

BACKGROUND CHECKS
FOR
CHILD WELFARE AGENCIES

REVISED

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DEPARTMENT OF SOCIAL SERVICES
COMMONWEALTH OF VIRGINIA

BACKGROUND

CHECKS FOR

CHILD WELFARE AGENCIES

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Background Checks for Child Welfare Agencies

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CHAPTER 191

BACKGROUND CHECKS FOR CHILD WELFARE AGENCIES.

22VAC40-191-10 Defining words and phrases

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

“Agent” means a person who is empowered to act on behalf of the applicant that is an association, partnership, limited liability company, business trust, public agency, or corporation in matters relating to the child welfare agency.

“Applicant” means the person applying for approval or licensure as a (i) licensed child-placing agency; (ii) licensed independent foster home; or (iii) foster and adoptive home approved by a licensed child-placing agency. In the case of a sole proprietorship, the applicant is the individual owner. In the case of a partnership, the applicants are all the partners. If the applicant is a corporation, association, or business trust, the applicants are officers. If the applicant is a limited liability company, the applicants are the members or managers. If the applicant is a public agency, the applicant is the person responsible for the overall operation of the public agency.

“Approved” means having obtained the status of approval through the process required in Standards for Licensed Child-Placing Agencies (22VAC40-131). Approved foster and adoptive parents include resource, foster, adoptive, treatment foster, and short-term foster parents and families approved by child-placing agencies.

“Background checks” means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

“Barrier crime” means a conviction identified at § 19.2-392.02 in the Code of Virginia.

“Central registry” means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.

“Central registry finding” means the record of founded complaints of child abuse and neglect for an individual.

“Central Criminal Records Exchange” or “CCRE” means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.

“Child-placing agency” means (i) any person that places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia; (ii) or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia; or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 of the Code

22VAC40-191-10 Defining words and phrases

of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of its authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

“Child welfare agency” means a child-placing agency, children’s residential facility, or independent foster home. For purposes of this chapter, the requirements for child welfare agencies also apply to foster or adoptive homes requesting approval or with approval by child-placing agencies.

“Commissioner” means the Commissioner of the Department of Social Services or his designee.

“Contract agency” means an entity with which the facility or a parent has an agreement to provide services to a child or children while attending the facility.

“Contract employee” means a person with whom the facility or a parent has an agreement to provide services to a child or children while attending the facility.

“Criminal history record check” means the process the Department of State Police uses to generate a criminal record report on a person. The check may be a state check generated solely through the Central Criminal Records Exchange or a check forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information.

“Criminal history record report” means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.

“Department” means the State Department of Social Services.

“Department representative” means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out approval functions. Licensed child-placing agencies have authority to approve foster and adoptive parents.

“Disqualifying background” means having an offense, as defined in § 63.2-1719 of the Code of Virginia. For the purpose of this chapter, having been the subject of a founded abuse or neglect complaint as described in “offense” includes records that have been purged from the child abuse and neglect central registry. However, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision

22VAC40-191-10 Defining words and phrases

“Employee” means a person hired by a facility or with whom the facility has an employment agreement.

“Facility” means (i) a licensed child-placing agency; (ii) a licensed independent foster home; and (iii) an applicant seeking a waiver in order to establish one of the above listed entities.

“Good character and reputation” means that the person (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the person is suitable and able to care for, guide, supervise, and protect children.

“Independent foster home” means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed in that home independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person; (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8 of the Code of Virginia; and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et. seq.) of Title 20 of the Code of Virginia.

“Involved in the day-to-day operations” means:

1. In a supervisory or management position, making daily decisions regarding the operation of the facility;
2. Counted by the facility for purposes of staff-to-children ratios;
3. Providing casework services for a child-placing agency; or
4. Having access to child-related and client-related records or to facility personnel records.

“Licensed” means having met the requirements of and obtained licensure as a licensed independent foster home or licensed private child-placing agency.

“Living in” means to reside in a place for an extended or permanent period of time.

“Local agency” means local department of social services.

“May” means has permission.

“Must” means the action is a requirement.

“Must not” means the action is prohibited.

22VAC40-191-10 Defining words and phrases

“National criminal background check” means criminal history record information from the Federal Bureau of Investigation.

“Offense” means a (i) conviction of a barrier crime, (ii) conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, (iii) founded complaint of child abuse or neglect within or outside the Commonwealth, or (iv) a conviction of an offense set forth in § 9.1-902 of the Code of Virginia or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia of an offense set forth in § 9.1-902 that results in the person’s requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901 of the Code of Virginia, or any similar registry in any other state. Convictions 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.

“Other felony” means conviction for any felony in the last five years that is not a barrier crime felony.

“Parent-volunteer” means 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 § 63.2-1720 of the Code of Virginia.

“Search of central registry” means the process the Virginia Department of Social Services’ Child Protective Services Unit uses to generate a central registry report on a person.

“Sworn statement or affirmation” means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

“22VAC” means Title 22 of the Virginia Administrative Code. This is the social services title.

“Volunteer” means a person who provides services without pay and who is alone with a child or children in performance of his duties.

22VAC40-191-20 Describing background checks

- A. The background checks covered by this regulation are:
1. Sworn statement or affirmation;
 2. Criminal history record check;
 3. National criminal background check; and
 4. Central registry search.
- B. The provisions for background checks are in §§ 63.2-1720, 63.2-1721, 63.2-1722, and 63.2-1723 of the Code of Virginia.
- C. Provisions for enforcement of background check regulations and other licensing and approval standards are in Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.
- D. The sworn statement or affirmation is a written document in which a person must disclose any criminal conviction and any pending criminal charges within or outside Virginia.
1. Conviction includes any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia.
 2. The person must also disclose any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia.
 3. The person must use either the model form prepared by the department or use a self-created form that includes all of the information that appears on the model form.

The department provides the model sworn statement or affirmation form on its website. Requesters are permitted to submit copies of the form. The person who signs the sworn statement or affirmation affirms the truth of the statement.

- E. The criminal history record check is the process of the Department of State Police to generate a criminal record report on a person. The report must be either the criminal record clearance or the criminal history record. The criminal record clearance shows whether the person is guilty of:
1. A barrier crime, as defined in § 19.2-392.02 of the Code of Virginia; or
 2. Any other felony not included in the definition of barrier crime unless five years have elapsed since the conviction.

The criminal history record report shows all convictions.

22VAC40-191-20 Describing background checks

- F. The person must use the form and process of the Central Criminal Records Exchange (CCRE) of the Department of State Police for this check. The Department of State Police provides original criminal history record check forms to facilities upon receipt of request. The Department of State Police also provides website access to this form for facilities that are noncriminal justice inquiry interface users. The CCRE verifies criminal history record reports.
- G. The national criminal background check is the process of obtaining criminal history record information from the Federal Bureau of Investigation through the Central Criminal Records Exchange.
 - 1. The person must submit to fingerprinting and provide personal descriptive information.
 - 2. The person must use the process of the department's Office of Background Investigations (OBI) to request and receive a national criminal background check.
- H. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.
- I. The person must use the form and process of the OBI. The department provides the central registry request form on its website. Requesters are permitted to submit copies of this form. OBI verifies child protective services central registry check findings.

22VAC40-191-30 Identifying the facilities that are not covered by this regulation

- A. Children's residential facilities are not covered by this regulation.
- B. Background check requirements for children's residential facilities, including child-caring institutions, are in § 63.2-1726 of the Code of Virginia.

22VAC40-191-40 Identifying who is covered by this regulation

- A. This regulation applies to:
 - 1. Licensed child-placing agencies;
 - 2. Licensed independent foster homes; and
 - 3. Foster and adoptive homes approved by child-placing agencies.
- B. Except as provided in 22VAC40-191-50 A, no person with a disqualifying background who has not been granted a waiver according to 22VAC40-191-90 may operate or volunteer or work at a facility governed by this chapter.
- C. Background checks are required at the time of initial application. These background checks are required at the time of initial application for licensure or approval

22VAC40-191-40 Identifying who is covered by this regulation

Who	What	When
1. An agent or applicant at the time of application who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more the children	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon application for licensure as a child welfare agency
2. An existing employee or volunteer	Same	Upon application for licensure
3. Prospective foster or adoptive parent	Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Prior to approval by child- placing agency
4. Birth parent of a child in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or § 63.2-1817 of the Code of Virginia, or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia).	Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Prior to placement of a child with birth parent
5. Other adults living in a prospective foster or adoptive home	Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Prior to approval by child- placing agency

22VAC40-191-40 Identifying who is covered by this regulation

D. Background checks are required after the initial licensure or approval.

1. These background checks are required after initial licensure or approval:

Who	What	When
a. New person designated as applicant, licensee or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation	Whenever an applicant, licensee or agent changes
	Search of central registry and criminal history record check	Before the end of 30 days after the change
b. An employee of a licensed or approved facility who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children	Sworn statement or affirmation	Prior to first day of employment at the facility
	Search of central registry and criminal history record check	Before 30 days of employment at the facility ends
c. An applicant, licensee, agent, employee, or volunteer	Sworn statement or affirmation, search of central registry and criminal history record check	Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report
d. Volunteer at licensed or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed or approved program	Sworn statement or affirmation	Prior to first day of service at the facility
	Search of central registry and criminal history record check	Before 30 days of service at the facility elapses
e. Foster parent approved by a licensed child-placing agency, in an independent foster home, or an adoptive parent approved by a licensed child-placing agency, until the adoption is final	Sworn statement or affirmation, search of central registry, and criminal history record check	Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report or national criminal background check

22VAC40-191-40 Identifying who is covered by this regulation

<p>f. All adult household members residing in the home of the foster parent approved by a licensed child-placing agency, foster parent in an independent foster home, or an adoptive parent approved by a licensed child-placing agency, until the adoption is final</p>	<p>Sworn statement or affirmation, search of central registry, and criminal history record check</p>	<p>Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report or national criminal background check</p>
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2. Background checks are required for independent contract employees and employees hired by a contract agency.

If a licensed or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:

- a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;
- b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;
- c. Make copies, and keep them at the licensed or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and
- d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.

3. A person 18 years of age and older must have background checks:

Who	What	When
<p>Person living in the home of (i) a prospective foster or adoptive parent, (ii) a foster parent approved by a licensed child-placing agency, (iii) a foster parent in an independent foster home, or</p>	<p>Sworn statement or affirmation</p>	<p>When a person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old</p>

22VAC40-191-40 Identifying who is covered by this regulation

(iv) until the adoption is final, an adoptive parent approved by a licensed child-placing agency	Search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background	Within 30 days of a person 18 years of age or older beginning to reside in the home or a person in the home becoming 18 years old
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4. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

Who	What	When
<p>a. Person living in:</p> <p>An applicant's home,</p> <p>A foster home approved by a licensed child-placing agency,</p> <p>An independent foster home, or</p> <p>An adoptive home approved by a licensed child-placing agency, until the adoption is final.</p>	Child protective services central registry check	Within 30 days of a 14-year-old beginning to reside in the home or a person in the home becoming 14 years old
<p>b. A person 14 years of age up to 18 years of age who is placed in an approved foster or adoptive home by a child-placing agency is not required to have a search of the central registry.</p>		

5. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home, or approving a foster or adoptive home.
6. Provisions for contracting agencies are described in subdivision 2 of this subsection.
7. The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii) was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.

22VAC40-191-50 Explaining requirements for satisfactory background checks

A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in foster and adoptive homes as specified in 22VAC40-191-40.

1. A satisfactory sworn statement or affirmation is:
 - a. A fully completed statement that states that the person does not have an offense; and
 - b. There is no other knowledge that the individual has a disqualifying background check.

Criminal convictions 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. Convictions also include convictions in other states that are equivalent to those specified in this section.

2. A satisfactory central registry finding is one in which:
 - a. A copy of the department's child protective services check form is returned to the requesting agency or state or local Department of Social Services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the central registry as an involved caregiver with a founded disposition of child abuse/neglect; and
 - b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.
3. A satisfactory criminal history record check report is one in which:
 - a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:
 - (1) No convictions indicated; or
 - (2) Convictions indicated, but no barrier crimes, offenses, or other felony convictions in the last five years;
 - b. A letter is received from the Office of Background Investigations with a finding of "eligible"; and
 - c. There is no other knowledge that the individual has an offense in Virginia or elsewhere.

22VAC40-191-50 Explaining requirements for satisfactory background checks

The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 22VAC40-191-90.)

4. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor of assault and battery, as defined in § 18.2-57 of the Code of Virginia, not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.
5. 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.
6. A child-placing agency must consider the results of background checks on a birth parent prior to placing the child of the birth parent with a birth parent, when child is in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or § 63.2-1817 of the Code of Virginia or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia).
7. No petition for adoption shall be granted if an adoptive parent has been convicted of a sexually violent offense or an offense requiring registration pursuant to § 9.1-902 of the Code of Virginia.
8. 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 pursuant to § 63.2-1721 G of the Code of Virginia.
9. A child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the local board or child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, but not including a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2- 77 et seq.) of Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.

B. Background checks results are not open ended.

1. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a

22VAC40-191-50 Explaining requirements for satisfactory background checks

person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

2. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:
 - a. Began a leave of absence from that facility;
 - b. Was terminated from employment at that facility; or
 - c. Was transferred to a center owned and operated by the same employer or entity.
 3. The facility, department, or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has an offense in Virginia or elsewhere.
 4. When the facility, department, or approving authority chooses to require a new background check:
 - a. The facility, department, or approving authority may allow the person to continue the same relationship with the child welfare agency until the licensing or approval authority receives the new Virginia background check information or equivalent documentation from another state; or
 - b. If there is reason to suspect that a person has an offense, the facility, department, or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.
- C. Waivers of some criminal convictions are possible. Refer to 22VAC40-191-90 through 22VAC40-191-130 for an explanation of the waiver.

22VAC40-191-60 Explaining consequences of disqualifying background checks results

- A. Applicants are denied licensure or approval when there are disqualifying background checks results for:
1. Applicants as a child welfare agency;
 2. Agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children;

22VAC40-191-60 Explaining consequences of disqualifying background checks results

3. Any other adult, or any child aged 14 or older, living in a foster home, or in the home of adoptive parents, until the adoption is final; and
 4. Prospective foster or adoptive parents approved by child-placing agencies.
- B. An employee or volunteer of a licensed child welfare agency must not be employed or provide volunteer service until the agency has the person's completed sworn statement or affirmation.
- C. An employee or volunteer of a licensed child welfare agency must be denied continued employment or volunteer service if:
1. The licensed child welfare agency does not have an original criminal history record report within 30 days of employment or volunteer service; or
 2. The licensed child welfare agency does not have a central registry finding within 30 days of employment or volunteer service.
- D. No violation will occur and an employee may continue to work or provide service in a licensed or approved facility if the facility has documentation that the criminal history record request, or the request for search of the central registry, was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.
1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester must contact within four working days:
 - a. The Central Criminal Records Exchange of the Department of State Police;
or
 - b. The department's Office of Background Investigations.
 2. If the request was not received, the requestor must submit another request within five working days after the contact.
 3. This provision applies to a child protective services central registry check for a person who becomes 14 years of age.
- E. If the department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to facilities that are covered by this regulation. Those facilities must not further disseminate this information

This provision applies to a child protective services central registry clearance for a person who becomes 14 years of age.

22VAC40-191-60 Explaining consequences of disqualifying background checks results

- F. Licensed or approved facilities must inform compensated employees and volunteers that the facilities are requesting child protective services registry checks and criminal history record reports for them.
- G. A facility may choose to request a national criminal background check, instead of the criminal history record check, for employees and volunteers.
 - 1. The facility must adhere to Department of State Police requirements for obtaining fingerprints, in accordance with § 19.2-392.02 of the Code of Virginia.
 - 2. The department and child-placing agency will accept a national criminal background check result of “qualified” from the Department of State Police.
 - 3. If the screening result is “disqualified,” the facility must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:
 - a. The facility wishes to employ the person or approve the person as a volunteer; or
 - b. The entity wishes the department to issue a license; or
 - c. The facility wishes a child-placing agency to issue an approval.
- H. The facility may also require a background check from another state per the provisions in subdivision B 3 of 22VAC40-191-50.
- I. A facility that does not comply with this regulation may have its licensure or approval status revoked or denied.
- J. If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 22VAC40-191-50 A, and the facility refuses to separate the person from employment, service, or residence in a home, then licensure or approval must be revoked or denied.

22VAC40-191-70 Keeping background check records

- A. A facility must keep background check records at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children.
 - 1. If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters or at the facility and must be made available to the department representative upon request.
 - 2. If a facility is not the primary work place for a person, the facility may keep copies on site, if there is:

22VAC40-191-70 Keeping background check records.

- a. Documentation of the place where original background check records are kept; and
 - b. Copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the child protective services central registry check form must be kept on site.
- B. Licensed child-placing agencies and licensed independent foster homes must keep all background check information for one year after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.
- C. The sworn statement or affirmation, criminal history record report, and central registry finding must be kept in locked files.
- D. Applicants and agents, and their designees, are the only facility staff who may have access to these documents. The board president must have access to these documents.
- E. If a person is denied licensure or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, or criminal history record report, the facility must provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both shall be provided to the person.
- F. A facility must also release a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both when the subject of the information requests it.
- G. Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. (See the provisions at 22VAC40-191-60 E.)

22VAC40-191-80 Describing the waiver of criminal conviction.

The waiver of criminal conviction is the department's waiving the consequences of a disqualifying criminal history record check only for specific convictions.

22VAC40-191-90 Identifying who may apply for a waiver

- A. Any person who wants to operate or to volunteer or work at a facility covered by this regulation, but who is disqualified because of a criminal conviction, pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia may apply in writing to the commissioner of the department for a waiver.

22VAC40-191-90 Identifying who may apply for a waiver

- B. The commissioner may grant a waiver if:
1. A nonbarrier crime felony conviction occurred less than five years previously;
 2. The commission determines that the person of good moral character and reputation; and
 3. The waiver would not adversely affect the safety and well-being of the children in the person's care.

22VAC40-191-100 Explaining waiver application requirements

- A. The person requests a waiver application package from the licensing office that serves the area where the person with the disqualifying background check wants to operate or volunteer or work at a facility covered by this regulation. The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the licensing office. The commissioner establishes the fee. It is identified in the application package.
- B. The commissioner acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.

22VAC40-191-110 Describing the contents of a waiver application

- A. The waiver application is a personally prepared application.
- B. The waiver application must be submitted in typewritten form or neatly printed and include:
1. A statement that the request was solely and personally prepared by the requester and has not been edited or changed by anyone else. The document may be typed by another person;
 2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;
 3. A statement that the requester understands that information in the waiver application package will be made available by the commissioner to any person upon request if the waiver is granted;
 4. Personal and employment information;
 5. A factual account of the crime of the person with the disqualifying conviction;
 6. The current status and history with justice systems of the person with the disqualifying conviction;

22VAC40-191-110 Describing the contents of a waiver application

7. Other information the person with the disqualifying background wants the commissioner to consider in evaluating the waiver request;
8. An explanation of why the waiver should be granted; and
9. Seven attachments:
 - a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;
 - b. For the person with the disqualifying conviction:
 - (1) A "Current Employment and Employment History Form";
 - (2) A copy of the current sworn statement or affirmation;
 - (3) A copy of the current criminal history record report;
 - (4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;
 - (5) At least four references by disinterested individuals who will vouch for the "good moral character and reputation" of the person with the disqualifying conviction;
 - (6) The Sponsoring Agency Statement; and
 - (7) A notarized signature page.

22VAC40-191-120 Describing the waiver evaluation criteria

- A. The commissioner may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.
- B. The final decision is based on the following:
 1. The content of the waiver application package;
 2. The nature of the conviction or convictions and relevance to decision criteria; and
 3. The extent and pattern of criminal history or child abuse and neglect, including the person's age when the act occurred and how long ago the act occurred.

22VAC40-191-120 Describing the waiver evaluation criteria

- C. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.
- D. The commissioner may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.
- E. The commissioner may grant a waiver if the commissioner determines that:
 - 1. The person is now of good moral character and reputation; and
 - 2. The waiver would not adversely affect the safety and well-being of children in the person's care.
- F. The commissioner will consider a waiver application abandoned, and close the file, when:
 - 1. More than 60 days have passed since the commissioner advised the requester and the sponsoring agency that the waiver application was incomplete, or since the commissioner requested additional information that was reasonably necessary to evaluate the application; and
 - 2. The commissioner informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.
- G. Waiver decisions are not appealable.

22VAC40-191-130 Describing the waiver decision notification process

- A. The commissioner notifies the requester, or other adult if applicable, and the sponsor of his approval or denial in writing by certified mail.
- B. Any approved waiver is for a specific person and a specific facility and must include:
 - 1. Name of individual;
 - 2. Name of facility;
 - 3. Effective dates;
 - 4. Terms, conditions, and stipulations, if any;
 - 5. Criminal conviction for which the waiver was granted;
 - 6. Date of criminal conviction;
 - 7. Relevant court and location;

22VAC40-191-130 Describing the waiver decision notification process

8. Sentence served; and
9. Signature of commissioner, or designee, and date.

22VAC40-191-140 Modifying, revoking, and terminating waivers

- A. The person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.
- B. The commissioner may revoke a waiver if, after investigation, he determines that:
 1. The waiver application contained false, deceptive, or misleading information;
 2. The terms, conditions, or stipulations of a waiver have been violated; or
 3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.
- C. If a waiver is revoked, the commissioner informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.
- D. A waiver automatically expires when:
 1. The person terminates the approved arrangement with the sponsoring facility; or
 2. Five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted.

22VAC40-191-150 Explaining the waiver public notification requirements

- A. Notification about waivers is conducted in accordance with agency policy.
- B. The facility must post in a conspicuous place on the premises any waiver granted by the department.
- C. The facility must notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, or volunteers.