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HOUSE BILL NO. 552

Offered January 8, 2014

Prefiled January 6, 2014

A *BILL to amend and reenact §§ 19.2-389, 19.2-392.02, 63.2-1515, 63.2-1702, 63.2-1704, and 63.2-1719 through 63.2-1726 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.2-1719.1, 63.2-1720.1, and 63.2-1721.1, relating to child welfare agencies; criminal history background checks.*

Patrons—Filler-Corn, Dance, Hope, Krupicka and McClellan

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 19.2-392.02, 63.2-1515, 63.2-1702, 63.2-1704, and 63.2-1719 through 63.2-1726 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.2-1719.1, 63.2-1720.1, and 63.2-1721.1 as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or

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59 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
60 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
61 the data shall not be further disseminated to any party other than a federal or state authority or court as
62 may be required to comply with an express requirement of law;

63 9. To the extent permitted by federal law or regulation, public service companies as defined in
64 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
65 personal contact with the public or when past criminal conduct of an applicant would be incompatible
66 with the nature of the employment under consideration;

67 10. The appropriate authority for purposes of granting citizenship and for purposes of international
68 travel, including, but not limited to, issuing visas and passports;

69 11. A person requesting a copy of his own criminal history record information as defined in
70 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
71 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
72 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
73 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
74 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
75 Solvers or Crime Line program as defined in § 15.2-1713.1;

76 12. Administrators and board presidents of and applicants for licensure or registration as a child
77 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
78 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
79 volunteers at such facilities, caretakers, and other adults living in family day care homes or homes
80 approved by family day care systems, and foster and adoptive parent applicants of private child-placing
81 agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, ~~and~~ 63.2-1721, *and* 63.2-1721.1, subject to
82 the restriction that the data shall not be further disseminated by the facility or agency to any party other
83 than the data subject, the Commissioner of Social Services' representative or a federal or state authority
84 or court as may be required to comply with an express requirement of law for such further
85 dissemination;

86 13. The school boards of the Commonwealth for the purpose of screening individuals who are
87 offered or who accept public school employment and those current school board employees for whom a
88 report of arrest has been made pursuant to § 19.2-83.1;

89 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
90 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
91 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

92 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
93 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
94 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject
95 to the limitations set out in subsection E;

96 16. ~~Licensed homes for adults, licensed district homes for adults, assisted living facilities~~ and
97 licensed adult day care centers for the conduct of investigations of applicants for compensated
98 employment in ~~licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults~~
99 ~~pursuant to § 63.1-189.1, and in licensed assisted living facilities or licensed adult day care centers~~
100 pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

101 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
102 § 4.1-103.1;

103 18. The State Board of Elections and authorized officers and employees thereof and general registrars
104 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
105 voter registration, limited to any record of felony convictions;

106 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
107 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
108 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

109 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
110 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
111 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

112 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
113 Department of Education, or the Department of Behavioral Health and Developmental Services for the
114 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
115 services;

116 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
117 Department for the purpose of determining an individual's fitness for employment pursuant to
118 departmental instructions;

119 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious
120 elementary or secondary schools which are accredited by a statewide accrediting organization

recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal

182 Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee
183 may disclose such information to the applicant or its designee;

184 39. The Department of Professional and Occupational Regulation for the purpose of investigating
185 individuals for initial licensure pursuant to § 54.1-2106.1;

186 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
187 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
188 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
189 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

190 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

191 42. The State Treasurer for the purpose of determining whether a person receiving compensation for
192 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

193 43. The Department of Social Services and directors of local departments of social services for the
194 purpose of screening individuals seeking to enter into a contract with the Department of Social Services
195 or a local department of social services for the provision of child care services for which child care
196 subsidy payments may be provided; and

197 44. Other entities as otherwise provided by law.

198 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
199 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
200 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
201 designated in the order on whom a report has been made under the provisions of this chapter.

202 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
203 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
204 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
205 copy of conviction data covering the person named in the request to the person making the request;
206 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
207 making of such request. A person receiving a copy of his own conviction data may utilize or further
208 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
209 subject, the person making the request shall be furnished at his cost a certification to that effect.

210 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
211 section shall be limited to the purposes for which it was given and may not be disseminated further.

212 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
213 history record information for employment or licensing inquiries except as provided by law.

214 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
215 Exchange prior to dissemination of any criminal history record information on offenses required to be
216 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
217 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
218 where time is of the essence and the normal response time of the Exchange would exceed the necessary
219 time period. A criminal justice agency to whom a request has been made for the dissemination of
220 criminal history record information that is required to be reported to the Central Criminal Records
221 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
222 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
223 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

224 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
225 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
226 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

227 F. Criminal history information provided to licensed assisted living facilities, ~~licensed district homes~~
228 ~~for adults~~, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the
229 convictions on file with the Exchange for any offense specified in ~~§ 63.1-189.1 or~~ 63.2-1720.

230 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
231 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

232 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
233 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
234 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in
235 the request to the employer or prospective employer making the request, provided that the person on
236 whom the data is being obtained has consented in writing to the making of such request and has
237 presented a photo-identification to the employer or prospective employer. In the event no conviction data
238 is maintained on the person named in the request, the requesting employer or prospective employer shall
239 be furnished at his cost a certification to that effect. The criminal history record search shall be
240 conducted on forms provided by the Exchange.

241 **§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**
242 **employees or volunteers providing care to children, or the elderly and disabled.**

243 A. For purposes of this section:

"Barrier crime" means any offense set forth in § 63.2-1719 or 63.2-1726.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, *or* the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity, and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care ~~or~~, (ii) *is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care, or* (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children, *or* the elderly or disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt pursuant to subdivision A 10 of § 63.2-1715.

B. ~~Notwithstanding §§ 63.2-1719 to 63.2-1721 and 63.2-1724, a~~ A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted at any local or state law-enforcement agency *or entity with which the Department of Social Services has entered into a contract for fingerprinting for background checks* and provided the fingerprints to the qualified entity; and

2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth; and, if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children, *or* the elderly or disabled for whom the qualified entity provides care.

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local record-keeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

D. Any background check conducted pursuant to this section for a provider employed by a private entity shall be screened by the Department of State Police. If the provider has been convicted of or is under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified to work or volunteer in a position that involves unsupervised access to children, *or* the elderly or disabled.

E. Any background check conducted pursuant to this section for a provider employed by a governmental entity shall be provided to that entity.

305 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
306 national criminal background check, the Department and the Federal Bureau of Investigation may each
307 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
308 with the fingerprints.

309 G. The failure to request a criminal background check pursuant to subsection B shall not be
310 considered negligence per se in any civil action.

311 **§ 63.2-1515. Central registry; disclosure of information.**

312 The central registry shall contain such information as shall be prescribed by Board regulation;
313 however, when the founded case of abuse or neglect does not name the parents or guardians of the child
314 as the abuser or neglecter, and the abuse or neglect occurred in a licensed or unlicensed child day
315 center, a licensed, registered or approved family day home, a private or public school, or a children's
316 residential facility, the child's name shall not be entered on the registry without consultation with and
317 permission of the parents or guardians. If a child's name currently appears on the registry without
318 consultation with and permission of the parents or guardians for a founded case of abuse and neglect
319 that does not name the parents or guardians of the child as the abuser or neglecter, such parents or
320 guardians may have the child's name removed by written request to the Department. The information
321 contained in the central registry shall not be open to inspection by the public. However, appropriate
322 disclosure may be made in accordance with Board regulations.

323 The Department shall respond to requests for a search of the central registry made by (i) local
324 departments and (ii) local school boards regarding applicants for employment, pursuant to § 22.1-296.4,
325 in cases where there is no match within the central registry within 10 business days of receipt of such
326 requests. In cases where there is a match within the central registry regarding applicants for
327 employment, the Department shall respond to requests made by local departments and local school
328 boards within 30 business days of receipt of such requests. The response may be by first-class mail, or
329 facsimile transmission, or secure server transaction.

330 Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate
331 of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) Virginia affiliate of
332 Childhelp USA/rs, (d) volunteer fire company or volunteer rescue squad, or (e) with a court-appointed
333 special advocate program pursuant to § 9.1-153 shall be conducted at no charge.

334 **§ 63.2-1702. Investigation on receipt of application.**

335 Upon receipt of the application the Commissioner shall cause an investigation to be made of the
336 activities, services, and facilities of the applicant and of his character and reputation or, if the applicant
337 is an association, partnership, limited liability company, or corporation, the character and reputation of
338 its officers and agents, and upon receipt of the initial application, an investigation of the applicant's
339 financial responsibility. The financial records of an applicant shall not be subject to inspection if the
340 applicant submits an operating budget and at least one credit reference. In the case of child welfare
341 agencies and assisted living facilities, the character and reputation investigation upon application shall
342 include background checks pursuant to §§ 63.2-1721 and 63.2-1721.1; however, a children's residential
343 facility shall comply with the background check requirements contained in § 63.2-1726. Records that
344 contain confidential proprietary information furnished to the Department pursuant to this section shall be
345 exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5.

346 **§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt
347 of complaint; revocation or suspension of registration.**

348 A. Any person who maintains a family day home serving fewer than six children, exclusive of the
349 provider's own children and any children who reside in the home, may apply for voluntary registration.
350 An applicant for voluntary registration shall file with the Commissioner, prior to beginning any such
351 operation and thereafter biennially, an application which shall include, but not be limited to, the
352 following:

353 1. The name, address, phone number, and social security number of the person maintaining the
354 family day home;

355 2. The number and ages of the children to receive care;

356 3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information
357 submitted to the Commissioner; and

358 4. Documentation that the background check requirements for registered child welfare agencies in
359 Article 3 (§ 63.2-1719 et seq.) of this chapter pursuant to §§ 63.2-1720.1 and 63.2-1721.1 have been
360 met.

361 B. The Board shall adopt regulations for voluntarily registered family day homes that include, but are
362 not limited to:

363 1. The criteria and process for the approval of the certificate of registration;

364 2. Requirements for a self-administered health and safety guidelines evaluation checklist;

365 3. A schedule for fees to be paid by the providers to the contract organization or to the Department
366 if it implements the provisions of this section for processing applications for the voluntary registration of

family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying such homes as eligible or registered;

4. The criteria and process for the renewal of the certificate of registration; and

5. The requirement that upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Commissioner reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a registered family day home is determined by the Commissioner to be in noncompliance with the regulations for voluntarily registered family day homes, the Commissioner shall give reasonable notice to the operator of the nature of the noncompliance and may thereafter revoke or suspend the registration.

C. Upon receiving the application on forms prescribed by the Commissioner, and after having determined that the home has satisfied the requirements of the regulations for voluntarily registered family day homes, the Commissioner shall issue a certificate of registration to the family day home.

D. The Commissioner shall contract in accordance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) with qualified local agencies and community organizations to review applications and certify family day homes as eligible for registration, pursuant to the regulations for voluntarily registered family day homes. If no qualified local agencies or community organizations are available, the Commissioner shall implement the provisions of this section. "Qualified" means demonstrated ability to provide sound financial management and administrative services including application processing, maintenance of records and reports, technical assistance, consultation, training, monitoring, and random inspections.

E. The scope of services in contracts shall include:

1. The identification of family day homes which may meet the standards for voluntary registration provided in subsection A; and

2. A requirement that the contract organization shall provide administrative services, including, but not limited to, processing applications for the voluntary registration of family day homes; certifying such homes as eligible for registration; providing technical assistance, training and consultation with family day homes; ensuring providers' compliance with the regulations for voluntarily registered family day homes, including monitoring and random inspections; and maintaining permanent records regarding all family day homes which it may certify as eligible for registration.

F. The contract organization, upon determining that a family day home has satisfied the requirements of the regulations for voluntarily registered family day homes, shall certify the home as eligible for registration on forms prescribed by the Commissioner. The Commissioner, upon determining that certification has been properly issued, may register the family day home.

G. The provisions of this section shall not apply to any family day home located in a county, city, or town in which the governing body provides by ordinance for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities pursuant to the provisions of § 15.2-914.

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as

set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies, *family day homes approved by family day systems*, and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, (ii) *a conviction of any offense requiring registration with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, and* (iii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 63.2-1719.1. Portable background check registry; fund created.

A. The Department shall establish a portable background check registry, which shall include background check information for all individuals required to undergo background checks in accordance with this chapter, including information obtained from the Central Criminal Records Exchange in accordance with this chapter and information obtained from the central registry maintained pursuant to § 63.2-1515, where appropriate. Individuals who are found to meet the requirements for issuance of a license, registration, or approval or for employment for compensation or to serve as a volunteer shall be issued a background check registry clearance certification. No individual who has an offense as defined in § 63.2-1719 or, in the case of an individual for whom a search of the central registry is required, who has been the subject of a founded complaint of child abuse or neglect shall be issued a background check registry clearance certification.

B. The Department shall establish a fee to be paid by each applicant for a license, registration, or approval or for employment or to serve as a volunteer for whom a background check is required pursuant to this chapter. All moneys collected pursuant to this section shall be paid into the Portable Background Check Registry Fund established pursuant to subsection C.

C. There is hereby created in the state treasury a special nonreverting fund to be known as the Portable Background Check Registry Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to subsection B shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of developing and administering the portable background check registry created in accordance with subsection A. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

§ 63.2-1720. Assisted living facilities and adult day care centers; employment for compensation of persons convicted of certain offenses prohibited; background check required; penalty.

A. ~~An~~ No assisted living facility, adult day care center, or ~~child welfare~~ child-placing agency licensed or registered in accordance with the provisions of this chapter, ~~or family day homes approved by family day systems~~, shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719. ~~Such employees~~ All applicants for employment shall provide evidence satisfactory to the Department of a background check registry clearance certification issued pursuant to § 63.2-1719.1 or undergo background checks pursuant to subsection ~~D~~ C. In the case of ~~child welfare~~ child-placing agencies, the provisions of this section shall apply to employees who are involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children.

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the conviction.

C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

D. Background checks pursuant to this section subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of child welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse

or neglect within or outside the Commonwealth;

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

3. In the case of ~~child welfare~~ *child-placing* agencies, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

~~E. Any person desiring to work as a compensated employee at a licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision D 1. D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D C 1 shall be is guilty of a Class 1 misdemeanor.~~

~~F. E. A licensed assisted living facility, licensed adult day care center, a or licensed or registered child welfare child-placing agency, or a family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry for any compensated employees within 30 days of employment. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center, or child welfare child-placing agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.~~

~~G. F. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare child-placing agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare child-placing agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D C 1. Such child welfare child-placing agency shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D C 1 shall be is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare child-placing agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.~~

~~H. G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.~~

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

~~J. I. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.~~

~~K. J. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.~~

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

§ 63.2-1720.1. Child day centers, family day homes, and family day systems; employment for compensation or use as volunteers of persons convicted or found to have committed certain offenses prohibited; national background check required.

A. No child day center licensed in accordance with the provisions of this chapter or family day home

approved by a family day system shall hire for compensated employment or permit to serve as a volunteer in a position that is involved in the day-to-day operations of the agency or in which the employee or volunteer will be alone with, in control of, or supervising children any person who has an offense as defined in § 63.2-1719. All applicants for employment or to serve as a volunteer shall provide evidence satisfactory to the Department of a background check registry clearance certification issued pursuant to § 63.2-1719.1 or undergo background checks in accordance with subsection B.

B. Any applicant required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subsection B of § 19.2-392.02; and

3. Authorize the child day center or family day home approved by a family day system to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department, and the Department shall report to the child day center or family day home approved by a family day system whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center or family day home approved by a family day system.

Information obtained from a search of the central registry maintained pursuant to § 63.2-1515 shall be obtained prior to permitting an applicant to work or serve as a volunteer alone with children.

C. The child day center or family day home approved by a family day system shall inform every applicant for compensated employment or to serve as a volunteer required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children.

D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

E. The provisions of this section related to volunteers shall apply only to volunteers who will be alone with a child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child day center or family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. For the purposes of this subsection, "parent-volunteer" means a person who is supervising, without pay, a group of children that includes his own child in a program that operates no more than four hours per day, provided that he works under the direct supervision of a person for whom a background check has been performed pursuant to this section.

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

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

H. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

I. The Department shall establish a fee not to exceed \$40 or the amount equal to the actual cost of the background check conducted by the Department of State Police and the Federal Bureau of Investigation, whichever is greater, for background checks pursuant to this section.

J. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

§ 63.2-1721. Background check upon application for licensure as an assisted living facility or child-placing agency; penalty.

A. Upon application for licensure ~~or registration~~ as a ~~child welfare~~ *child-placing* agency, (i) all applicants; and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the ~~child welfare~~ *child-placing* agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) ~~any other adult living in the home of an applicant for licensure or registration as a family day home~~ shall undergo a background check. Upon application for licensure as an assisted living facility, all applicants shall *provide evidence satisfactory to the Department of a background check registry clearance certification issued pursuant to § 63.2-1719.1* or undergo a background check. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home ~~or existing employee or volunteer of the family day home~~, shall undergo background checks pursuant to subsection B prior to their approval *in accordance with subsection B*.

B. Background checks pursuant to ~~this section~~ *subsection A* require:

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

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

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

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, ~~registration or approval~~. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 ~~shall be~~ *is* guilty of a Class 1 misdemeanor. If ~~any person specified in subsection A required to have a background check~~ *the applicant* has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in ~~subsections~~ *subsection E, F, or G* (i) the Commissioner shall not issue a license or registration to a ~~child welfare~~ *child-placing* agency; (ii) the Commissioner shall not issue a license to an assisted living facility; *or* (iii) a child-placing agency shall not approve an adoptive or foster home; ~~or (iv) a family day system shall not approve a family day home.~~

D. No person specified in subsection A shall be involved in the day-to-day operations of the ~~child welfare~~ *child-placing* agency or shall be alone with, in control of, or supervising one or more of the children without first having completed background checks pursuant to subsection B.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

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

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

J. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements

674 contained in § 63.2-1726.

675 **§ 63.2-1721.1. Background check upon application for licensure or registration as child day center**
676 **or family day homes approved by family day systems; penalty.**

677 A. Every (i) applicant for licensure as a child day center; (ii) agent of an applicant for licensure as
678 a child day center who is or will be involved in the day-to-day operations of the child day center or
679 who is or will be alone with, in control of, or supervising one or more of the children; (iii) adult living
680 in the home of an applicant for licensure or registration as a family day home; (iv) operator of a family
681 day home requesting approval by family day systems; (v) existing employee or volunteer of an operator
682 of a family day home requesting approval by a family day system; or (vi) adult residing in a home
683 operated as a family day home for which the operator is seeking approval by a family day system shall
684 provide evidence satisfactory to the Department of a background check registry clearance certification
685 issued pursuant to § 63.2-1719.1 or undergo a background check in accordance with subsection B prior
686 to issuance of a license as a child day center or approval as a family day home by a family day system.

687 B. Every person required to undergo a background check pursuant to subsection A shall:

688 1. Provide a sworn written statement or affirmation disclosing whether he has ever been convicted of
689 or is the subject of pending charges for any offense within or outside the Commonwealth and whether
690 he has been the subject of a founded complaint of child abuse or neglect within or outside the
691 Commonwealth;

692 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B
693 of § 19.2-392.02; and

694 3. Authorize the Department, in the case of an individual described in clause (i), (ii), or (iii) of
695 subsection A, or the family day system, in the case of individuals described in clause (iv), (v), or (vi) of
696 subsection A, to obtain a copy of information from the central registry maintained pursuant to §
697 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

698 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be
699 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for
700 the purpose of obtaining national criminal history record information regarding the individual. Upon
701 receipt of the individual's record or notification that no record exists, the Central Criminal Records
702 Exchange shall forward the information to the Department. For individuals described in clause (iv), (v),
703 or (vi) of subsection A, the Department shall report to the family day system whether the applicant is
704 eligible to have responsibility for the safety and well-being of children. In cases in which the record
705 forwarded to the Department is lacking disposition data, the Department shall conduct research in
706 whatever state and local recordkeeping systems are available in order to obtain complete data.

707 C. If any person specified in subsection A required to have a background check has an offense as
708 defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant
709 to § 63.2-1723, (i) no license as a child day center shall be granted if the individual is described in
710 clause (i), (ii), or (iii) of subsection A, and (ii) no family day home shall be approved by a family day
711 system if the individual is described in clause (iv), (v), or (vi) of subsection A.

712 D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized
713 in accordance with subdivision B 3, shall be obtained prior to issuance or denial of a license as a child
714 day center or approval of a family day home by a family day system.

715 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
716 day center or shall be alone with, in control of, or supervising one or more of the children without first
717 having completed any required background check pursuant to subsection B.

718 F. Any person making a materially false statement regarding the sworn statement or affirmation
719 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

720 G. If an applicant is denied licensure, registration, or approval because of information from the
721 central registry or convictions appearing on his criminal history record, the Commissioner shall provide
722 a copy of the information obtained from the central registry or the Central Criminal Records Exchange
723 or both to the applicant.

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

727 I. The Department shall establish a fee not to exceed \$40 or the amount equal to the actual cost of
728 the background check conducted by the Department of State Police and the Federal Bureau of
729 Investigation, whichever is greater, for background checks pursuant to this section.

730 **§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain**
731 **background check.**

732 A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare
733 agency, an assisted living facility, or adult day care center, a child-placing agency may revoke the
734 approval of a foster home, and a family day system may revoke the approval of a family day home if
735 the assisted living facility, adult day care center, child welfare agency, foster home, or approved family

day home has knowledge that a person specified in §§ 63.2-1720 and, 63.2-1720.1, 63.2-1721, or 63.2-1721.1 required to have a background check has an offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720 and subsection E of § 63.2-1721, and the facility, center, or agency refuses to separate such person from employment or service.

B. Failure to obtain background checks pursuant to §§ 63.2-1720 and, 63.2-1720.1, 63.2-1721, and 63.2-1721.1 shall be grounds for denial or revocation of a license, registration, or approval. No violation shall occur if the assisted living facility, adult day care center, or child welfare agency has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.

A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 63.2-1720.1, 63.2-1721, 63.2-1721.1, and 63.2-1724, may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the Commissioner may grant a waiver to a family day home regulated by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, provided (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available for inspection by the public. The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.

B. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1724. Records check by unlicensed child day center; penalty.

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to provide evidence satisfactory to the Department of a background check registry clearance certification issued pursuant to § 63.2-1719.1 or to obtain within 30 days of employment or commencement of volunteer service; a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a criminal history records check as provided in subdivision A 11 of § 19.2-389 and search of the central registry maintained pursuant to § 63.2-1515 in accordance with subsection B of § 63.2-1720.1. A child day center that is exempt from licensure pursuant to § 63.2-1716 shall refuse employment or service to any person who has any offense defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other person who is expected to be alone with one or more children in the child day center to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry or convictions appearing on his criminal history record, the child day center shall provide a copy of the information obtained from the central registry or Central Criminal Records Exchange or both to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending the child day center whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

797 *The Department shall establish a fee not to exceed \$40 or the amount equal to the actual cost of the*
798 *background check conducted by the Department of State Police and the Federal Bureau of Investigation,*
799 *whichever is greater, for background checks pursuant to this section.*

800 **§ 63.2-1725. Records checks of child day centers or family day homes receiving federal, state or**
801 **local child care funds; penalty.**

802 Whenever any child day center or family day home that has not met the requirements of
803 §§ 63.2-1720, 63.2-1720.1, 63.2-1721, 63.2-1721.1, and 63.2-1724 applies to enter into a contract with
804 the Department or a local department to provide child care services to clients of the Department or local
805 department, the Department or local department shall require *evidence satisfactory to the Department of*
806 *a background check registry clearance certification issued pursuant to § 63.2-1719.1 or a criminal*
807 *records check pursuant to subdivision A 43 of § 19.2-389, as well as a and search of the central registry*
808 *maintained pursuant to § 63.2-1515; on any child abuse or neglect investigation, of in accordance with*
809 *subsection B of § 63.2-1720.1 for the applicant; any employee; prospective employee; volunteers; agents*
810 *involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or*
811 *more of the children; and any other adult living in a family day home. The applicant shall provide the*
812 *Department or local department with copies of these records checks. The child day center or family day*
813 *home shall not be permitted to enter into a contract with the Department or a local department for child*
814 *care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved*
815 *in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or*
816 *any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day*
817 *center or family day home shall also require the above individuals to provide a sworn statement or*
818 *affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child*
819 *abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the*
820 *Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially*
821 *false statement regarding any such offense shall be is guilty of a Class 1 misdemeanor. If a person is*
822 *denied employment or work because of information from the central registry or convictions appearing on*
823 *his criminal history record, the child day center or family day program shall provide a copy of such*
824 *information obtained from the central registry or Central Criminal Records Exchange or both to the*
825 *person. Further dissemination of the information provided to the facility, beyond dissemination to the*
826 *Department, agents of the Department, or the local department, is prohibited. The Department shall*
827 *establish a fee not to exceed \$40 or the amount equal to the actual cost of the background check*
828 *conducted by the Department of State Police and the Federal Bureau of Investigation, whichever is*
829 *greater, for background checks pursuant to this section.*

830 **§ 63.2-1726. Background check required; children's residential facilities.**

831 A. As a condition of employment, volunteering, or providing services on a regular basis, every
832 children's residential facility that is regulated or operated by the Departments of Social Services,
833 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any
834 individual who (i) accepts a position of employment at such a facility who was not employed by that
835 facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with
836 a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1,
837 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and
838 will be alone with a juvenile in the performance of his duties who did not provide such services prior to
839 July 1, 2007, to submit to fingerprinting and to provide personal descriptive information, to be
840 forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the
841 Federal Bureau of Investigation for the purpose of obtaining criminal history record information
842 regarding such applicant. The children's residential facility shall inform the applicant that he is entitled
843 to obtain a copy of any background check report and to challenge the accuracy and completeness of any
844 such report and obtain a prompt resolution before a final determination is made of the applicant's
845 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the
846 children's residential facility with a written statement or affirmation disclosing whether he has ever been
847 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth.
848 The results of the criminal history background check must be received prior to permitting an applicant
849 to work with children.

850 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
851 record exists, shall forward it to the state agency which operates or regulates the children's residential
852 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's
853 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are
854 available in order to obtain complete data. The state agency shall report to the children's facility whether
855 the applicant is eligible to have responsibility for the safety and well-being of children. Except as
856 otherwise provided in subsection B, no children's residential facility regulated or operated by the
857 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social
858 Services shall hire for compensated employment or allow to volunteer or provide contractual services

persons who have been (a) convicted of or are the subject of pending charges for the following crimes: a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; a felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361; taking indecent liberties with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1.1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; (b) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (c) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of this section also shall apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision, and to local secure detention facilities provided, however, that the provisions of this section related to local secure detention facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local agency that regulates or operates the local secure detention facility shall process the criminal history record information regarding such applicant in accordance with this subsection and subsection B.

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

If the applicant is denied employment or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Departments of Education; Behavioral Health and Developmental Services; Military

920 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide
921 contractual services, persons who have a founded case of child abuse or neglect. Every residential
922 facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be
923 authorized to obtain a copy of the information from the central registry.

924 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and
925 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with
926 the provisions of this section. Copies of any information received by a children's residential facility
927 pursuant to this section shall be available to the agency that regulates or operates such facility but shall
928 not be disseminated further. *The Department shall establish a fee not to exceed \$40 or the amount equal*
929 *to the actual cost of the background check conducted by the Department of State Police and the Federal*
930 *Bureau of Investigation, whichever is greater, for background checks pursuant to this section.* The cost
931 of obtaining the criminal history record and the central registry information shall be borne by the
932 employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

933 **2. That the Department of Social Services may enter into a contractual agreement with a nonprofit**
934 **organization for the purpose of screening and processing criminal history background information**
935 **for unlicensed child day centers pursuant to § 63.2-1724 of the Code of Virginia and child day**
936 **centers or family day homes receiving federal, state, or local child-care funds pursuant to**
937 **§ 63.2-1725 of the Code of Virginia. Such agreement shall include requirements for development of**
938 **a statewide plan for the operation of a background check screening system and the provision of**
939 **training and technical and other assistance to child-care providers.**

940 **3. That the Department of Social Services shall convene a work group to review and make**
941 **recommendations for the establishment, operation, and maintenance of a national**
942 **fingerprint-based background check system for child-care providers.**

943 **4. That the Department of Social Services shall promulgate regulations to implement the**
944 **provisions of this act, which shall include requirements for fees for background checks that shall**
945 **be no more than the amount necessary to pay the cost of developing and administering a national**
946 **fingerprint-based background check program for child-care providers.**

947 **5. That requirements of this act related to national background checks for child-care providers**
948 **shall become effective on the date on which the 2016-2017 Child Care and Development Fund state**
949 **plan established pursuant to 42 U.S.C. § 9858c becomes effective.**