

From: **Edwina Williams** <edwina.williams@dss.virginia.gov>
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Subject: Legislative Information for Children's Residential Facilities Programs
To: <DSS_LICENSING@listserv.cov.virginia.gov>

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Please be advised that this email includes (3) attachments pertaining to legislative information regarding Senate Bill 1678, addressing licensed children's residential facilities. This legislation became effective February 21, 2019. If you have any question pertaining to these attachments, please contact Robin Ely, Licensing Administrator, Child Welfare Programs at robin.ely@dss.virginia.gov.

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

DATE: March 11, 2019

TO: Licensed Children's Residential Facilities

FROM: Tara Ragland, Director
Division of Licensing Programs

Update: Legislative Implementation Senate Bill 1678

This memo will update you of legislation that passed in the 2019 Virginia General Assembly session that affects the licensed children's residential facilities (CRF). On January 16, 2019, the Division of Licensing notified licensed children's residential facilities of the Family First Prevention Services Act and changes set forth by the federal government. This memo is attached.

Senate Bill 1678

Senate Bill 1678 (attached) aligns the Code of Virginia with the federal Family First Prevention Services Act of 2018 regarding requirements for criminal record and central registry checks for all adults working in CRFs. This bill specifies that individuals cannot begin work until results of these background checks are received. This legislation had an emergency clause, was signed into law on February 21, 2019 and is immediately effective. The updated Code language is included in this memo.

If there are any inquiries regarding this legislation, please contact your licensing specialist.

Virginia Code effective February 21, 2019

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

A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility, (ii) is employed by such a facility, (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility to submit to fingerprinting and to 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 for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant 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. The applicant shall provide the children's residential facility with a 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. The results of the criminal history background check must be received prior to permitting an applicant to work in the children's residential facility.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. The 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, or any substantially similar offense under the laws of another jurisdiction, 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. 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) through (iv) 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. Children's residential facilities regulated or operated by the Departments of Education; Behavioral Health and Developmental Services; Military Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

1994, c. 704, § 63.1-248.7:2; 1996, c. 747; 2001, c. 138; 2002, c. 747; 2007, c. 573; 2009, cc. 813, 840; 2012, c. 383; 2013, cc. 96, 181; 2016, c. 580; 2017, c. 809; 2019, c.100.

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 100

An Act to amend and reenact §§ 37.2-408.1 and 63.2-1726 of the Code of Virginia, relating to statutory alignment with federal Family First Prevention Services Act.

[S 1678]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 37.2-408.1 and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-408.1. Background check required; children's residential facilities.

A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department shall require any person who (i) accepts a position of employment at such a facility ~~who was not employed by that facility prior to July 1, 2008,~~ (ii) *is currently employed by such a facility,* (iii) volunteers for such a facility ~~on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2008,~~ or (iii) (iv) provides contractual services directly to a juvenile for such *a facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2008,* to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the person's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the person. The children's residential facility shall inform the person 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 person's eligibility to have responsibility for the safety and well-being of children. The person shall provide the children's residential facility with a 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. The results of the criminal history background check must be received prior to permitting a person to work ~~with children in the children's residential facility.~~

The Central Criminal Records Exchange, upon receipt of a person's record or notification that no record exists, shall forward it to the state agency that operates or regulates the children's residential facility with which the person is affiliated. The state agency shall, upon receipt of a person's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the person is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, 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.

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, or any substantially similar offense under the laws of another jurisdiction, 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 person 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 person disputes the information upon which the denial was based, upon written request of the person the state agency shall furnish the person the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. ~~If the person 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 person from his position pending a final determination of the person'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 persons listed in clauses (i), ~~(ii)~~, and ~~(iii)~~ *through* (iv) 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 person 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 a person to work ~~alone with children~~. Children's residential facilities regulated or operated by the Department shall not hire for compensated employment, or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect.

D. The cost of obtaining the criminal history record and the central registry information shall be borne by the person unless the children's residential facility, at its option, decides to pay the cost.

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

A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility ~~who was not employed by that facility prior to July 1, 2007~~, (ii) *is employed by such a facility*, (iii) volunteers for such a facility ~~on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007~~, or (iii) (iv) provides contractual services directly to a juvenile for such a facility ~~on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2007~~, to submit to fingerprinting and to 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 for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant 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. The applicant shall provide the children's residential facility with a 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. The results of the criminal history background check must be received prior to permitting an applicant to work ~~with children in the children's residential facility~~.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. The 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, or any substantially similar offense under the laws of another jurisdiction, 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)~~ *through (iv)* 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 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

2. That an emergency exists and this act is in force from its passage.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

DATE: January 16, 2019

TO: Licensed Children's Residential Facilities

FROM: Carl Ayers, Director,
Division of Family Services

SUBJECT: Public Law 115-123, the Family First Prevention Services Act

The Family First Prevention Service Act (Family First) was signed into law on February 9, 2018 and resulted in changes to the title IV-E plan requirements. Changes set forth by the federal government include new requirements for criminal record and central registry checks for all adults working in children's residential facilities (CRF). Family First requires that CRF reimbursed by IV-E implement procedures for fingerprint-based criminal records checks of national crime information databases and child abuse registry checks for any adult working in a CRF.

As a licensed CRF, you are aware that 22VAC40-151-*Standards for Licensed Children's Residential Facilities* stipulates that licensed children's residential facilities be in compliance with background check regulations as required by § 63.2-1726 of the Code of Virginia. This Code currently requires criminal history record checks and child protective services central registry searches to be conducted on employees, volunteers and contractors working alone with children on a regular basis. Family First specifies that the above checks are required for any adult working in a CRF.

Additionally, Family First requires that individuals cannot begin work until results of these background checks are received. Currently the IV-E CRF matrix procedure allows for letters of exemption to begin work at the facility as long as they are not alone with a child prior to receiving the results. **This practice will no longer be accepted. All safety checks are required to be completed and received prior to the employee's date of employment.**

Any CRF that desires to be eligible for title IV-E or Children's Services Act (CSA) reimbursement must meet these new federal background check requirements. Therefore, this could affect the local department of social services' ability to place or to maintain a child in a CRF that is non-reimbursable for IV-E or CSA.

To ensure that Virginia complies with all federal laws, the Virginia Department of Social Services (VDSS) will work with the Virginia General Assembly to amend the current code to require any adult working in a CRF to have completed background checks prior to the start date

of employment. We anticipate an emergency enactment, which would make this law go into effect when signed by the Governor no later than March 30, 2019.

Please begin identifying current employees who are not currently included on the CRF matrix and who do not have the required background checks in their personnel file. It is strongly encouraged, that these staff complete background checks immediately, so that when Virginia Code is amended, your staff and facility will be in compliance.

VDSS will provide additional updates as they become available addressing these new federal requirements. In addition, we will be reaching out to the local departments and their Family Assessment and Planning Teams (FAPT) to notify them of these federal changes.

A link to this law and the Family First Prevention Services Act can be found at the following:

[Public Law 115-123](#)

If you have any questions pertaining to this notification please contact Familyfirst@dss.virginia.gov.