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SENATE BILL NO. 846

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 27, 2023)

(Patron Prior to Substitute—Senator Favola)

A BILL to amend and reenact §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia, relating to background checks; peer recovery specialists; barrier crime exceptions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia are amended and reenacted as follows:

§ 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, 18.2-346, or 18.2-346.01; 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. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or mental health treatment program any peer recovery specialist who was convicted of any offense set forth in clause (ii), (iii), or (iv) of the definition of barrier crime in § 19.2-392.02 if the Department determines, based upon a screening assessment, that the criminal behavior was substantially related to the peer recovery specialist's substance abuse or mental illness and that the peer recovery specialist 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.

For the purposes of this subsection, "peer recovery specialist" means any person who has completed a peer recovery specialist training course approved by the Department of Behavioral Health and Developmental Services.

E. The Department ~~and a screening contractor designated by the Department~~ shall screen applicants who meet the criteria set forth in subsection C or D 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.

60 E. F. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification
61 that no record exists, shall submit a report *or record* to the state facility or to the Department. If an
62 applicant is denied employment because of information appearing on his criminal history record and the
63 applicant disputes the information upon which the denial was based, the Central Criminal Records
64 Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the
65 criminal history record from the FBI. The information provided to the state facility or Department shall
66 not be disseminated except as provided in this section.

67 F. G. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or
68 Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any
69 investigation of child abuse or neglect undertaken on them.

70 G. H. The Board may adopt regulations to comply with the provisions of this section. Copies of any
71 information received by the state facility or Department pursuant to this section shall be available to the
72 Department and to the applicable state facility but shall not be disseminated further, except as permitted
73 by state or federal law. The cost of obtaining the criminal history record and the central registry
74 information shall be borne by the applicant, unless the Department or state facility decides to pay the
75 cost.

76 **§ 37.2-416. Background checks required.**

77 A. As used in this section:

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

81 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
82 or adult mental health treatment position to another such position within the same licensee licensed
83 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health
84 treatment position in another office or program licensed pursuant to this article if the person employed
85 prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application
86 date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an
87 adult substance abuse treatment position to any mental health or developmental services direct care
88 position within the same licensee licensed pursuant to this article or (b) new employment in any mental
89 health or developmental services direct care position in another office or program of the same licensee
90 licensed pursuant to this article for which the person has previously worked in an adult substance abuse
91 treatment position.

92 "*Peer recovery specialist*" means any person who has completed a peer recovery specialist training
93 course approved by the Department of Behavioral Health and Developmental Services.

94 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance
95 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and
96 providing companionship, support, and other limited, basic assistance to a person with developmental
97 disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal
98 responsibility.

99 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts
100 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service
101 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential
102 service provider, (iv) any person employed by a sponsored residential service provider to provide
103 services in the home, (v) any person who enters into a shared living arrangement with a person
104 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract with the
105 provider to serve in a direct care position to submit to fingerprinting and provide personal descriptive
106 information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of
107 Investigation (FBI) for the purpose of obtaining national criminal history record information regarding
108 the applicant. Except as otherwise provided in subsection C, D, E, or F G, no provider licensed pursuant
109 to this article shall:

110 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
111 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
112 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
113 application date for employment or (b) if such person continues on probation or parole or has failed to
114 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
115 § 19.2-392.02;

116 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
117 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
118 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
119 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
120 years prior to the application date to be a sponsored residential service provider or (b) if such applicant
121 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;

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; or

4. Allow any person under contract with the provider to serve in a direct care position 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.

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 or permit any person under contract with the provider to serve in a direct care position 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 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, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider 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, a provider may hire for compensated employment or permit any peer recovery specialist under contract with the provider to serve in a direct care position or permit any peer recovery specialist employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse treatment facilities a peer recovery specialist who was convicted of any offense set forth in clause (ii), (iii), or (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the peer recovery specialist's substance abuse or mental illness and that the peer recovery specialist 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.*

E. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position 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 at adult substance abuse treatment facilities 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 provider 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 and his substance abuse history.

~~E. F. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D, or E to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their~~

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

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

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

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

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

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

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

230 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
231 § 19.2-389; and

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

234 Except as otherwise provided in subsection C, D, E or ~~F~~ G, no provider licensed pursuant to this
235 article shall permit any person employed by a temporary agency that has entered into a contract with the
236 provider to provide direct care services on behalf of the provider if that person has been convicted of (i)
237 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
238 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
239 years prior to the application date for employment or (b) if such person continues on probation or parole
240 or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of
241 barrier crime in § 19.2-392.02.

242 **§ 37.2-506. Background checks required.**

243 A. As used in this section:

244 "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.

"Peer recovery specialist" means any person who has completed a peer recovery specialist training course approved by the Department of Behavioral Health and Developmental Services.

"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, (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 to serve in a direct care position on behalf of the community services board 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, E, or FG, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permit any person under contract to serve in a direct care position on behalf of the community services board 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 or record 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 or 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 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, 18.2-346, or 18.2-346.01; 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 or permit any peer recovery specialist under contract to serve in a direct care position on behalf of the community services board or permit any peer recovery specialist 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 at adult substance abuse treatment programs a peer recovery specialist who has been convicted of any offense set forth in clause (ii), (iii), or (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the peer recovery specialist's substance abuse or mental illness and that the peer recovery specialist 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.

E. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or 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 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 and his substance abuse history.

F. ~~The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and, D, or E 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 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. G. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, (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. H. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, 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. I. 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. J. 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.~~ *K.* 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.~~ *L.* 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, *E*, or ~~F~~ *G*, 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.