

OFFICE OF INTERDEPARTMENTAL REGULATION

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

Departments of Education; Mental Health, Mental Retardation
and Substance Abuse Services; and Social Services

July 1, 2007

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. BACKGROUND INVESTIGATION UNIT:

A. HOURS OF OPERATION:

The Background Investigation Unit 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 day worked.

B. POINTS OF CONTACT:

Angela Pearson, Senior Legal Assistant
Telephone: 804-726-7099
E-Mail: angela.pearson@dss.virginia.gov

Marilyn Suber, Legal Assistant
Telephone: 804-726-7092
E-Mail: marilyn.suber@dss.virginia.gov

OFFICE FAX: 804-726-7095

C. EMERGENCY POINT OF CONTACT:

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

D. MAILING ADDRESS:

Office of Interdepartmental Regulation
Background Investigations
7 North Eighth Street
Richmond, VA 23219

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

II. FACILITY POINT OF CONTACT

Each facility should designate one criminal background investigation contact person. All correspondence and questions from the Background Investigation Unit 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 Background Investigation Unit.

III. ORDERING FINGERPRINT CARDS AND OTHER FORMS:

- A.** Fingerprint cards and related forms should be requested through the Background Investigation Unit
- B.** Child abuse and neglect search forms should be requested through the Department of Social Services. The complete name of the form is "Request for Search of the Central Registry and Release of Information Form" and it may be requested using one of the following methods:
- Telephone – 804-726-7549
 - Mail – Virginia Department of Social Services, Child Protective Services Unit, 7 North 8th Street, 4th Floor, Richmond, VA 23219
 - Internet – <http://www.dss.virginia.gov>

IV. **FORMS TO BE SUBMITTED AND FEES REQUIRED:**

A. Background Investigation: Each background investigation packet, which consists of the following, should be forwarded to the Background Investigation Unit:

- Request for Criminal Background Investigation form
- One fingerprint card
 - Paperclip all information together, do not staple
 - Do not fold fingerprint cards
- Appropriate fee – business check, cashier check, or money order, only.

A breakdown of these fees is as follows:

Agency	Employee or Contract Service Provider	Volunteer
FBI	\$24	\$18
State Police	13	8
Background Investigation Unit	13	10
Total Fee Due For Each Background Investigation	\$50	\$36

Facility check or money order 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. The Background Investigation Unit 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 Virginia Department of Social Services:

- Request for Search of the Central Registry and Release of Information Form
- \$5 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 by either of the above offices.

Individuals **cannot work alone with children** until the child abuse and neglect information comes back from the Department of Social Services. Individuals **cannot work with any children** 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 \$25 charge. The facility will be notified of the returned check by telephone and 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 \$25.

NOTE: Any future payments for background investigation requests must be accompanied by either a money order or bank check (guaranteed funds)

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:

Courts, law enforcement agencies, and military departments may require this form before furnishing missing dispositions and/or clarifying information regarding an arrest to the Background Investigation Unit. Some agencies require the release form to be notarized but other agencies require that their own release form be utilized. For those reasons, It is **not** necessary to have this form completed and signed by each applicant unless a need arises and you are asked to obtain one.

C. DISCLOSURE STATEMENT:

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. **This form should be obtained prior to an individual beginning his duties.**

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.” Details are required not only to aid you in making a hiring decision but to aid the Background Investigation Unit when requesting disposition data and/or clarifying information from a court or law enforcement agency.

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 and **should not** be submitted with the background investigation request.

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 Background Investigation Unit. **NOTE: An original signature is required on each form.**

E. FINGERPRINT CARDS

1. One fingerprint card should be submitted to the Background Investigation Unit 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 imprinted by computer on the card.** The files for imprinting this information can be furnished to you by the Background Investigation Unit by the following method:

- Furnish your e-mail address
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.

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 Background Investigation Unit. 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.
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 status entry shown on the fingerprint cards should match that shown on the Request Form. The only two categories are "Applicant" and "Volunteer." If you submit a background investigation for a volunteer but enter applicant on the fingerprint card, the Background Investigation Unit will be billed \$50 even though you paid only \$36. Other terms such as "intern" should not be used.
15. The facility identification number should be shown on the fingerprint cards and request forms. Facilities not regulated under the *Interdepartmental Standards* have a five-digit number that begins with 999.

VI. PROCESSING OF BACKGROUND INVESTIGATION BY THE BACKGROUND INVESTIGATION UNIT

Background investigation packets are reviewed by a Legal Assistant who determines if they are complete. If complete, the fingerprint cards are scanned to the State Police for processing and fees are deposited to pay State Police invoices. Incomplete background investigation packets will be returned to the facility for completion unless the problem(s) can be resolved with a telephone call or simple correction by a Legal Assistant.

VII. REJECTED FINGERPRINT CARDS:

If a fingerprint card is rejected by the State Police or by the FBI, a different person 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. After the fingerprints have been rejected as follows, a Facility Request to Discontinue Reprints form may be submitted to the Background Investigation Unit:

- **Three** times by the state police.
- **Two** times by the FBI

The Background Investigation Unit representative will verify the information provided. If a name check has not been done by the FBI, it will be requested by this office. Once the request is approved, the form will be returned to the facility along with a letter for retention in the facility's file. The request will be returned for appropriate action if not approved.

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 affiliated with a facility, it is mandatory that the Background Investigation Unit 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. PROCESSING OF FINGERPRINT RESULTS BY THE BACKGROUND INVESTIGATION UNIT:

- A.** The results of the State Police and FBI investigations are forwarded to public sector facilities.
- 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.
 - 2. "Not Eligible"** means one of the following regarding the individual:
 - The individual has been convicted of a barrier crime listed in the state law
 - Is the subject of pending charges for a barrier crime listed in the state law.

3. “Adequate information is not available to determine whether the applicant is eligible or not eligible” means:

- The individual was, at some time, either charged or arrested with a crime listed in the state law or the Background Investigation Unit was unable to determine the nature of the arrest. The Background Investigation Unit 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. 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 by the court.
 - The Background Investigation Unit 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.
 - The Background Investigation Unit 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.

X. EVALUATING BACKGROUND INVESTIGATION RESULTS:

The Background Investigation Unit is responsible for screening the FBI record for private facilities. Public facilities; however, are allowed by law to receive a copy of the actual results of the FBI fingerprint check results and are responsible for screening the record themselves. If a public facility receives a FBI record containing an arrest history, it is responsible for requesting missing dispositions for offenses that could be screenable. It is also important to follow up on failure to appear and contempt charges if the nature of the original offense is not readily apparent. The Background Investigation Unit may be contacted for assistance in obtaining names and addresses of courts and other agencies.

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. CHALLENGING BACKGROUND RESULTS:**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** the individual wishes to challenge 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. Copies of the challenge related letters may also be provided. The request for a copy of the FBI identification record should be mailed by the individual via the U.S. mail directly to the FBI, Criminal Justice Information Services Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26036. The letter requesting an identification record should include a brief reason for the request and be accompanied by a money order or bank certified check in the amount of \$18 made payable to the Treasury of the United States, a set of rolled-inked fingerprint impressions placed upon fingerprint cards commonly utilized for applicant or law enforcement purposes by law enforcement agencies, and satisfactory proof of identity, which shall consist of name, date and place of birth.

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 application directly to the agency (court, law enforcement agency, etc.) that contributed the questioned information. If the applicant chooses, he may send his challenge directly to the FBI at the above address who will then forward it to the agency which submitted the data, requesting that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI will make any changes necessary in accordance with the information supplied by that agency.

B. VIRGINIA STATE POLICE:

If an individual needs to obtain a copy of his Virginia criminal record, contact the State Police using information listed below. 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 a 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.

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 in either the state police or FBI arrest records but is developed during the investigation through another source, i.e. court or police.

Reports to a facility from the Office of Interdepartmental Regulation 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 to the Background Investigation Unit 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.

Applicants should not be told to contact this office for more information. Information regarding arrest histories cannot be discussed because of federal and state dissemination laws.

XII. 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. 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.

XIII. 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 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 Background Investigation Unit
- Letters transmitting results of the State Police and FBI fingerprint checks
- Facility Request to Discontinue Reprints form (if utilized)
- CPS search 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.

XIV. MULTIPLE PROGRAM POLICY:

Facilities are reminded that 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; Mental Health, Mental Retardation, and Substance Abuse Services; or Social Services. Organizations that operate multiple programs **should not** request the Background Investigation Unit to process requests 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.

XV. 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 Background Investigation Unit operates, 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 Background Investigation Unit.

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

XV. DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (DMHMRSAS) BACKGROUND INVESTIGATIONS

Effective July 1, 1999, all DMHMRSAS 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* (formally 37.1-183.3 prior to October 1, 2005.)

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 Background Investigation Unit, facilities regulated by DMHMRSAS 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*.

XVII. OFFICE OF INTERDEPARTMENTAL REGULATION WEB SITE:

Information regarding the Office of Interdepartmental Regulation and Background Investigation Unit may be found at <http://www.interdepartmentalregs.virginia.gov>. This site contains answers to frequently asked questions. In addition, request for Criminal Background Investigation forms and Disclosure Statements may be downloaded.

Any questions regarding these procedures may be directed to the Background Investigation Unit.