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## HOUSE BILL NO. 2092

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on January 25, 2021)

(Patron Prior to Substitute—Delegate Willett)

*A BILL to amend and reenact §§ 19.2-389, as it is currently effective and as it shall become effective, 37.2-416, and 37.2-506 of the Code of Virginia, relating to Department of Behavioral Health and Developmental Services; background checks; persons providing contractual services.*

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

**1. That §§ 19.2-389, as it is currently effective and as it shall become effective, 37.2-416, and 37.2-506 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-389. (Effective until July 1, 2021) Dissemination of criminal history record information.**

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

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

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the

60 adult members of that individual's household, with whom the agency is considering placing a child or  
61 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
62 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
63 the data shall not be further disseminated to any party other than a federal or state authority or court as  
64 may be required to comply with an express requirement of law;

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

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

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

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

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

90 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
91 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,  
92 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth  
93 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

101 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth  
102 in § 4.1-103.1;

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

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

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

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

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

119 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
120 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
121 records information on behalf of such governing boards or administrators pursuant to a written

agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

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

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

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

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

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

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

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

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

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other

183 program administered by the Department of Medical Assistance Services;

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

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

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

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

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

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

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

207 45. The State Corporation Commission, for the purpose of screening applicants for insurance  
208 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

209 46. Other entities as otherwise provided by law.

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

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

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

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

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

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

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

242 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
243 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the  
244 definition of barrier crime in § 19.2-392.02.

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

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 19.2-389. (Effective July 1, 2021) Dissemination of criminal history record information.**

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

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

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency,

306 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
307 the data shall not be further disseminated to any party other than a federal or state authority or court as  
308 may be required to comply with an express requirement of law;

309 9. To the extent permitted by federal law or regulation, public service companies as defined in  
310 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
311 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
312 with the nature of the employment under consideration;

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

315 11. A person requesting a copy of his own criminal history record information as defined in  
316 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
317 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
318 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any  
319 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board  
320 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime  
321 Solvers or Crime Line program as defined in § 15.2-1713.1;

322 12. Administrators and board presidents of and applicants for licensure or registration as a child  
323 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
324 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
325 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing  
326 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data  
327 shall not be further disseminated by the facility or agency to any party other than the data subject, the  
328 Commissioner of Social Services' representative or a federal or state authority or court as may be  
329 required to comply with an express requirement of law for such further dissemination;

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

333 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
334 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,  
335 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth  
336 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

344 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth  
345 in § 4.1-103.1;

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

349 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
350 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
351 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

362 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
363 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
364 records information on behalf of such governing boards or administrators pursuant to a written  
365 agreement with the Department of State Police;

366 24. Public institutions of higher education and nonprofit private institutions of higher education for  
367 the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

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

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

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

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

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

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

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

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

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

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under

Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

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

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

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

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

43. The Department of Education or its agents or designees for the purpose of screening individuals seeking to enter into a contract with the Department of Education or its agents or designees for the provision of child care services for which child care subsidy payments may be provided;

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

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Superintendent of Public Instruction'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; and

47. Other entities as otherwise provided by law.

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

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

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

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

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

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

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange



for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

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

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 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, *and (vi) any person under contract with the provider to serve in a direct care position* 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

552 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause  
553 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause  
554 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a  
555 shared living arrangement or (b) if such person continues on probation or parole or has failed to pay  
556 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
557 § 19.2-392.02; or

558 4. Allow any person under contract with the provider to serve in a direct care position who has been  
559 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in  
560 § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in  
561 § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person  
562 continues on probation or parole or has failed to pay required court costs for such offense set forth in  
563 clause (iv) of the definition of barrier crime in § 19.2-392.02.

564 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
565 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed  
566 pursuant to this article. If any applicant is denied employment because of information appearing on the  
567 criminal history record and the applicant disputes the information upon which the denial was based, the  
568 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures  
569 for obtaining a copy of the criminal history record from the FBI. The information provided to the  
570 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated  
571 except as provided in this section.

572 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
573 or permit any person under contract with the provider to serve in a direct care position or permit any  
574 person employed by a temporary agency that has entered into a contract with the provider to provide  
575 direct care services on behalf of the provider at adult substance abuse or adult mental health treatment  
576 programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of  
577 § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of  
578 § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of  
579 § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in  
580 § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially  
581 similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a  
582 screening assessment, that the criminal behavior was substantially related to the applicant's substance  
583 abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to  
584 individuals receiving services based on his criminal history background and his substance abuse or  
585 mental illness history.

586 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
587 or permit any person under contract with the provider to serve in a direct care position or permit any  
588 person employed by a temporary agency that has entered into a contract with the provider to provide  
589 direct care services on behalf of the provider at adult substance abuse treatment facilities a person who  
590 has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially  
591 similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon  
592 if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under  
593 the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the  
594 hiring provider determines, based upon a screening assessment, that the criminal behavior was  
595 substantially related to the applicant's substance abuse and that the person has been successfully  
596 rehabilitated and is not a risk to individuals receiving services based on his criminal history background  
597 and his substance abuse history.

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

610 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated  
611 employment, (ii) approve as a sponsored residential service provider, ~~or~~ (iii) permit to enter into a  
612 shared living arrangement, or (iv) permit any person under contract with the provider to serve in a  
613 direct care position on behalf of the provider or permit any person employed by a temporary agency

that has entered into a contract with the provider to provide direct care services on behalf of the provider persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

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

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

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

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

K. Any person employed by a temporary agency that has entered into a contract with the provider and who will serve in a direct care position on behalf of the provider licensed pursuant to this article shall undergo a background check that shall include:

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

2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider if that person 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.

#### **§ 37.2-506. 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 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

675 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and  
676 providing companionship, support, and other limited, basic assistance to a person with developmental  
677 disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal  
678 responsibility.

679 B. Every community services board shall require (i) any applicant who accepts employment in any  
680 direct care position with the community services board, (ii) any applicant for approval as a sponsored  
681 residential service provider, (iii) any adult living in the home of an applicant for approval as a  
682 sponsored residential service provider, (iv) any person employed by a sponsored residential service  
683 provider to provide services in the home, ~~and~~ (v) any person who enters into a shared living  
684 arrangement with a person receiving medical assistance services pursuant to a waiver, *and (vi) any*  
685 *person under contract to serve in a direct care position on behalf of the community services board* to  
686 submit to fingerprinting and provide personal descriptive information to be forwarded through the  
687 Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of  
688 obtaining national criminal history record information regarding the applicant. Except as otherwise  
689 provided in subsection C, D, or F, no community services board shall hire for compensated employment,  
690 approve as a sponsored residential service provider, ~~or~~ permit to enter into a shared living arrangement  
691 with a person receiving medical assistance services pursuant to a waiver, *or permit any person under*  
692 *contract to serve in a direct care position on behalf of the community services board* persons who have  
693 been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in  
694 § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in  
695 § 19.2-392.02 (1) in the five years prior to the application date for employment, the application date to  
696 be a sponsored residential service provider, or entering into a shared living arrangement or (2) if such  
697 person continues on probation or parole or has failed to pay required court costs for such offense set  
698 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

699 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
700 record exists, shall submit a report to the requesting executive director or personnel director of the  
701 community services board. If any applicant is denied employment because of information appearing on  
702 his criminal history record and the applicant disputes the information upon which the denial was based,  
703 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the  
704 procedures for obtaining a copy of the criminal history record from the FBI. The information provided  
705 to the executive director or personnel director of any community services board shall not be  
706 disseminated except as provided in this section.

707 C. Notwithstanding the provisions of subsection B, the community services board may hire for  
708 compensated employment *or permit any person under contract to serve in a direct care position on*  
709 *behalf of the community services board or permit any person employed by a temporary agency that has*  
710 *entered into a contract with the community services board to provide direct care services on behalf of*  
711 *the community services board* at adult substance abuse or adult mental health treatment programs a  
712 person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or  
713 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  
714 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of  
715 the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of  
716 § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring  
717 community services board determines, based upon a screening assessment, that the criminal behavior  
718 was substantially related to the applicant's substance abuse or mental illness and that the person has been  
719 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history  
720 background and his substance abuse or mental illness history.

721 D. Notwithstanding the provisions of subsection B, the community services board may hire for  
722 compensated employment *or permit any person under contract to serve in a direct care position on*  
723 *behalf of the community services board or permit any person employed by a temporary agency that has*  
724 *entered into a contract with the community services board to provide direct care services on behalf of*  
725 *the community services board* at adult substance abuse treatment programs a person who has been  
726 convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar  
727 offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the  
728 offense was a felony committed in Virginia, or the equivalent if the person was convicted under the  
729 laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the  
730 hiring community services board determines, based upon a screening assessment, that the criminal  
731 behavior was substantially related to the applicant's substance abuse and that the person has been  
732 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history  
733 background and his substance abuse history.

734 E. The community services board and a screening contractor designated by the Department shall  
735 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants  
736 have been rehabilitated successfully and are not a risk to individuals receiving services based on their

criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, ~~or~~ (iii) permit to enter into a shared living arrangement, *or (iv) permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board* persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A community services board may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, *or permission for any person under contract to serve in a direct care position on behalf of the community services board*, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

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

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

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

K. *Any person employed by a temporary agency that has entered into a contract with a community services board and who will serve in a direct care position on behalf of the community services board shall undergo a background check that shall include:*

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

2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

*Except as otherwise provided in subsection C, D, or F, no community services board shall permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board if that person 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, the application date to be a sponsored residential service provider, or 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.*