

HOUSE BILL NO. 1525

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions

on _____)

(Patron Prior to Substitute--Delegate Coyner)

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

Be it enacted by the General Assembly of Virginia:

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

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any applicant who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or adult mental health treatment program a person who was

27 convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or
28 subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-
29 60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any
30 offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense
31 pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of
32 another jurisdiction, if the Department determines, based upon a screening assessment, that the criminal
33 behavior was substantially related to the applicant's substance abuse or mental illness and that the person
34 has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal
35 history background and his substance abuse or mental illness history. In addition, where the employment
36 at an adult substance abuse treatment program is as a peer recovery specialist, the Department may hire
37 any person eligible under this subsection or who was convicted any offense set forth in clause (iv) of the
38 definition of barrier crime in § 19.2-392.02 if the Department determines, based upon a screening
39 assessment, that the criminal behavior was substantially related to the person's substance abuse or mental
40 illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving
41 services based on his criminal history background and his substance abuse or mental illness history.

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

45 D. The Department and a screening contractor designated by the Department shall screen
46 applicants who meet the criteria set forth in subsection C to assess whether the applicants have been
47 rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history
48 backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the
49 applicant shall have completed all prison or jail terms; shall not be under probation or parole supervision;
50 shall have no pending charges in any locality; shall have paid all fines, restitution, and court costs for any
51 prior convictions; and shall have been free of parole or probation for at least five years for all convictions.
52 In addition to any supplementary information the Department or screening contractor may require or the
53 applicant may wish to present, the applicant shall provide to the screening contractor a statement from his

54 most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-
55 sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening
56 shall be paid by the applicant, unless the Department decides to pay the cost.

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

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

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

72 **§ 37.2-416. Background checks required.**

73 A. As used in this section:

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

77 "Hire for compensated employment" does not include (i) a promotion from one adult substance
78 abuse or adult mental health treatment position to another such position within the same licensee licensed
79 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment
80 position in another office or program licensed pursuant to this article if the person employed prior to July

81 1, 1999, in a licensed program had no convictions in the five years prior to the application date for
82 employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult
83 substance abuse treatment position to any mental health or developmental services direct care position
84 within the same licensee licensed pursuant to this article or (b) new employment in any mental health or
85 developmental services direct care position in another office or program of the same licensee licensed
86 pursuant to this article for which the person has previously worked in an adult substance abuse treatment
87 position.

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

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

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

105 1. Hire for compensated employment any person who has been convicted of (i) any offense set
106 forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set
107 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the

108 application date for employment or (b) if such person continues on probation or parole or has failed to pay
109 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-
110 392.02;

111 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
112 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
113 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any
114 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior
115 to the application date to be a sponsored residential service provider or (b) if such applicant continues on
116 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the
117 definition of barrier crime in § 19.2-392.02;

118 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
119 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause (i),
120 (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of
121 the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living
122 arrangement or (b) if such person continues on probation or parole or has failed to pay required court costs
123 for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02; or

124 4. Allow any person under contract with the provider to serve in a direct care position who has
125 been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §
126 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02
127 (a) in the five years prior to the application date for employment or (b) if such person continues on
128 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the
129 definition of barrier crime in § 19.2-392.02.

130 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
131 no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed
132 pursuant to this article. If any applicant is denied employment because of information appearing on the
133 criminal history record and the applicant disputes the information upon which the denial was based, the
134 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures

135 for obtaining a copy of the criminal history record from the FBI. The information provided to the
136 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except
137 as provided in this section.

138 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated
139 employment or permit any person under contract with the provider to serve in a direct care position or
140 permit any person employed by a temporary agency that has entered into a contract with the provider to
141 provide direct care services on behalf of the provider at adult substance abuse or adult mental health
142 treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor
143 violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation
144 of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of §
145 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime
146 in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially
147 similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a
148 screening assessment, that the criminal behavior was substantially related to the applicant's substance
149 abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to
150 individuals receiving services based on his criminal history background and his substance abuse or mental
151 illness history. In addition, where the employment at an adult substance abuse treatment program is as a
152 peer recovery specialist, the provider may hire any person eligible under this subsection or who was
153 convicted any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 if the hiring
154 provider determines, based upon a screening assessment, that the criminal behavior was substantially
155 related to the person's substance abuse or mental illness and that the person has been successfully
156 rehabilitated and is not a risk to individuals receiving services based on his criminal history background
157 and his substance abuse or mental illness history.

158 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated
159 employment or permit any person under contract with the provider to serve in a direct care position or
160 permit any person employed by a temporary agency that has entered into a contract with the provider to
161 provide direct care services on behalf of the provider at adult substance abuse treatment facilities a person

162 who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially
163 similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon
164 if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the
165 laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring
166 provider determines, based upon a screening assessment, that the criminal behavior was substantially
167 related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not
168 a risk to individuals receiving services based on his criminal history background and his substance abuse
169 history.

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

182 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated
183 employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared
184 living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care
185 position on behalf of the provider or permit any person employed by a temporary agency that has entered
186 into a contract with the provider to provide direct care services on behalf of the provider persons who have
187 been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any
188 substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the

189 conviction, unless the person committed the offense while employed in a direct care position. A provider
190 may also approve a person as a sponsored residential service provider if (a) any adult living in the home
191 of an applicant or (b) any person employed by the applicant to provide services in the home in which
192 sponsored residential services are provided has been convicted of not more than one misdemeanor offense
193 under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,
194 if 10 years have elapsed following the conviction, unless the person committed the offense while employed
195 in a direct care position.

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

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

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

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

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

219 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §
220 19.2-389; and

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

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

231 **§ 37.2-506. Background checks required.**

232 A. As used in this section:

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

236 "Hire for compensated employment" does not include (i) a promotion from one adult substance
237 abuse or adult mental health treatment position to another such position within the same community
238 services board or (ii) new employment in an adult substance abuse or adult mental health treatment
239 position in another office or program of the same community services board if the person employed prior
240 to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire
241 for compensated employment" includes (a) a promotion or transfer from an adult substance abuse
242 treatment position to any mental health or developmental services direct care position within the same

243 community services board or (b) new employment in any mental health or developmental services direct
244 care position in another office or program of the same community services board for which the person has
245 previously worked in an adult substance abuse treatment position.

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

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

253 B. Every community services board shall require (i) any applicant who accepts employment in any
254 direct care position with the community services board, (ii) any applicant for approval as a sponsored
255 residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored
256 residential service provider, (iv) any person employed by a sponsored residential service provider to
257 provide services in the home, (v) any person who enters into a shared living arrangement with a person
258 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract to serve in
259 a direct care position on behalf of the community services board to submit to fingerprinting and provide
260 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the
261 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record
262 information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community
263 services board shall hire for compensated employment, approve as a sponsored residential service
264 provider, permit to enter into a shared living arrangement with a person receiving medical assistance
265 services pursuant to a waiver, or permit any person under contract to serve in a direct care position on
266 behalf of the community services board persons who have been convicted of (a) any offense set forth in
267 clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in
268 clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application
269 date for employment, the application date to be a sponsored residential service provider, or entering into

270 a shared living arrangement or (2) if such person continues on probation or parole or has failed to pay
271 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-
272 392.02.

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

281 C. Notwithstanding the provisions of subsection B, the community services board may hire for
282 compensated employment or permit any person under contract to serve in a direct care position on behalf
283 of the community services board or permit any person employed by a temporary agency that has entered
284 into a contract with the community services board to provide direct care services on behalf of the
285 community services board at adult substance abuse or adult mental health treatment programs a person
286 who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1,
287 subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any
288 misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the
289 definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-
290 248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community
291 services board determines, based upon a screening assessment, that the criminal behavior was substantially
292 related to the applicant's substance abuse or mental illness and that the person has been successfully
293 rehabilitated and is not a risk to individuals receiving services based on his criminal history background
294 and his substance abuse or mental illness history. In addition, where the employment at an adult substance
295 abuse treatment program is as a peer recovery specialist, the community services board may hire any
296 person eligible under this subsection or who was convicted any offense set forth in clause (iv) of the

297 definition of barrier crime in § 19.2-392.02 if the hiring community services board determines, based upon
298 a screening assessment, that the criminal behavior was substantially related to the person's substance abuse
299 or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals
300 receiving services based on his criminal history background and his substance abuse or mental illness
301 history.

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

315 E. The community services board and a screening contractor designated by the Department shall
316 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants
317 have been rehabilitated successfully and are not a risk to individuals receiving services based on their
318 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such
319 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole
320 supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court
321 costs for any prior convictions, and shall have been free of parole or probation for at least five years for
322 all convictions. In addition to any supplementary information the community services board or screening
323 contractor may require or the applicant may wish to present, the applicant shall provide to the screening

324 contractor a statement from his most recent probation or parole officer, if any, outlining his period of
325 supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony
326 conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the
327 cost.

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

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

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

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

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

362 K. Any person employed by a temporary agency that has entered into a contract with a community
363 services board and who will serve in a direct care position on behalf of the community services board shall
364 undergo a background check that shall include:

365 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §
366 19.2-389; and

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

369 Except as otherwise provided in subsection C, D, or F, no community services board shall permit
370 any person employed by a temporary agency that has entered into a contract with the community services
371 board to provide direct care services on behalf of the community services board if that person has been
372 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-
373 392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in
374 the five years prior to the application date for employment, the application date to be a sponsored
375 residential service provider, or entering into a shared living arrangement or (b) if such person continues
376 on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of
377 the definition of barrier crime in § 19.2-392.02.

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