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SENATE BILL NO. 846

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on January 31, 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. *In addition, where the employment at an adult substance abuse treatment program is as a peer recovery specialist, the Department may hire any person eligible under this subsection or who was convicted any offense set forth in clause (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 person'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.*

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.

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

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that

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

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

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

75 **§ 37.2-416. Background checks required.**

76 A. As used in this section:

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

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

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

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

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

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

115 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
116 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
117 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
118 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
119 years prior to the application date to be a sponsored residential service provider or (b) if such applicant
120 continues on probation or parole or has failed to pay required court costs for such offense set forth in
121 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. *In addition, where the employment at an adult substance abuse treatment program is as a peer recovery specialist, the provider may hire any person eligible under this subsection or who was convicted any offense set forth in clause (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 person'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 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. 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 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 provider or screening contractor may

183 require or the applicant may wish to present, the applicant shall provide to the screening contractor a
184 statement from his most recent probation or parole officer, if any, outlining his period of supervision
185 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The
186 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

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

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

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

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

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

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

224 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
225 § 19.2-389; and

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

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

236 **§ 37.2-506. Background checks required.**

237 A. As used in this section:

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

241 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
242 or adult mental health treatment position to another such position within the same community services
243 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
244 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, or F, 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. *In addition, where the employment at an adult substance abuse treatment program is as a peer recovery specialist, the community services board may hire any person eligible under this subsection or who was convicted any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the person'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*

306 *background and his substance abuse or mental illness history.*

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

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

333 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
334 compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter
335 into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care
336 position on behalf of the community services board or permit any person employed by a temporary
337 agency that has entered into a contract with the community services board to provide direct care services
338 on behalf of the community services board persons who have been convicted of not more than one
339 misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of
340 another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the
341 offense while employed in a direct care position. A community services board may also approve a
342 person as a sponsored residential service provider if (a) any adult living in the home of an applicant or
343 (b) any person employed by the applicant to provide services in the home in which sponsored residential
344 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or
345 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
346 elapsed following the conviction, unless the person committed the offense while employed in a direct
347 care position.

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

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

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

365 J. A person who complies in good faith with the provisions of this section shall not be liable for any
366 civil damages for any act or omission in the performance of duties under this section unless the act or
367 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.