

STATE BOARD OF SOCIAL SERVICES
BACKGROUND CHECKS FOR CHILD WELFARE AGENCIES

22 VAC 40-191-40. Identifying who is covered by this regulation.

A. This regulation applies to:

1. Licensed family day homes;
2. Licensed family day systems;
3. Family day homes approved by family day systems;
4. Licensed child-placing agencies;
5. Licensed independent foster homes;
6. Foster and adoptive homes approved by child-placing agencies;
7. Voluntarily registered family day homes; and
8. Religious exempt child day centers.

B. Background checks are required at the time of initial application.

1. These background checks are required at the time of application for licensure, registration, or approval:

Who	What	When
Any applicant	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon application for licensure or registration as a child welfare agency
Any agent at the time of application who is or will be	Same	Same

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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 of the children		
Any other adult living in the home of an applicant for licensure or registration as a family day home, or any existing employee or volunteer	Same	Upon application for licensure or registration as a family day home
Prospective foster or adoptive parent	Same	Upon request for approval by child-placing agency
Operator of family day home requesting approval by family day system	Same	Upon request for approval by family day system
Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home	Same	Upon request by operator for approval by family day system

Specific information related to persons aged 14 to 18 is found in subdivisions C 4 and 5 of this section.

2. These background checks are required at the time of initial application for religious exemption status:

Who	What	When
Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent-volunteer, as defined in this regulation, or a parent or guardian who may be left alone with his or her own child	Documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check	With the written request for religious exemption status

3. These background checks are required prior to the placement of a child who is in a foster care placement with the child's birth parent:

<u>Who</u>	<u>What</u>	<u>When</u>
<u>Birth parent of a child in a foster care placement</u>	<u>Sworn statement or affirmation, search of central registry, and criminal history record</u>	<u>Prior to placement of a child in foster care with the child's birth parent</u>

	<u>check</u>	
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C. Background checks are required after the initial licensure, registration, approval, or receipt of religious exemption status.

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

Who	What	When
New person designated as applicant, licensee, registrant, approved individual, 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, approved individual, or registrant changes
	Search of central registry and criminal history record check	Before the end of 30 days after the change
Any employee of a licensed, registered, and 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

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Any applicant, licensee, approved individual, agent, employee, volunteer, and person living in the home who is required to have background checks	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
Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home	Sworn statement or affirmation, search of central registry and criminal history record check	90 days before the date of application for renewal of the current certificate of registration (The application for renewal must be received by the contracting organization no later than 45 days before the expiration of the current certificate of registration.)
Volunteer at licensed, registered,	Sworn statement or affirmation	Prior to first day of service at the facility

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or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed, registered, or approved program	Search of central registry and criminal history record check	Before 30 days of service at the facility elapses
Foster parent or other adult member of the household	Search of central registry	If child-placing agency staff believe it is necessary

A person whose most recent background checks were before 1990 must request new checks by the end of December 2004. A person whose most recent background checks were from 1991 through 1995 must request new checks by the end of December 2005. A person whose most recent background checks were from 1996 to the present must request new checks by the end of December 2006, or before five years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report, whichever is the shorter period of time.

2. These background checks are required after receipt of the initial religious exemption status letter.

Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:

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Who	What	When
Prospective employee, volunteer, or any other person who is expected to be alone with one or	Sworn statement or affirmation	Before employment or commencement of service at the facility
more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child	Search of central registry and criminal history record clearance check, as requested by the individual	Within 30 days of employment or commencement of service
Employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child	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

~~A person whose most recent background checks were before 1990 must request new checks by the end of December 2004. A person whose most recent background checks were from 1991 through 1995 must request new checks by~~

~~the end of December 2005. A person whose most recent background checks were from 1996 to the present must request new checks by the end of December 2006, or before five years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report, whichever is the shorter period of time.~~

3. Background checks are required for independent contract employees and employees hired by a contract agency.

If a licensed, registered, 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, registered, 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.

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

Who	What	When
Person living in: The home of an applicant*, The home of a licensed or registered family day home provider,	Sworn statement or affirmation	When person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old
A foster home approved by a licensed child-placing agency, An independent foster home, or an adoptive home approved by a licensed child-placing agency, until the adoption is final	Search of central registry and criminal history record check, as requested by the individual	Within 30 days of an 18-year-old beginning to reside in the home or a person in the home becoming 18 years old
* Note: This does not apply to applicants for family day systems, licensed child-placing agencies, and religious exempt child day centers.		

5 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
Person living in: An applicant’s home, Home of a licensed or registered family day home provider, A foster home approved by a licensed child-placing agency, An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final	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

Exception: A person 14 years of age to 18 years of age who is placed in a foster home by a child-placing agency is not required to have a search of the central registry.

6 5. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, 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 family day home or foster or adoptive home.

Exception: See provisions for contracting agencies at subdivision C 3 of this section.

7 6. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.

8 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.

22 VAC 40-191-50. 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 family day homes as specified in 22 VAC 40-191-40.

1. A satisfactory sworn statement or affirmation is:

a. A fully completed original that states that the person:

(1) Does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years; and

(2) Is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and

b. When there is no other knowledge that the individual has an unsatisfactory background.

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 of Founded Child Abuse/Neglect Investigations 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 or other felony convictions in the last five years; and

b. There is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

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 22 VAC 40-191-90.)

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 ~~or moral turpitude~~, 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 the birth parent, when the child is in a foster care placement.

B. Background checks results are not open ended.

1. When a minor living in a family day home turns 18, the operator is responsible for making sure that the 18-year-old complies with all background check requirements for adults. (22 VAC 40-191-40 C 4)
2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, Background checks are required every three years for all other persons required to have background checks. (See 22 VAC 40-191-40 C.)
3. 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 person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.
4. 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.
5. The facility, department, or registering 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:

- a. A barrier crime conviction in Virginia or elsewhere;
- b. A felony conviction that is not for a barrier crime within the last five years in Virginia or elsewhere; or
- c. A founded complaint of child abuse and neglect in Virginia or elsewhere.

6. When the facility, department, or registering or approving authority chooses to require a new background check:

- a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child welfare agency until the child care provider or licensing, registering, 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 a barrier crime conviction, a felony conviction in the last five years, or has a founded complaint of child abuse and neglect, the facility, department, or registering 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. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, Waivers waivers of some criminal convictions are possible.

Refer to 22 VAC 40-191-90 through 22 VAC 40-191-130 for an explanation of the waiver.

22 VAC 40-191-90. 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, with the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, but who is disqualified because of a criminal conviction, or a criminal conviction in the background check of any other adult living in a family day home governed by this regulation, may apply in writing to the commissioner of the department for a waiver.

The requirements found in 22 VAC 40-191-100 through 22 VAC 40-191-170 also apply to licensed child day care centers.

B. A person may apply for a waiver if:

1. A nonbarrier crime felony conviction occurred less than five years previously;
or

2. Any other adult living in the home of a family day home applicant or provider has been convicted of not more than one misdemeanor offense of assault and battery or assault and battery against a family or household member. (See §§ 18.2-57 and 18.2-57.2 of the Code of Virginia.) The other adult must not be an assistant or substitute provider. See 22 VAC 40-191-50 A for an exception that applies to prospective adoptive parents.

C. Except as provided in 22 VAC 40-191-50 A, no person guilty of a barrier crime may operate or volunteer or work at a licensed child care center or facility governed by this regulation.