

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 63.2-901.1, 63.2-1721, and 63.2-1722 of the Code of Virginia, relating to*
 3 *foster and adoptive homes; barrier crimes; exceptions.*

4 [H 1060]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 63.2-901.1, 63.2-1721, and 63.2-1722 of the Code of Virginia are amended and reenacted as**
 8 **follows:**9 **§ 63.2-901.1. Criminal history and central registry check for placements of children.**

10 A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations
 11 adopted by the Board, criminal history record information from the Central Criminal Records Exchange and
 12 the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a
 13 search of the child abuse and neglect central registry of any individual with whom the local board or licensed
 14 child-placing agency is considering placing a child on an emergency, temporary or permanent basis,
 15 including the birth parent of a child in foster care placement, unless the birth parent has revoked an
 16 entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a
 17 placement agreement while legal custody remains with the parent, parents, or guardians pursuant to
 18 § 63.2-900. The local board or licensed child-placing agency shall also obtain such background checks on all
 19 adult household members residing in the home of the individual with whom the child is to be placed pursuant
 20 to subsection B. Such state criminal records or registry search shall be at no cost to the individual. The local
 21 board or licensed child-placing agency shall pay for the national fingerprint criminal history record check or
 22 may require such individual to pay the cost of the fingerprinting or the national fingerprinting criminal
 23 history record check or both. In addition to the fees assessed by the Federal Bureau of Investigation, the
 24 designated state agency may assess a fee for responding to requests required by this section.

25 B. Background checks pursuant to this section require the following:

26 1. A sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or
 27 is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the
 28 individual has been the subject of a founded complaint of child abuse or neglect within or outside the
 29 Commonwealth;

30 2. That the individual submit to fingerprinting and provide personal descriptive information to be
 31 forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the
 32 Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local
 33 board or licensed child-placing agency shall inform the individual that he is entitled to obtain a copy of any
 34 background check report and to challenge the accuracy and completeness of any such report and obtain a
 35 prompt resolution before a final decision is made of the individual's fitness to have responsibility for the
 36 safety and well-being of children.

37 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
 38 record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an
 39 individual's record lacking disposition data, conduct research in whatever state and local recordkeeping
 40 systems are available in order to obtain complete data. The state agency shall report to the local board or
 41 licensed child-placing agency whether the individual meets the criteria for having responsibility for the safety
 42 and well-being of children based on whether or not the individual has ever been convicted of or is the subject
 43 of pending charges for any barrier crime as defined in § 19.2-392.02. Copies of any information received by a
 44 local board or licensed child-placing agency pursuant to this section shall be available to the state agency that
 45 regulates or operates such a child-placing agency but shall not be disseminated further; and

46 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child
 47 abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any other state
 48 pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in which a
 49 prospective parent or other adult in the home has resided in the preceding five years.

50 C. In emergency circumstances, each local board may obtain, from a criminal justice agency, criminal
 51 history record information from the Central Criminal Records Exchange and the Federal Bureau of
 52 Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records search
 53 authorized by this section. Within three days of placing a child, the local board shall require the individual for
 54 whom a criminal history record information check was requested to submit to fingerprinting and provide
 55 personal descriptive information to be forwarded along with the fingerprints through the Central Criminal
 56 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal record history

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57 information, pursuant to subsection B. The child shall be removed from the home immediately if any adult
 58 resident fails to provide such fingerprints and written permission to perform a criminal history record check
 59 when requested.

60 D. Any individual with whom the local board is considering placing a child on an emergency basis shall
 61 submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh Child
 62 Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or neglect. The
 63 search of the central registry must occur prior to emergency placement. Such central registry search shall be
 64 at no cost to the individual. Prior to emergency placement, the individual shall provide a written statement of
 65 affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within
 66 or outside the Commonwealth. Child-placing agencies shall not approve individuals with a founded
 67 complaint of child abuse as foster or adoptive parents.

68 E. ~~The~~ A local board or child-placing agency shall not approve a foster or adoptive home, *including a*
 69 *kinship foster home*, if any individual has been convicted of any barrier crime as defined in § 19.2-392.02 or
 70 is the subject of a founded complaint of abuse or neglect as maintained in registries pursuant to § 63.2-1515
 71 and ~~42 U.S.C.S.~~ U.S.C. 16901 et seq.

72 F. A local board or child-placing agency may approve as a foster ~~parent~~ or *adoptive home, including a*
 73 *kinship foster home*, where an applicant ~~who has~~ and any adult household member have each been convicted
 74 of not more than one misdemeanor as set out in § 18.2-57, or any substantially similar offense under the laws
 75 of another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10 years
 76 have elapsed following the conviction.

77 ~~F.~~ G. A local board or child-placing agency may approve as a kinship foster ~~care parent~~ home where an
 78 applicant ~~who has~~ and any adult household member have been convicted of the following offenses, provided
 79 that the local board or child-placing agency makes a specific finding that approving the kinship foster care
 80 placement would not adversely affect the safety and well-being of the child: (i) any offense set forth in the
 81 definition of barrier crime in § 19.2-392.02 clause (iv), provided that five years have elapsed from the date of
 82 the conviction; (ii) any misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar
 83 offense under the laws of another jurisdiction, not involving a minor, provided that five years have elapsed
 84 from the date of the conviction; or (iii) any misdemeanor offense under § 18.2-80, 18.2-81, 18.2-83, 18.2-87,
 85 18.2-87.1, or 18.2-88 or any substantially similar offense under the laws of another jurisdiction provided that
 86 10 years have elapsed from the date of the conviction.

87 H. A local board or child-placing agency may approve a foster or adoptive home, *including a kinship*
 88 *foster home*, where an applicant and any adult household member have been convicted of any offense set
 89 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02, so long as (i) the individual has had
 90 their civil rights restored by the Governor or other appropriate authority and 10 years have elapsed
 91 following the conviction or (ii) eight years have elapsed following the conviction and the individual (a) has
 92 complied with all obligations imposed by the criminal court, (b) has completed a substance abuse treatment
 93 program, (c) has completed a drug test administered by a laboratory or medical professional within 90 days
 94 prior to being approved and such test returned with a negative result, and (d) complies with any other
 95 obligations as determined by the Department.

96 I. A local board or child-placing agency may approve a foster or adoptive home, *including a kinship*
 97 *foster home*, where an applicant and any adult household member have been convicted of any offense set
 98 forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, so long as the individual has had their
 99 civil rights restored by the Governor or other appropriate authority and 20 years have elapsed following the
 100 conviction.

101 ~~G.~~ J. Any individual participating in the Fostering Futures program, which allows local departments to
 102 continue to provide foster care services to individuals who are 18 years of age or older but have not reached
 103 21 years of age, who is placed in a foster home shall be subject to the background check requirements set
 104 forth in subsection B. The results of such background check shall be used for the sole purpose of determining
 105 whether other children should be placed or remain in the same foster home as the individual subject to the
 106 background check. The results of the background check shall not be used to terminate or suspend the
 107 approval of the foster home pursuant to subsection E. For purposes of this subsection, "individual
 108 participating in the Fostering Futures program" means a person who is 18 years of age or older but has not
 109 reached 21 years of age and is receiving foster care services through the Fostering Futures program.

110 **§ 63.2-1721. Background check upon application for licensure as a child-placing agency, etc.;**
 111 **penalty.**

112 A. Upon application for licensure as a child-placing agency or independent foster home, (i) all applicants
 113 and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the
 114 child-placing agency or independent foster home or who are or will be alone with, in control of, or
 115 supervising one or more of the children shall undergo a background check pursuant to subsection B. Upon
 116 application for licensure as an assisted living facility, all applicants shall undergo a background check
 117 pursuant to subsection B. In addition, *all applicants and adult household members of applicants for foster or*
 118 *adoptive parents homes, including kinship foster homes*, requesting approval by child-placing agencies shall

119 undergo background checks pursuant to subsection B prior to ~~their~~ *the home's* approval.

120 B. Background checks pursuant to subsection A require:

121 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
122 subject of any pending criminal charges within or outside the Commonwealth and whether or not the person
123 has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

124 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
125 § 19.2-389; and

126 3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a search
127 of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and
128 neglect.

129 C. The person required to have a background check pursuant to subsection A shall submit the background
130 check information required in subsection B to the Commissioner's representative prior to issuance of a
131 license, registration or approval. The applicant, other than an applicant for licensure as an assisted living
132 facility, shall provide an original criminal record clearance with respect to any barrier crime as defined in
133 § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. An
134 applicant for licensure as an assisted living facility shall provide an original criminal record clearance with
135 respect to any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original
136 criminal history record from the Central Criminal Records Exchange. Any person making a materially false
137 statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a
138 Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an
139 assisted living facility, required to have a background check (i) has been convicted of any barrier crime as
140 defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or
141 outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to
142 § 63.2-1723 or is not subject to an exception in subsection E, F, G, ~~or~~ H, *or I of § 63.2-901.1* (a) the
143 Commissioner shall not issue a license to a child-placing agency or independent foster home or (b) a
144 child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an
145 assisted living facility required to have a background check has been convicted of any offense set forth in
146 clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an
147 assisted living facility.

148 D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-
149 placing agency or independent foster home; be alone with, in control of, or supervising one or more children
150 receiving services from a licensed child-placing agency or independent foster home; or be permitted to work
151 in a position that involves direct contact with a person receiving services without first having completed
152 background checks pursuant to subsection B unless such person is directly supervised by another person for
153 whom a background check has been completed in accordance with the requirements of this section.

154 E. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency may~~
155 ~~approve as an adoptive or foster parent an applicant who has been convicted of not more than one~~
156 ~~misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of another~~
157 ~~jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed~~
158 ~~following the conviction.~~

159 F. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency may~~
160 ~~approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and~~
161 ~~entering a dwelling home or other structure with intent to commit larceny, or any substantially similar offense~~
162 ~~under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other~~
163 ~~appropriate authority, provided that 25 years have elapsed following the conviction.~~

164 G. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency may~~
165 ~~approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the~~
166 ~~definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other~~
167 ~~appropriate authority, provided that 10 years have elapsed following the conviction, or eight years have~~
168 ~~elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the~~
169 ~~criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test~~
170 ~~administered by a laboratory or medical professional within 90 days prior to being approved; and such test~~
171 ~~returned with a negative result; and (iv) complies with any other obligations as determined by the~~
172 ~~Department.~~

173 H. ~~Notwithstanding any provision to the contrary contained in this section, a child-placing agency may~~
174 ~~approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii) of the~~
175 ~~definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other~~
176 ~~appropriate authority, provided that 20 years have elapsed following the conviction.~~

177 I. E. If an applicant is denied licensure, registration or approval because of information from the central
178 registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the
179 information obtained from the central registry or the Central Criminal Records Exchange or both to the
180 applicant.

181 ~~F.~~ Further dissemination of the background check information is prohibited other than to the
182 Commissioner's representative or a federal or state authority or court as may be required to comply with an
183 express requirement of law for such further dissemination.

184 **§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain**
185 **background check.**

186 A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted living
187 facility, or adult day center and a child-placing agency may revoke the approval of a foster home if the
188 assisted living facility, adult day center, child welfare agency, or foster home has knowledge that a person
189 specified in § 63.2-1720 or 63.2-1721 required to have a background check (i) has been convicted of any
190 barrier crime as defined in § 19.2-392.02 or (ii) in the case of a child welfare agency or foster home, is the
191 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such
192 person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the
193 exceptions in subsection B of § 63.2-1720 or subsection ~~E~~, F, G, ~~or H~~, or I of § ~~63.2-1721~~ 63.2-901.1, and the
194 facility, center, or agency refuses to separate such person from employment or service or allows the
195 household member to continue to reside in the home.

196 B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for
197 denial, revocation, or termination of a license, registration, or approval or any contract with the Department
198 or a local department to provide child care services to clients of the Department or local department. No
199 violation shall occur if the assisted living facility, adult day center, child-placing agency, or independent
200 foster home has applied for the background check timely and it has not been obtained due to administrative
201 delay. The provisions of this section shall be enforced by the Department.