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HOUSE BILL NO. 2491

Offered January 13, 2025

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A BILL to amend and reenact §§ 17.1-805, 18.2-57, 18.2-160.2, 37.2-416.1, and 37.2-506.1 of the Code of Virginia, relating to assault and battery; serious bodily injury; penalty.

Patrons—Green, Earley and Williams; Senator: Diggs

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-805, 18.2-57, 18.2-160.2, 37.2-416.1, and 37.2-506.1 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, or the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any felony violation of § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or 18.2-41; any violation of clause (c)(i) or (ii) of subsection B of § 18.2-46.3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1, or 18.2-49;

59 any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53,
60 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any violation of subsection B *or* C of § 18.2-57; any felony
61 violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of § 18.2-60.1,
62 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2.1,
63 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in violation of §
64 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation
65 of § 18.2-63; any violation of subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any
66 Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85,
67 18.2-89, 18.2-90, 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony
68 violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of §
69 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling;
70 any felony violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of
71 subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1, 18.2-287.2,
72 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of subsection C of §
73 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of § 18.2-308.2:2; any
74 violation of § 18.2-308.3 or 18.2-312; any former felony violation of § 18.2-346; any felony violation of §
75 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any
76 violation of former § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of
77 § 18.2-366; any violation of § 18.2-368, 18.2-370, or 18.2-370.1; any violation of subsection A of §
78 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of §
79 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second
80 or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any
81 violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2;
82 any felony violation of § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478,
83 18.2-480, 18.2-481, or 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of §
84 53.1-203; any conspiracy or attempt to commit any offense specified in this subsection, or any substantially
85 similar offense under the laws of any state, the District of Columbia, or the United States or its territories.

86 **§ 18.2-57. Assault and battery; penalty.**

87 A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor,
88 and if the person intentionally selects the person against whom a simple assault is committed because of his
89 race, religious conviction, gender, disability, gender identity, sexual orientation, color, or ethnic or national
90 origin, the penalty upon conviction shall include a term of confinement of at least six months.

91 B. However, if a person intentionally selects the person against whom an assault and battery resulting in
92 bodily injury is committed because of his race, religious conviction, gender, disability, gender identity, sexual
93 orientation, color, or ethnic or national origin, the person is guilty of a Class 6 felony, and the penalty upon
94 conviction shall include a term of confinement of at least six months.

95 C. *Any person who commits an assault and battery resulting in serious bodily injury, as defined in §*
96 *18.2-51.4, is guilty of a Class 6 felony.*

97 D. In addition, if any person commits an assault or an assault and battery against another knowing or
98 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in
99 subsection G H, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment,
100 or supervision of inmates in the custody of the Department of Corrections or an employee of a local or
101 regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody
102 of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or
103 under the supervision of the Department of Juvenile Justice, an employee or other individual who provides
104 control, care, or treatment of sexually violent predators committed to the custody of the Department of
105 Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer
106 firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an
107 emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer
108 emergency medical services agency, regardless of whether a resolution has been adopted by the governing
109 body of a political subdivision recognizing such firefighters or emergency medical services personnel as
110 employees, engaged in the performance of his public duties anywhere in the Commonwealth, such person is
111 guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory
112 minimum term of confinement of six months.

113 Nothing in this subsection shall be construed to affect the right of any person charged with a violation of
114 this section from asserting and presenting evidence in support of any defenses to the charge that may be
115 available under common law.

116 ~~D.~~ E. In addition, if any person commits a battery against another knowing or having reason to know that
117 such other person is a full-time or part-time employee of any public or private elementary or secondary
118 school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the
119 sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall

120 be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or
 121 other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory
 122 minimum sentence of confinement of six months.

123 ~~E.~~ *F.* In addition, any person who commits a battery against another knowing or having reason to know
 124 that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of
 125 his duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering
 126 emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction,
 127 shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term
 128 of confinement.

129 ~~F.~~ *G.* In addition, any person who commits an assault or an assault and battery against another knowing or
 130 having reason to know that such individual is an operator of a vehicle operated by a public transportation
 131 service as defined in § 18.2-160.2 who is engaged in the performance of his duties is guilty of a Class 1
 132 misdemeanor. The sentence of such person, upon conviction, shall also prohibit such person from entering or
 133 riding in any vehicle operated by the public transportation service that employed such operator for a period of
 134 not less than six months as a term and condition of such sentence.

135 ~~G.~~ *H.* As used in this section:

136 "Disability" means a physical or mental impairment that substantially limits one or more of a person's
 137 major life activities.

138 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title
 139 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

140 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge
 141 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore under
 142 § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation
 143 Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district
 144 court.

145 "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's
 146 office that is part of or administered by the Commonwealth or any political subdivision thereof who is
 147 responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws
 148 of the Commonwealth, any conservation officer of the Department of Conservation and Recreation
 149 commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control
 150 Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the
 151 enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any
 152 employee with internal investigations authority designated by the Department of Corrections pursuant to
 153 subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional
 154 facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail
 155 responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733,
 156 auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington
 157 Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire
 158 marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

159 "School security officer" means the same as that term is defined in § 9.1-101.

160 ~~H.~~ *I.* "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school
 161 security officer or full-time or part-time employee of any public or private elementary or secondary school
 162 while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or
 163 reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and
 164 necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens
 165 physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student
 166 from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense
 167 of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or
 168 controlled substances or associated paraphernalia that are upon the person of the student or within his control.

169 In determining whether a person was acting within the exceptions provided in this subsection, due
 170 deference shall be given to reasonable judgments that were made by a school security officer or full-time or
 171 part-time employee of any public or private elementary or secondary school at the time of the event.

172 **§ 18.2-160.2. Trespassing on public transportation; penalty.**

173 A. Any person who enters or remains upon or within a vehicle operated by a public transportation service
 174 without the permission of, or after having been forbidden to do so by, the owner, lessee, or authorized
 175 operator thereof is guilty of a Class 4 misdemeanor.

176 B. Any person who enters or rides in a vehicle operated by a public transportation service who has been
 177 prohibited to do so pursuant to subsection ~~F~~ *G* of § 18.2-57 is guilty of a Class 1 misdemeanor.

178 C. "Public transportation service" means passenger transportation service provided by bus, rail, or other
 179 surface conveyance that provides transportation to the general public on a regular and continuing basis.

180 **§ 37.2-416.1. Background checks required; adult substance abuse and mental health services.**

181 A. As used in this section:

182 "Direct care position" means any position that includes responsibility for (i) treatment, case management,
183 health, safety, development, or well-being of an adult receiving substance abuse or mental health services or
184 (ii) immediately supervising a person in a position described in this definition.

185 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or
186 adult mental health treatment position to another such position within the same licensee licensed pursuant to
187 this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in
188 another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a
189 licensed program had no convictions in the five years prior to the application date for employment. "Hire for
190 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
191 position to any mental health or developmental services direct care position within the same licensee licensed
192 pursuant to this article or (b) new employment in any mental health or developmental services direct care
193 position in another office or program of the same licensee licensed pursuant to this article for which the
194 person has previously worked in an adult substance abuse treatment position.

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

197 "Provider" means a provider who is licensed pursuant to this article and who provides substance abuse or
198 mental health services to adults.

199 B. Every provider shall require (i) any applicant who accepts employment in any direct care position and
200 (ii) any person under contract with the provider to serve in a direct care position to submit to fingerprinting
201 and provide personal descriptive information to be forwarded through the Central Criminal Records
202 Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history
203 record information regarding the applicant. Except as otherwise provided in subsection C, D, E, or G, no
204 provider shall:

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

210 2. Allow any person under contract with the provider to serve in a direct care position who has been
211 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §
212 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
213 the five years prior to the application date for employment or (b) if such person continues on probation or
214 parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of
215 barrier crime in § 19.2-392.02.

216 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no
217 record exists, shall submit a report to the requesting authorized officer or director of a provider. If any
218 applicant is denied employment because of information appearing on the criminal history record and the
219 applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange
220 shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history
221 record from the FBI. The information provided to the authorized officer or director of a provider shall not be
222 disseminated except as provided in this section.

223 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or
224 permit any person under contract with the provider to serve in a direct care position or permit any person
225 employed by a temporary agency that has entered into a contract with the provider to provide direct care
226 services on behalf of the provider at an adult substance abuse or mental health treatment program a person
227 who was convicted of any misdemeanor violation of § 18.2-57 or any violation of § 18.2-248, 18.2-250, or
228 18.2-258.1, except an offense pursuant to subsection H1 or H2 of § 18.2-248, provided that such conviction
229 occurred more than four years prior to the application date for employment.

230 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or
231 permit any person under contract with the provider to serve in a direct care position or permit any person
232 employed by a temporary agency that has entered into a contract with the provider to provide direct care
233 services on behalf of the provider at adult substance abuse or adult mental health treatment programs a person
234 who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1; any
235 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;
236 any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the
237 definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of §
238 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider
239 determines, based upon a screening assessment, that the criminal behavior was substantially related to the
240 applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not
241 a risk to individuals receiving services based on his criminal history background and his substance abuse or
242 mental illness history. In addition, where the employment at an adult substance abuse treatment program is as

243 a peer recovery specialist, the provider may hire any person eligible under this subsection or who was
 244 convicted of any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring
 245 provider determines, based upon a screening assessment, that the criminal behavior was substantially related
 246 to the person's substance abuse or mental illness and that the person has been successfully rehabilitated and is
 247 not a risk to individuals receiving services based on his criminal history background and his substance abuse
 248 or mental illness history.

249 E. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or
 250 permit any person under contract with the provider to serve in a direct care position or permit any person
 251 employed by a temporary agency that has entered into a contract with the provider to provide direct care
 252 services on behalf of the provider at adult substance abuse treatment facilities a person who has been
 253 convicted of not more than one offense under subsection *E* of § 18.2-57, or any substantially similar
 254 offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense
 255 was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another
 256 jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider
 257 determines, based upon a screening assessment, that the criminal behavior was substantially related to the
 258 applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to
 259 individuals receiving services based on his criminal history background and his substance abuse history.

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

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

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

291 I. The cost of obtaining the criminal history record and search of the child abuse and neglect registry
 292 record shall be borne by the applicant, unless the provider decides to pay the cost.

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

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

303 L. Any person employed by a temporary agency that has entered into a contract with a provider and who

304 will serve in a direct care position on behalf of such provider shall undergo a background check that shall
305 include:

306 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §
307 19.2-389; and

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

310 Except as otherwise provided in subsection C, D, E, or G, no provider shall permit any person employed
311 by a temporary agency that has entered into a contract with the provider to provide direct care services on
312 behalf of the provider if that person has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of
313 the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of
314 barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such
315 person continues on probation or parole or has failed to pay required court costs for such offense set forth in
316 clause (iv) of the definition of barrier crime in § 19.2-392.02.

317 **§ 37.2-506.1. Background checks required; adult substance abuse and mental health services.**

318 A. As used in this section:

319 "Direct care position" means any position that includes responsibility for (i) treatment, case management,
320 health, safety, development, or well-being of an adult receiving substance abuse or mental health services or
321 (ii) immediately supervising a person in a position described in this definition.

322 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or
323 adult mental health treatment position to another such position within the same community services board or
324 (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or
325 program of the same community services board if the person employed prior to July 1, 1999, had no
326 convictions in the five years prior to the application date for employment. "Hire for compensated
327 employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any
328 mental health or developmental services direct care position within the same community services board or (b)
329 new employment in any mental health or developmental services direct care position in another office or
330 program of the same community services board for which the person has previously worked in an adult
331 substance abuse treatment position.

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

334 B. Every community services board shall require (i) any applicant who accepts employment in any direct
335 care position with the community services board and (ii) any person under contract to serve in a direct care
336 position on behalf of the community services board to submit to fingerprinting and provide personal
337 descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal
338 Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information
339 regarding the applicant. Except as otherwise provided in subsection C, D, e, or g, no community services
340 board shall hire for compensated employment, approve as a sponsored residential service provider, permit to
341 enter into a shared living arrangement with a person receiving medical assistance services pursuant to a
342 waiver, or permit any person under contract to serve in a direct care position on behalf of the community
343 services board persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the
344 definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of
345 barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, the
346 application date to be a sponsored residential service provider, or entering into a shared living arrangement or
347 (2) if such person continues on probation or parole or has failed to pay required court costs for such offense
348 set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

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

357 C. Notwithstanding the provisions of subsection B, the community services board may hire for
358 compensated employment or permit any person under contract to serve in a direct care position on behalf of
359 the community services board or permit any person employed by a temporary agency that has entered into a
360 contract with the community services board to provide direct care services on behalf of the community
361 services board at an adult substance abuse or mental health treatment program a person who was convicted of
362 any misdemeanor violation of § 18.2-57 or any violation of § 18.2-248, 18.2-250, or 18.2-258.1, except an
363 offense pursuant to subsection H1 or H2 of § 18.2-248, provided that such conviction occurred more than
364 four years prior to the application date for employment.

365 D. Notwithstanding the provisions of subsection B, the community services board may hire for

366 compensated employment or permit any person under contract to serve in a direct care position on behalf of
 367 the community services board or permit any person employed by a temporary agency that has entered into a
 368 contract with the community services board to provide direct care services on behalf of the community
 369 services board at adult substance abuse or adult mental health treatment programs a person who was
 370 convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56, 18.2-56.1, or 18.2-57.2;
 371 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,
 372 or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except
 373 an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws
 374 of another jurisdiction, if the hiring community services board determines, based upon a screening
 375 assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental
 376 illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving
 377 services based on his criminal history background and his substance abuse or mental illness history. In
 378 addition, where the employment at an adult substance abuse treatment program is as a peer recovery
 379 specialist, the community services board may hire any person eligible under this subsection or who was
 380 convicted of any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring
 381 community services board determines, based upon a screening assessment, that the criminal behavior was
 382 substantially related to the person's substance abuse or mental illness and that the person has been
 383 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history
 384 background and his substance abuse or mental illness history.

385 E. Notwithstanding the provisions of subsection B, the community services board may hire for
 386 compensated employment or permit any person under contract to serve in a direct care position on behalf of
 387 the community services board or permit any person employed by a temporary agency that has entered into a
 388 contract with the community services board to provide direct care services on behalf of the community
 389 services board at adult substance abuse treatment programs a person who has been convicted of not more than
 390 one offense under subsection C D of § 18.2-57, or any substantially similar offense under the laws of another
 391 jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in
 392 Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than
 393 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based
 394 upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance
 395 abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services
 396 based on his criminal history background and his substance abuse history.

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

409 G. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
 410 compensated employment or (ii) permit any person under contract to serve in a direct care position on behalf
 411 of the community services board or permit any person employed by a temporary agency that has entered into
 412 a contract with the community services board to provide direct care services on behalf of the community
 413 services board persons who have been convicted of not more than one misdemeanor offense under §
 414 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed
 415 following the conviction, unless the person committed the offense while employed in a direct care position.

416 H. Community services boards also shall require, as a condition of employment or permission for any
 417 person under contract to serve in a direct care position on behalf of the community services board, written
 418 consent and personal information necessary to obtain a search of the registry of founded complaints of child
 419 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

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

422 J. Notwithstanding any other provision of law, a community services board that provides services to
 423 individuals receiving services under the state plan for medical assistance services or any waiver thereto may
 424 disclose to the Department of Medical Assistance Services (i) whether a criminal history background check
 425 has been completed for a person described in subsection B for whom a criminal history background check is
 426 required and (ii) whether the person described in subsection B is eligible for employment.

427 K. Any person employed by a temporary agency that has entered into a contract with a community

428 services board and who will serve in a direct care position on behalf of such community services board shall
429 undergo a background check that shall include:

430 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §
431 19.2-389; and

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

434 Except as otherwise provided in subsection C, D, E, or G, no community services board shall permit any
435 person employed by a temporary agency that has entered into a contract with the community services board
436 to provide direct care services on behalf of the community services board if that person has been convicted of
437 (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
438 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to
439 the application date for employment, the application date to be a sponsored residential service provider, or
440 entering into a shared living arrangement or (b) if such person continues on probation or parole or has failed
441 to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §
442 19.2-392.02.

443 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
444 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
445 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
446 **therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal**
447 **Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**
448 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**
449 **periods of commitment to the custody of the Department of Juvenile Justice.**