

OFFICE OF BACKGROUND INVESTIGATIONS (OBI)

PROCEDURES FOR CONDUCTING BACKGROUND INVESTIGATIONS REQUIRED BY § 63.2-1726 OF THE *CODE OF VIRGINIA* ON EMPLOYEES, VOLUNTEERS, AND CONTRACTUAL SERVICES PROVIDERS AFFILIATED WITH CHILDREN'S RESIDENTIAL FACILITIES

July 12, 2012

As of July 1, 2007, anyone who is hired or is approved to provide volunteer or contractual services on a regular basis and will be alone with children:

- Cannot work with children until the criminal history background check has been received by the facility.
- Cannot work alone with children until the central registry search has been received by the facility.
- Cannot be hired or allowed to provide volunteer or contractual services if the individual has been convicted of a barrier crime as found in § 63.2-1726 of the *Code of Virginia* or has a founded central registry check.

I. OFFICE OF BACKGROUND INVESTIGATIONS (OBI):

A. HOURS OF OPERATION:

The Office of Background Investigations (OBI) is staffed Monday through Friday from 8:30 a.m. to 4:00 p.m. Messages may be left on voice mail at other times and calls will be returned the next business day.

B. POINTS OF CONTACT:

General Background Questions

Debra Reynolds
Telephone: 804-726-7098

Criminal Background Investigations

Angela Pearson
Telephone: 804-726-7099
e-mail: angela.pearson@dss.virginia.gov

Marilyn Scott
Telephone: 804-726-7092
e-mail: marilyn.scott@dss.virginia.gov

Linda Jean-Pierre
Telephone: 804-726-7066
Email: linda.jeanpierre@dss.virginia.gov

OFFICE FAX (CRIMINAL BACKGROUNDS): 804-726-7095

Child Protective Services Central Registry Checks

Betty Whittaker
Telephone: 804-726-7567
e-mail: betty.whittaker@dss.virginia.gov

C. EMERGENCY POINT OF CONTACT:

Charlene Vincent, Director
Telephone: 804-726-7097
e-mail: charlene.vincent@dss.virginia.gov

D. MAILING ADDRESS:

Virginia Department of Social Services
Office of Background Investigations
801 East Main Street, 6th Floor
Richmond, VA 23219

NOTE: Please do not address mail to the Treasurer of Virginia.

II. FACILITY POINT OF CONTACT FOR CRIMINAL BACKGROUND INVESTIGATIONS

Each facility should designate one criminal background investigation contact person. All correspondence and questions from the OBI will be directed to this contact. In order to keep contact lists and mailing labels current, any changes in the designated point of contact should be reported to the OBI.

In addition the facility should specify an e-mail address where criminal background results can be sent. A generic e-mail that can be accessed by more than one authorized person is preferred.

III. ORDERING FINGERPRINT CARDS AND OTHER FORMS:

- A. Fingerprint cards can be requested by calling OBI or sending an e-mail request to Angela Pearson and/or Marilyn Scott:
angela.pearson@dss.virginia.gov
marilyn.scott@dss.virginia.gov

- B.** Procedures and forms including the "Request for Criminal Background Form" and "Child Protective Services Central Registry Release of Information Form" can be found at – <http://www.dss.virginia.gov/facility/crf.cgi>

IV. FORMS TO BE SUBMITTED AND FEES REQUIRED:

A. Criminal Background Investigation: Each background investigation packet should be forwarded to OBI and should include the following:

- One request for Criminal Background Investigation form
- One fingerprint card
 - Paperclip all information together, do not staple
 - Do not fold fingerprint cards
- Business check, cashier's check or money order, placed on top of the investigation requests, for the appropriate fee based on the following breakdown:

Agency	Employee or Contract Service Provider	Volunteer
FBI	\$24	\$18
State Police	13	8
Office of Background Investigations (OBI)	13	10
Total Fee Due For Each Background Investigation	\$50	\$36

Facility checks or money orders should be made payable to the *Treasurer of Virginia*. Personal checks cannot be accepted.

(If an incorrect fee is forwarded by a facility, either the entire package will be returned or the facility will be contacted to obtain permission to retain any excess funds). OBI does not have a system to "credit" your account.

B. Child Abuse and Neglect Search: A complete packet, which consists of the following, should be submitted to the Office of Background Investigations:

- Request for Search of the Central Registry and Release of Information Form
- \$7 fee for each search

Facility or cashier's check should be made payable to the Virginia Department of Social Services.

NOTE: Personal checks are not accepted for the criminal background investigation or the central registry search. **Requests for criminal**

backgrounds requests and requests for the central registry searches may be sent together in one envelope to the Office of Background Investigations as long as separate checks are written and the fees and forms for the central registry search should be separated from the criminal background requests:

- one check for the criminal background investigation requests made payable to the "Treasurer of Virginia" and
- a second check for all the CPS central registry requests made payable to the "Virginia Department of Social Services."

Individuals **cannot work alone with children** until the child abuse and neglect information is received and evaluated by the facility. Individuals **cannot work with any children or at the Children's Residential Facility** until the criminal background information is received by the facility.

C. Returned Check Fee: If a check is returned for non-sufficient funds, there will be a \$50 charge. The facility will be notified of the returned check by telephone and/or letter. Since the bank requires that repayment be made within ten days, the facility should take **immediate action** to have a replacement bank check (guaranteed funds) or money order issued to cover the background investigation fee and returned check fee of \$50.

If a check is returned for insufficient funds, all future payments for background investigation requests must be accompanied by either a money order or a cashier's check.

V. IMPORTANT INFORMATION REGARDING FORMS:

A. REQUEST FOR SEARCH OF THE CENTRAL REGISTRY AND RELEASE OF INFORMATION FORM:

This form should be filled out completely and notarized or it will be returned. Please enter "N/A" for any items that are not applicable. If a record of a founded complaint is located, the Child Protective (CPS) representative will annotate the back of the form to that effect. You should contact the social services office noted on the form to obtain specific information about the complaint. Please contact your facility's regulator if you are unsure how the information you obtained will impact your hiring or retaining the individual concerned.

B. AUTHORITY FOR RELEASE OF INFORMATION – Criminal Background:

Courts, law enforcement agencies, and military departments may require this form before releasing missing dispositions and/or clarifying information regarding an arrest to the OBI. Some agencies require the release form to be notarized but other agencies require that their own release form be utilized.

For those reasons, **DO NOT complete this form** for each applicant **unless a request is made by the OBI.**

C. DISCLOSURE STATEMENT – Criminal Background:

An affirmation should be obtained from applicants concerning whether the individual has ever been convicted of **OR** is the subject of pending charges for any offense or has been the subject of a founded case of child abuse and neglect.

Facilities should ensure that individuals provide all requested information regarding arrest history, i.e. date of arrest, offense, identity of court, and city and state in which offense took place. It is not sufficient for applicants to list non-specific information such as "domestic dispute" or "drug conviction."

Facilities should discuss with each individual the list of barrier crimes that would prevent the individual from being hired by the facility.

If facilities have other policies in place, such as terminating an individual for falsifying information on the Disclosure Statement, those policies should also be disclosed.

NOTE: The Disclosure Statement is for the facility's use/records and SHOULD NOT be submitted to OBI.

D. REQUEST FOR CRIMINAL BACKGROUND INVESTIGATION FORM

This form should be filled out completely and legibly or it will be returned. The form should be signed by the facility's point of contact prior to submission to the OBI. **NOTE: A signature is required on each form.**

E. FINGERPRINT CARDS

1. One fingerprint card should be submitted to OBI in order to obtain Virginia and national criminal history checks. Fingerprint cards should be filled out completely and legibly or they will be returned.
2. **It is mandatory that the facility name, address, and identification number as well as the reason fingerprinted be either typed on a label and adhered to the card or printed legibly.**
3. One of the following entries should be shown in the reason fingerprinted section:
 - **Juvenile Facility Applicant – VA Code § 63.2-1726**
 - **Juvenile Facility Volunteer – VA Code § 63.2-1726**

NOTE: No other reason or comments should be shown in this section.

4. Applicant's name and personal identifying information may be handwritten but only if block-style printing is used. The full name of the person should be shown at the top of each fingerprint card. If the person does not have a middle name, enter "(NMN)" in that area. If the person has only an initial instead of a first or middle name, enter "(IO)" in that area. Parenthesis is to be included.
5. The applicant's prints should be affixed to fingerprint cards. Any qualified individual may take the prints. Options include: (a) having prints taken by a local law enforcement agency [§19.2-392 of the *Code of Virginia* sets a maximum fee limit of \$10 for police authorities to provide this service], and (b) the facility contracting with or employing a qualified individual to take prints. The individual taking prints must verify the identity of the applicant. An official identification card bearing the applicant's picture can be used to verify identity. A valid driver's license is preferred.
6. If an amputation or deformity makes it impossible to print a finger, it is recommended by the FBI that one of the following handwritten notations be made in the individual finger block:
 - Amp (Use this abbreviation if amputated)
 - Tip-Amp (Use this abbreviation if tip is amputated)
 - Missing at Birth
 - Cut-Off
 - Shot-Off
 - Deformed
 - Missing

If some physical condition makes it impossible to obtain perfect impressions, submit the best that can be obtained with a memo stapled to the card explaining the circumstances.

If an agency is aware of a disability, it is recommended that they give the individual 2-3 cards to take to the police official and have 2 different officials take the prints-the agency can hold the extra cards for processing if the prints reject.

7. Facilities are encouraged to take the steps necessary to ensure the individual taking prints is qualified to do so. All prints must be taken in proper order and be legible, fully rolled and classifiable. All data called for is essential. When a fingerprint card contains any accidental or additional markings or overlapping fingerprints, the scanning equipment will attempt

to read the markings as fingerprint minutiae. The State Police recommends that a new card be completed. Due to the scanning process, print-over tabs should not be used and reprints may not be done on the reverse side of the card. Smudged or other unacceptable prints cannot be processed and will be returned to the facility.

8. All aliases must be listed on the fingerprint cards. This would include maiden name, former married name, etc. If an applicant has a change of name during the background investigation process, any subsequent fingerprint cards should show the name **initially used** to avoid confusion between a name entered in the database and a name used by the State Police or FBI for billing purposes. When there has been a recent name change, the current name should be shown in the **aliases section** of the fingerprint cards.
9. Citizenship entries of fingerprint cards must indicate the country of citizenship such as "US." **Do not enter yes or no.** It is not necessary to list alien registration numbers on any paperwork submitted to the Office of Background Investigations (OBI). NOTE: Individuals with "Green Cards" are not U.S. citizens but have been granted permanent U. S. residency.
10. Staples, labels or markings of any kind should not appear in the "LEAVE BLANK" areas of fingerprint cards. Failure to follow this procedure will result in processing delays according to the FBI. (Do not fold cards).
11. The FBI has furnished the following race categories which **must** be utilized:

<u>Race</u>	<u>Code</u>
American Indian or Alaskan Native	I
Asian or Pacific Islander	A
Black	B
White	W

If race is Hispanic, other, or any other category not listed, then it should be entered with the race code most closely representing the individual.

12. **Miscellaneous Number section of fingerprint cards should be left blank.**
13. Fingerprint cards from other agencies should not be used as each agency has its own identification number imprinted and the result of the fingerprint check is returned to the agency whose name and identification number are shown on the card.
14. The reason fingerprinted shown on the fingerprint cards should match the reason printed on the Background Request Form. The only two

categories are "Applicant" and "Volunteer." Other terms such as "intern" should not be used.

15. The facility identification number should be shown on the fingerprint cards and on the request forms.

The fingerprint is a legal document. White out should never be used on the card. If an error is made that can be corrected, place a line through the information and write the correct information above or beside the field.

Fingerprint cards that have previously been processed should not be submitted again. If fingerprints were taken and the card was never submitted or processed, the prints are valid for one year from the date they were taken. (This is based on guidance from the Virginia State Police).

VI. PROCESSING OF BACKGROUND INVESTIGATION BY OBI

Background investigation packets for both criminal and central registry background investigations are reviewed to determine if they are complete. Incomplete or unreadable background investigation packets will be returned to the facility for completion or correction unless the problem(s) can be resolved with a telephone call or simple correction.

VII. REJECTED FINGERPRINT CARDS

If a fingerprint card is rejected by the State Police or by the FBI, a different person/official should attempt to obtain good prints. Having a different person take the prints is necessary if a facility wishes to obtain permission to discontinue further reprints. Local authorities and the State Police have scanning equipment to take prints which may increase the quality for a resubmission.

Reprints must be submitted within two weeks after receiving the rejection notification in order to complete the background investigation process and thus be in compliance with the state law.

Note: If an individual is no longer under consideration by the CRF, it is mandatory that OBI be notified in order to close the case.

A check or money order for the appropriate fee must accompany the re-submission of a fingerprint card. The fees are based on the following breakdown:

Agency	Licensed CPA
FBI (1 st Re-submission)	\$ 0
FBI (Covers 2 nd & 3 rd Re-submission)	24
State Police	0
Processing Fee	0

VIII. REQUEST TO DISCONTINUE REPRINTS

If fingerprints continue to reject by the Virginia State Police or by the FBI then a request to discontinue form may be submitted to the OBI once the following has occurred:

- Prints have **rejected three** times by the **Virginia State police** or
- Prints have **rejected two times** by the **FBI**, (this scenario is if the Virginia State Police has processed/cleared the prints and only the FBI is rejecting).

This form will initiate a national name search. Once the request is approved and the name check has been completed, a final screening letter will be sent to the facility for retention in the facility's file. If the request to discontinue prints is denied a letter will be sent to the facility indicating this information). (**See procedures and form for conducting a request to discontinue on the OBI website**).

IX. PROCESSING OF FINGERPRINT RESULTS BY THE OBI:

A. The results of the State Police and FBI investigations are forwarded to public sector facilities. Public facilities will also receive an eligibility letter. (See Section B.1, B.2, and B.3 for additional information.)

B. Private sector facilities are notified of the individual's status based on evaluation of the information received from the State Police and the FBI. One of the following letters will be generated:

1. "Eligible" means one of the following regarding the individual:

- Does not have any criminal record
- Has not been convicted of any barrier crime listed in the state law
- Does not have any charges pending for any barrier crime listed in the state law.
- Has a barrier conviction listed in § 63.2-1726 and meets the criteria to be approved based on the exceptions listed in the *Code of Virginia*.

2. "Not Eligible" means one of the following regarding the individual:

- The individual has been convicted of a barrier crime listed in § 63.2-1726.
- Is the subject of pending charges for a barrier crime listed in § 63.2-1726.

3. "Adequate Information Is Not Available/Unable to determine" means

- The individual was, at some time, either charged or arrested with a crime listed in the state law and the OBI was unable to obtain a disposition or that the OBI was unable to determine the nature of the arrest. OBI has researched through all available state and local record-keeping systems and has not been able to determine whether the applicant was convicted of the crime. However, adequate information to make a determination is not available when:
 - The disposition has not been reported by the court to the State Police/FBI.
 - The record has been purged or destroyed by the court.
 - OBI is unable to comply with the court's requirements for researching its records and releasing the disposition. The individual may or may not have been convicted of the crime.
 - OBI was unable to determine if a listed arrest/conviction is a barrier offense because of lack of information shown on the arrest history and inability to obtain clarifying information from courts and law enforcement agencies.

4. "Administratively Closed Case" which means the applicant:

- Is no longer under consideration by the CRF/process discontinued; or
- Case has been in-active for 90 days.

As a general rule, if the Virginia State Police fingerprint check resulted in a no record or the arrest history did not list any barrier crimes, the arrest(s) that caused one of the above letters to be issued was reported by another state or possibly a federal agency (including the military). On rare occasions, an arrest is not listed on either the state police or FBI arrest records but is developed during the investigation through another source, i.e. court or police.

X. EVALUATING CRIMINAL BACKGROUND INVESTIGATION RESULTS:

OBI is responsible for screening the Virginia and FBI records for facilities. Only public facilities are allowed by law to receive a copy of the actual results of the FBI fingerprint check.

If the facility receives a “Not Eligible” letter on an individual, this individual shall not be hired by the facility and shall not perform volunteer or contractual services at the facility.

Anyone with a founded case of child abuse or neglect shall not be hired by the facility and shall not perform volunteer or contractual services.

XI. REQUESTING A COPY OF THE CRIMINAL HISTORY RECORD:

A. FBI:

If an individual wants to request a copy of their FBI criminal history record, they can visit the FBI website at:

http://www.fbi.gov/about-us/cjis/background-checks/background_checks
or
www.fbi.gov

B. VIRGINIA STATE POLICE:

If an individual wants to request a copy of their Virginia criminal history record, they can visit the Virginia State Police website at:

http://www.vsp.state.va.us/CJIS_Criminal_Record_Check.shtm
or
www.vsp.virginia.gov

XII. CHALLENGING CRIMINAL BACKGROUND RESULTS:

If, after reviewing the identification record, the individual believes it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make direct contact with the agency (court, law enforcement agency, etc.) that contributed the questioned information.

A. FBI:

If an individual is denied employment or the opportunity to provide volunteer or contractual services because of information appearing on the individual's FBI record **and** it comes to the individual's attention that **he is not the person of the record, the individual may initiate a challenge** of the information contained in the record. The facility is required by state and federal laws to provide the individual with a copy of the challenge procedures. The challenge procedures can be found at:

<http://www.fbi.gov/about-us/cjis/background-checks/challenge-of-a-criminal-record>

B. VIRGINIA STATE POLICE:

In instances where it comes to an individual's attention that his name or other descriptive information is a matter of record in the CCRE and **he is not the person of the record, then the individual may initiate a challenge** of the information contained in the record. An individual should report this information to a local sheriff, police or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record.

The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letterhead paper that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address:

Manager
Central Criminal Records Exchange
Virginia Department of State Police
P. O. Box 27472
Richmond, VA 23261-7472
www.vsp.virginia.gov
(804) 674-2000

Within five workdays, the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modification(s) taken, if applicable.

It is the policy of the CCRE to correct or otherwise modify a criminal record after receiving notification from the contributor of the record of the change to be initiated. Upon receipt of information that a record is in error, CCRE staff will initiate an audit of the record and coordinate corrections or modifications directly with the contributing agency. The time to complete this process varies depending on how expeditiously CCRE is officially advised by the contributor that a change to a record is appropriate. CCRE will not accept corrections or changes to a criminal record from sources other than the criminal justice agency (contributor) that submitted the record.

Reports to a facility from the OBI can be modified only after the individual challenges his record, it is corrected by the court or law enforcement agency, and the correction reported by the court/agency to the State Police or FBI. The facility should then submit a request for a new background investigation along with a new fee to the Office of Background Investigations (OBI) in order to obtain an accurate record.

If an applicant admits having a barrier conviction or pending barrier charge, he is not entitled to proceed with the challenge procedure. In addition,

§ 63.2-1726 of the *Code of Virginia* does not contain any provision for an appeal or challenge.

Applicants should not be told to contact the Office of Background Investigations for more information. The facility should provide the individual with a copy of the barrier crimes and refer them to either the State Police or FBI website to request a copy of their criminal record.

XIII. SAFEGUARDING AND DISPOSING OF CRIMINAL HISTORY RECORDS:

State and Federal laws prohibit secondary dissemination of criminal history records by facilities. Facilities are permitted to let an individual see the results of the State Police and FBI fingerprint checks but are not permitted to furnish copies to anyone.

Facilities must safeguard both the records and their content. **Records must be destroyed when they have served the purpose for which they were obtained.** They may not be maintained in personnel files unless they are kept for a specific reason for documentation purposes and they must be kept in a secured area. Information is obtained from the State Police and FBI for the specific purpose of determining whether to use the individual as an employee, a contractual service provider, or a volunteer.

XIV. DOCUMENTATION TO BE RETAINED BY FACILITIES:

After the results of the Virginia State Police **AND** the FBI fingerprint checks are sent to a facility (or reprints are discontinued), the criminal investigation is considered closed. To document that it has complied with the requirements of state law(s), facilities should keep the following documents after an investigation is closed:

- Copy of Request for Criminal Background Investigation Form, indicating date submitted to the OBI (at least until results letters are received.)
- Letters transmitting results of the State Police and FBI fingerprint checks
- Facility Request to Discontinue Reprints form (if utilized)
- Request for Search of the Central Registry and Release of Information Form
- Disclosure Statement

These documents may be retained in the individual's personnel file. The facility is responsible for safeguarding the documentation to prevent its dissemination.

XV. MULTIPLE PROGRAM POLICY:

Facilities are reminded that criminal background investigations conducted under § 63.2-1726 of the *Code of Virginia* can legally be conducted only on employees, volunteers, and contractual service providers who will be affiliated with a children's

residential facility operated or regulated by the Departments of Education; Behavioral Health and Developmental Services; or Social Services. Organizations that operate multiple programs **should not** request the OBI to process requests for criminal background investigations on individuals under § 63.2-1726 who work for other programs sponsored by the organization, but who have no connection to the children's residential program.

XVI. COMMUNITY SERVICE BOARD (CSB) BACKGROUND INVESTIGATIONS:

On July 1, 1997, § 37.1-197.2 of the *Code of Virginia* concerning background investigations on CSB employees became effective. As a result of this law, CSB's must conduct fingerprint checks on **all direct care employees**.

Virginia Code § 63.2-1726, under which the Office of Background Investigations (OBI) conducts criminal background investigations, stipulates that fingerprint checks will be done on **all employees, as well as, volunteers and contractual service providers who are alone with one or more children on a regular basis**.

All CSB background investigations on volunteers and contractual service providers who work in a children's residential facility and who are alone with one or more children on a regular basis, and employees who work in a children's residential facility who **do not provide direct care** must be processed through the OBI.

CSB's may process criminal background investigations on **direct care employees who are employed at the children's residential facility** either through this office or through the CSB procedure.

XVII. DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES (DBHDS) BACKGROUND INVESTIGATIONS:

Effective July 1, 1999, all DBHDS licensed providers are required to conduct criminal background investigations on all applicants who accept employment in compensated direct consumer care positions as required by § 37.2-416 & 37.2-314 of the *Code of Virginia*.

As of July 1, 2007 § 63.2-1726 of the *Code of Virginia* and § 37.2-416 & 37.2-314 of the *Code of Virginia* both contain identical barrier crimes. By submitting background requests to the OBI, facilities regulated by DBHDS will be meeting the requirements for § 63.2-1726 of the *Code of Virginia* **and** § 37.2-416 & 37.2-314 of the *Code of Virginia*.

XVIII. OFFICE OF BACKGROUND INVESTIGATIONS WEB SITE:

Information regarding the Office of Background Investigations (OBI) may be found at <http://www.dss.virginia.gov/facility/crf.cgi>