

VIRGINIA ACTS OF ASSEMBLY -- 2022 RECONVENED SESSION

CHAPTER 729

An Act to amend and reenact § 37.2-408.1 of the Code of Virginia, relating to criminal history background checks; children's residential facilities.

[S 577]

Approved April 27, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-408.1 of the Code of Virginia is amended and reenacted as follows:

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

A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department shall require any person who (i) accepts a position of employment at such a facility, (ii) is currently 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 person's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the person. The children's residential facility shall inform the person that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the person's eligibility to have responsibility for the safety and well-being of children. The person shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. ~~The results of the criminal history background check must be received prior to permitting a person to work in the children's residential facility.~~

The Central Criminal Records Exchange, upon receipt of a person's record or notification that no record exists, shall forward it to the state agency that operates or regulates the children's residential facility with which the person is affiliated. The state agency shall, upon receipt of a person's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the person is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

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

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

C. Those persons listed in clauses (i) through (iv) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. ~~The children's residential facility shall receive the results of the central registry search prior to permitting a~~

~~person to work.~~ Children's residential facilities regulated or operated by the Department shall not hire for compensated employment, or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect.

D. No person shall be allowed to work, volunteer, or provide services at a children's residential facility unless (i) all components of the background check required pursuant to this section have been received by the children's residential facility and (ii) the person is eligible to have responsibility for the safety and well-being of children in accordance with subsections A and C.

E. Notwithstanding any provisions of this section to the contrary, a children's residential facility may employ a person specified in subsection A pending the results of the check of the central registry maintained by the Department pursuant to § 63.2-1515 required by this section, provided that (i) the person has received qualifying results on the fingerprint-based criminal history background check, (ii) the person does not work in the children's residential facility or any other location where children placed in such facility are present, and (iii) such employment is permitted under 42 U.S.C. § 671 and regulations promulgated pursuant thereto.

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

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