii) agents at the time of application who are or will be involved in the day-to-day
1198 operations of the child-placing agency or independent foster home or who are or will be alone with, in
1199 control of, or supervising one or more of the children shall undergo a background check pursuant to
1200 subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a
1201 background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval
1202 by child-placing agencies shall undergo background checks pursuant to subsection B prior to their
1203 approval.

1204 B. Background checks pursuant to subsection A require:

1205 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
1206 subject of any pending criminal charges within or outside the Commonwealth and whether or not the
1207 person has been the subject of a founded complaint of child abuse or neglect within or outside the
1208 Commonwealth;

1209 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
1210 § 19.2-389; and

1211 3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a
1212 search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child
1213 abuse and neglect.

1214 C. The person required to have a background check pursuant to subsection A shall submit the
1215 background check information required in subsection B to the Commissioner's representative prior to
1216 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an
1217 assisted living facility, shall provide an original criminal record clearance with respect to any barrier
1218 crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal
1219 Records Exchange. An applicant for licensure as an assisted living facility shall provide an original
1220 criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier
1221 crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
1222 Exchange. Any person making a materially false statement regarding the sworn statement or affirmation
1223 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in
1224 subsection A, other than an applicant for licensure as an assisted living facility, required to have a
1225 background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the
1226 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such

person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, *or* G; ~~or H~~, (a) the Commissioner shall not issue a license to a child-placing agency or independent foster home or (b) a child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency or independent foster home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency or independent foster home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant who has been convicted of not more than one misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, or any substantially similar offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

G. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, or eight years have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test administered by a laboratory or medical professional within 90 days prior to being approved; and such test returned with a negative result; and (iv) complies with any other obligations as determined by the Department.~~

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

~~I. H.~~ If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

~~J. I.~~ Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

§ 63.2-1722. (Effective until July 1, 2021) Revocation or denial of renewal based on background checks; failure to obtain background check.

A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare agency, assisted living facility, or adult day care center; a child-placing agency may revoke the approval of a foster home; and a family day system may revoke the approval of a family day home if the assisted living facility, adult day care center, child welfare agency, foster home, or approved family day home has knowledge that a person specified in § 63.2-1720, 63.2-1720.1, 63.2-1721, or 63.2-1721.1 required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) in the case of a child welfare agency, foster home, or family day home, is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720, subsection G of § 63.2-1720.1, or subsection E, F, *or* G; ~~or H~~ of § 63.2-1721, and the facility, center, home, or agency refuses to separate such person from employment or service or allows the household member to continue to reside in the home.

B. Failure to obtain background checks pursuant to §§ 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1 shall be grounds for denial, revocation, or termination of a license, registration, or approval or any contract with the Department or a local department to provide child care services to clients of the Department or local department. No violation shall occur if the assisted living facility, adult day care

center, child-placing agency, independent foster home, family day system, family day home, or child day center has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

§ 63.2-1722. (Effective July 1, 2021) Revocation or denial of renewal based on background checks; failure to obtain background check.

A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted living facility, or adult day care center and a child-placing agency may revoke the approval of a foster home if the assisted living facility, adult day care center, child welfare agency, or foster home has knowledge that a person specified in § 63.2-1720 or 63.2-1721 required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) in the case of a child welfare agency or foster home, is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720 or subsection E, F, or G, or H of § 63.2-1721, and the facility, center, or agency refuses to separate such person from employment or service or allows the household member to continue to reside in the home.

B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for denial, revocation, or termination of a license, registration, or approval or any contract with the Department or a local department to provide child care services to clients of the Department or local department. No violation shall occur if the assisted living facility, adult day care center, child-placing agency, or independent foster home has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

§ 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 (ii) is employed by such a facility (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility 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 in the children's residential facility.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services 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) (iv) 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 residential programs 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 and to local secure detention facilities, provided, however, that the provisions of this section related to local secure detention facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local agency that regulates or operates the local secure detention

1350 facility shall process the criminal history record information regarding such applicant in accordance with
1351 this subsection and subsection B.

1352 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for
1353 compensated employment or for volunteer or contractual service purposes persons who have been
1354 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
1355 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
1356 unless the person committed such offense in the scope of his employment, volunteer, or contractual
1357 services.

1358 If the applicant is denied employment or the opportunity to volunteer or provide services at a
1359 children's residential facility because of information appearing on his criminal history record, and the
1360 applicant disputes the information upon which the denial was based, upon written request of the
1361 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
1362 record from the Federal Bureau of Investigation. The information provided to the children's residential
1363 facility shall not be disseminated except as provided in this section.

1364 C. Those individuals listed in clauses (i) through (iv) of subsection A also shall authorize the
1365 children's residential facility to obtain a copy of information from the central registry maintained
1366 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The
1367 applicant shall provide the children's residential facility with a written statement or affirmation disclosing
1368 whether he has ever been the subject of a founded case of child abuse or neglect within or outside the
1369 Commonwealth. The children's residential facility shall receive the results of the central registry search
1370 prior to permitting an applicant to work. Children's residential facilities regulated or operated by the
1371 Departments of Education; Behavioral Health and Developmental Services; Military Affairs; and Social
1372 Services shall not hire for compensated employment or allow to volunteer or provide contractual
1373 services, persons who have a founded case of child abuse or neglect. Every residential facility for
1374 juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to
1375 obtain a copy of the information from the central registry.

1376 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and
1377 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with
1378 the provisions of this section. Copies of any information received by a children's residential facility
1379 pursuant to this section shall be available to the agency that regulates or operates such facility but shall
1380 not be disseminated further. The cost of obtaining the criminal history record and the central registry
1381 information shall be borne by the employee or volunteer unless the children's residential facility, at its
1382 option, decides to pay the cost.