

CHAPTER 191
MINIMUM STANDARDS FOR BACKGROUND CLEARANCES
FOR CHILD WELFARE AGENCIES

PART I
INTRODUCTION.

22 VAC 40-191-10. Definitions.

The following words and terms, when used in conjunction with this chapter, shall have the following meanings:

“Applicant for approval” means the person or persons applying for approval as (i) a family day home approved by a family day system or (ii) a foster or adoptive home approved by a licensed child-placing agency.

“Applicant for licensure or registration” means the person or persons applying for licensure or registration. In the case of a sole proprietorship, the applicant is the individual owner. In the case of partnership, the applicants are all the partners. If the applicant is a corporation, limited liability company, public agency or similar entity, the applicant must designate at least one individual who must comply with the applicant’s obligation on its behalf.

“Approved” means having obtained the status of approval through the process required in Minimum

Requirements for Family Day-Care Systems, 22 VAC-40-180-10 et seq. or Minimum Standards for Child-Placing Agencies, 22 VAC 40-130-10 et seq. Approved facilities are (i) family day homes approved by licensed family day systems or (ii) foster and adoptive homes approved by licensed child-placing agencies.

“Background clearances” means a sworn disclosure statement, a criminal record report, and a central registry report on child abuse and neglect.

“Barrier crimes” means convictions specified by ? 63.1-198.1 of the *Code of Virginia* and are listed in this chapter under 22 VAC 40-191-30.

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

“Central registry report” means the information resulting from a search of the Child Abuse and Neglect Central Registry.

“Child Abuse and Neglect Central Registry” means the information system containing founded cases of child abuse and neglect within the Commonwealth of Virginia.

“Child abuse/neglect history record request” means the Virginia Department of Social Services, Child Protective Services Unit form used to authorize the Department to generate a central registry report on a person.

“Child welfare agency” means, as defined in ? 63.1-195 of the *Code of Virginia*, a child day center, child day center system, child-placing agency, child caring institution, family day home, family day system, or independent foster home.

“Commissioner” means the Commissioner of the Virginia Department of Social Services,

“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 center.

“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.

“Contracting organization” means an agency that has been designated by the Department of Social Services to administer the voluntary registration program for family day homes.

“Criminal history record request” means the Department of State Police form used to authorize the State Police to generate a criminal record report on a person.

“Criminal 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 reports are on convictions within the Commonwealth.

“Department” means the Department of Social Services.

“Department representative” means an employee of the department that carries out regulatory duties or an agency acting as an authorized agent of the Department of Social Services carrying out approval functions. Licensed family day systems and licensed child-placing agencies have approval authority.

“Disqualifying background” means having (i) ever been the subject of a founded complaint of child abuse or neglect even if his record has been purged from the Child Abuse and Neglect Central Registry system or (ii) a barrier crime conviction. For purpose of this regulation, no person shall be 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 shall be 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.

“Employee” means a person hired by a facility. A provider assistant in a family day home shall be considered an employee in this chapter.

“Facility” means a (i) licensed family day home; (ii) licensed family day system; (iii) licensed child-placing agency; (iv) licensed independent foster home; (v) voluntarily registered family day home; (vi) family day home approved by a licensed family day system; (vii) foster and adoptive home approved by a licensed child-placing agency; and (viii) religious exempt center.

“Good character and reputation” means that the person (i) maintains business, professional, family, and community relationships which 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.

“Involved in the day-to-day operations of the center” means being:

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. a person who provides casework services for a child-placing agency; or
4. a home visitor employed by a licensed family day system.

“Licensed” means having obtained licensure through the Department of Social Services as required in General Procedures and Information for Licensure, 22 VAC 15-80-10 et seq.

“Other person or persons officially involved in the operations of a religious exempt center” means agents of the religious institution and members of the governing board who are involved in the day-to-day operations of the child day center or who are alone with, in control of, or supervising one or more children.

NOTE: The governing board is the board having decision-making authority over the operation of the center.

“Parent-volunteer” means someone supervising, without pay, a group of children which includes the

parent-volunteer's own child in a program of care which 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 ? 63.1-198.1 or ? 63.1-198.2 of the *Code of Virginia*.

"Registered" means having obtained a registration as required in the Voluntary Registration of Family Day Home Requirements for Contracting Organizations, 22 VAC 40-170-10 et seq.

"Religious exempt center" means an unlicensed child day center operated or conducted under the auspices of a religious institution that has filed with the Commissioner of Social Services an annual statement of intent to operate a child day center and other information as specified in ? 63.1-196.3 of the *Code of Virginia*.

"Sex offense felony for family day homes" means a crime listed in ? 63.198.3 of the *Code of Virginia* that prohibits a sex offender or child abuser to reside in a family day home. Such person can not be convicted of a felony violation of the Code ?? 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1, or 18.2-374.1 or be the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A description of the Code sections are abduction; actual or attempted rape; carnal knowledge of a child between thirteen and fifteen years of age; carnal knowledge of a juvenile under

the purview of the Juvenile and Domestic Relations District Court or juvenile committed to the custody of the State Department of Juvenile Justice; actual or attempted forcible sodomy or object sexual penetration; aggravated sexual battery; attempted sexual battery; taking or detaining a person or consenting to the taking of a person for prostitution or unlawful sexual intercourse; crimes against nature; incest; abuse and neglect of incapacitated adults; taking indecent liberties with children; abuse and neglect of children; indecent liberties by a person in a custodial or supervisory relationship; and production, publication, sale, possession with intent to distribute, financing, etc. of sexually explicit items.

“Sworn disclosure statement” means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of a barrier crime within the Commonwealth or equivalent offense outside the Commonwealth, or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Additionally for family day homes, the person affirms if he, or if he knows that any person who resides in the home, has a sex offense conviction or is 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 *Code of Virginia* §§ 63.1-197, 63.1-198, 63.1-198.1, and 63.1-198.2.

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

22 VAC 40-191-20. Licensed child day center systems.

Licensed child day center systems shall follow the regulations set forth in 22 VAC 15-051-10 et seq.

22 VAC 40-191-30. Barrier crimes specified by § 63.1-198.1 of the Code of Virginia.

A. Crimes as set out in the Code of Virginia:

1. Murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
2. Malicious wounding by mob as set out in § 18.2-41;
3. Abduction as set out in § 18.2-47 A;
4. Abduction for immoral purposes as set out in § 18.2-48;
5. Assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

6. Robbery as set out in § 18.2-58;

7. Car jacking as set out in § 18.2-58.1;

8. Extortion by threat as set out in §18.2-60;

9. Any felony stalking violation as set out in § 18.2-60.3;

10. Sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

11. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

12. Burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2;

13. Any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

14. Drive by shooting as set out in § 18.2-286.1;

15. Use of a machine gun in a crime of violence as set out in § 18.2-289;

16. Aggressive use of a machine gun as set out in § 18.2-290;

17. Use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A;

18. Pandering as set out in § 18.2-355;

19. Crimes against nature involving children as set out in § 18.2-361;

20. Incest as set out in § 18.2-366;

21. Taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1;

22. Abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314;

23. Obscenity offenses as set out in § 18.2-374.1;

24. Possession of child pornography as set out in § 18.2-374.1:1;

25. Electronic facilitation of pornography as set out in § 18.2-374.3;

26. Abuse and neglect of incapacitated adults as set out in § 18.2-369;

27. Employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379;

28. Delivery of drugs to prisoners as set out in § 18.2-474.1;

29. Escape from jail as set out in § 18.2-477;

30. Felonies by prisoners as set out in § 53.1-203.

B. A felony other than those specified in subsection A of this section for which a person has been convicted in the five years prior to the application date for employment, staff volunteer service, approval, registration, or licensure.

EXCEPTION: For a religious exempt center, rather than five years prior to application date for employment, it shall be five years prior to the date of employment, volunteer service, or serving as an officer or board member.

C. Convictions include:

1. Prior adult convictions;

2. Juvenile convictions and adjudications of juvenile delinquency, if the offenses involved would have been barrier crimes had the offender been an adult at the time of the offense.

D. Convictions in other states that are equivalent to those specified in this section.

PART II.

PERSONS AFFECTED BY BACKGROUND CLEARANCES.

22 VAC 40-191-40. Persons affected by background clearances.

A. The following persons, for facilities defined in this chapter, shall have background clearances and are affected by provisions of this chapter:

1. Applicants for licensure or licensees;

2. Applicants for approval or individual or individuals approved;

3. Applicants for registration as a voluntarily registered family day home or the registrants;

4. Persons who are (i) alone with, in control of, or supervising one or more children, or (ii) involved the day-to-day operations of the facility as:
 - a. Employees;
 - b. Contract employees;
 - c. Officers and board members;

5. Volunteers who are alone with children in the performance of their duties; and

EXCEPTION: Parent-volunteers as defined Part I, Definitions, 22 VAC-40-191-10 are not required to have background clearances.

6. Adults, persons age 18 years or older, residing in an applicant's home or in the home of (i) a licensed family day home; (ii) a voluntarily registered family day home; (iii) a family day home approved by a family day system; (iv) an independent foster home; or (v) an adoptive or foster home approved by a licensed child-placing agency.

EXCEPTION to subsection A: Persons affected by background clearances for religious exempt child day centers are addressed in Part VI, 22 VAC 40-191-80 B.

B. Persons age 14 or over who reside in an applicant's home or in the home of a (i) licensed family day home or (ii) family day home approved by a family day system, are required to have a central registry report. No sworn disclosure or criminal record report is required until the person turns age 18.

NOTE: Provider assistants in family day homes are considered employees who are covered in subdivision A 4 of this section.

PART III.

BACKGROUND CLEARANCES AT INITIAL APPLICATION.

22 VAC 40-191-50. Background clearances at initial application for licensure, registration, or approval.

A. The following facilities are subject to background clearances. This section is for applicants for licensure, registration, or approval.

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

NOTE: Requirements for background clearances for religious exempt child day centers are covered in Part VI, 22 VAC 40-191-80 of this chapter.

Requirements for background clearances for licensed child day centers and child day center systems are in separate regulations. Background clearances for certified pre-schools are in ? 63.1-196.3:1 of the Code of Virginia. Background clearances for child caring institutions are in ? 63.1-248.7:2 of the Code of Virginia.

B. The applicant or applicants shall obtain background clearances on all the persons listed in Part II, 22 VAC 20-191-40, prior to initial licensure, registration, or approval of a facility.

C. The facility shall inform the person that background clearances are being obtained.

D. For employees, contract employees, and volunteers, who begin employment or volunteer service prior to initial licensure, registration, or approval, the facility has 21 days from the date of employment or volunteer service to obtain the criminal record report and the central registry report. The facility shall not be penalized if the facility has submitted the criminal history record request and child abuse/neglect history record request within seven days of the person being employed or volunteering.

E. A facility cannot be licensed, registered, or approved if a person listed in Part II, 22 VAC 40-191-40 has a disqualifying background.

F. Additionally, an applicant for (i) licensure as a family day home; (ii) approval as a family day home by a family day system; or (iii) registration as a voluntarily registered family day home shall state on the sworn disclosure if he has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth or if he knows that any other person, regardless of age, who resides in the house has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

PART IV.

BACKGROUND CLEARANCES AFTER INITIAL LICENSURE, REGISTRATION, OR

APPROVAL.

22 VAC 40-191-60. Background clearances after initial licensure, registration, or approval.

A. This section applies to facilities listed in Part II, 22-VAC-40-191-50 A.

B. After licensure, registration, or approval, the facility shall obtain background clearances for persons listed in the following table. The following table states when each clearance is required.

<u>Required For</u>	<u>Sworn Disclosure</u>	<u>Criminal History Report</u>	<u>Central Registry Report</u>
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	<u>a.</u>	<u>b.</u>	<u>c.</u>
<u>For persons who are (i) alone with, in control of, or supervising one or more children or (ii) are involved day to day operations of the facility as:</u>			
<u>1. Employees</u>	<u>Prior to employment</u>	<u>Within 21 days of employment</u>	<u>Within 21 days of employment</u>
<u>2. Contract Employees</u>	<u>Prior to providing service at the facility</u>	<u>Within 21 days of when first provide service at the facility</u>	<u>Within 21 days of when first provide service at the facility</u>
<u>3. Officers & Board Members</u>	<u>Prior to serving</u>	<u>Prior to serving</u>	<u>Prior to serving</u>
<u>4. Volunteers who are alone with children</u>	<u>Prior to volunteering</u>	<u>Within 21 days of volunteering</u>	<u>Within 21 days of volunteering</u>

C. Facilities using contract employees whether independent contractors or those connected with a contract agency shall either obtain background clearances or:

1. View the required background clearances supplied by the agency or independent contractor;
2. Write on the criminal record report copy that it is a photocopy of an original that the center verified; and
3. Accept a background clearance that is not dated more than 12 months prior to the date on which the contractor begins providing services at the facility.

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D. Additionally for a (i) licensed family day home; (ii) voluntarily registered family day home; (iii) family day home approved by a licensed family day system; (iv) licensed independent foster home; or (v) an adoptive or foster home approved by a licensed child-placing agency, the operator shall obtain background clearances when a person age 18 years or older begins residing in the home or turns age 18 years old. The following table states when each clearance is required.

<u>Required For</u>	<u>Sworn Disclosure</u> <u>1.</u>	<u>Criminal History Report</u> <u>2.</u>	<u>Central Registry Report</u> <u>3.</u>
<u>A person age 18 or older begins residing In the home or a person in the home turns age 18</u>	<u>When a person begins residing or turns 18</u>	<u>When the person begins residing or turns age 18</u>	<u>When the person begins residing or turns age 18</u>

E. Additionally for (i) licensed family day homes; (ii) family day homes approved by a licensed family day system; or (iii) voluntarily registered family day homes, the operator shall obtain or request a central registry report when a person age 14 to 18 years old begins residing in the home or a person in the home turns age 14. The table below states when each clearance is required.

<u>Required For</u>	<u>Sworn Disclosure</u> <u>1.</u>	<u>Criminal History Report</u> <u>2.</u>	<u>Central Registry Report</u> <u>3.</u>

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<u>A person age 14 to 18 begins residing in the home or a person in the home turns age 14</u>	<u>Not required until a person turns age 18</u>	<u>Not required until a person turns age 18</u>	<u>When the person begins residing or turns age 14</u>
<u>The operator shall obtain all background clearances for persons age 18 years and older as required in subsection C of this section.</u>			

F. Voluntarily registered family day homes shall obtain background clearances prior to each renewal of registration. These clearances shall be included with the application for renewal.

G. If the person or persons designated as the applicant; licensee; approved individual or individuals; or registrant or registrants changes, the facility shall obtain background clearances on the new designated person or persons.

H. The facility shall not be penalized if the facility has submitted the criminal history record request and child abuse/neglect history record request within seven days of the person being employed or volunteering.

I. The facility shall inform the person that background clearances are being obtained.

PART V.

CONSEQUENCES ASSOCIATED WITH BACKGROUND CLEARANCES.

22 VAC 40-191-70. Consequences associated with background clearances.

- A. This section applies to facilities listed in Part II, 22 VAC-40-191-50 A.

- B. No facility shall permit a person listed in Part II, 22 VAC 40-191-40, to assume or maintain his duties with the facility if the facility has knowledge that the person has a disqualifying background.

- C. Additionally, no (i) licensed family day home; (ii) voluntarily registered family day home; or (iii) family day home approved by a licensed family day system may be or remain licensed, registered, or approved if a person residing in the home has been convicted of a sex offender felony or is the subject of a founded complaint of child abuse or neglect.

- D. The department or department representative may impose sanctions or deny, suspend, or revoke the licensure, registration, or approval if the facility fails to comply with terms of this chapter.

- E. If a person is denied employment or a facility is denied approval, because of information appearing in a background clearance, the facility or the department, as appropriate, shall provide the person with a

copy of the documents upon which the facility or department relied in making its determination.

F. If the Department becomes aware that a person listed in Part II, 22 VAC 15-051-40 has a disqualifying background, the department shall be permitted to release this information to the facilities, which have a legitimate interest.

PART VI.

BACKGROUND CLEARANCES FOR RELIGIOUS EXEMPT CHILD DAY CENTERS.

22 VAC 40-191-80. Background clearances for religious exempt child day centers.

A. The sponsoring religious institution for the religious exempt center shall provide to the commissioner, with its statement of intent to operate a child day center, documentation that the center and institution are in compliance with the requirements of § 63.1-198.2 relating to background clearances.

B. When making the request for exemption, the center shall have obtained background clearances for the following persons:

1. The person who signs the statement of intent to operate a child day center;

2. Persons who are (i) alone with, in control, of or supervising one or more children or (ii) involved in the day to day operations of the facility as:

- a. Employees;
- b. Contract employees; and
- c. Officers and board members; and

3. A volunteer who is alone with children in the performance of his duties.

EXCEPTION: A sworn disclosure statement is not required for volunteers

EXCEPTION: Parent-volunteers as defined Part I, Definitions, 22 VAC 40-191-10, are not required to have background clearances.

C. The religious exempt center shall obtain background clearances for new employees, contract employees, volunteers, officers and board members as defined in subsection B of this section. The following table states when each clearance is required.

<u>Required For</u>	<u>Sworn Disclosure</u> <u>a.</u>	<u>Criminal History Report</u> <u>b.</u>	<u>Central Registry Report</u> <u>c.</u>
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<u>1. Employees of the center</u>	<u>Prior to employment</u>	<u>Prior to employment</u>	<u>Prior to employment</u>
<u>2. Contract employees</u>	<u>Prior to providing service at the facility</u>	<u>Prior to providing service at the facility</u>	<u>Prior to providing service at the facility</u>
<u>3. Officers and board members</u>	<u>Prior to serving</u>	<u>Prior to serving</u>	<u>Prior to serving</u>
<u>4. Volunteers</u>	<u>Not required for volunteers</u>	<u>Prior to volunteering</u>	<u>Prior to volunteering</u>

E. Centers using contract employees whether independent contractors or those connected with a contract agency shall either obtain background clearances or:

1. View the required background clearances supplied by the agency or independent contractor;
2. Write on the criminal record report copy that it is a photocopy of an original that the center verified; and
3. Accept a background clearance for that is not dated more than 12 months prior to the date of when the contractor begins providing services at the center.

E. The center shall inform the person that background clearances are being obtained.

F. The center shall prohibit a person listed in subsection B of this section to assume or maintain his duties if the person has a disqualifying background.

G. The department may revoke the religious exempt status if the center fails to comply with this regulation.

H. If a person is denied employment because of information appearing in a background clearance, the center shall provide the person with a copy of the documents upon which the center relied in making its determination.

I. If the Department becomes aware that a person listed in Part II, 22 VAC 15-051-60 or the licensee has a disqualifying background; the department shall be permitted to release this information to the centers, which have a legitimate interest.

J. §§ 22 VAC 40-191-90 through 22 VAC 40-191-170 applies to religious exempt child day centers as stated in each section.

PART VII.

VERIFYING BACKGROUND CLEARANCES.

22-VAC 40-191-90. Verifying background clearances.

A. Background clearances shall be considered valid only if the clearance meets the following criteria:

	<u>CRITERIA FOR BACKGROUND CLEARANCES</u>	
	<u>Document</u> <u>a.</u>	<u>From</u> <u>b.</u>
<u>1. Sworn disclosure statement</u>	<u>Original statement using either Department of Social Services model form or appropriate facility developed form</u>	<u>The person completing the statement</u>
<u>2. Criminal record report. The report at minimum shall be a criminal record clearance for the barrier crimes</u>	<u>Original report</u>	<u>State Police Central Criminal Record Exchange</u>
<u>3. Central registry report</u>	<u>Original or copy of report</u>	<u>Department of Social Services Child Abuse & Neglect Central Registry</u>

B. A facility shall not accept a required criminal record report or a central registry report that is dated more than 90 days prior to the date of employment, volunteering, serving as an officer or on the board, residing in the home, or approval of a family day home or foster and adoptive home.

- C. The department shall not accept a required criminal record report or a central registry report for the 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 when the person designated as the applicant or licensee changes.
- D. All background clearances shall be kept confidential. The facility administrator, board president, licensee, registered provider, or his designee shall receive reports on employees, contractors, and volunteers.
- E. The facility designee shall review all background clearances and be charged with knowledge of all information contained in the clearance. The department shall verify the background clearances for applicants of licensure and licensees.

PART VIII.

DURATION OF BACKGROUND CLEARANCES.

22 VAC 40-191-100 Duration of background clearances.

A. If a person leaves a facility and the criminal record report or central registry report is 90 days old or less, the person may take the report or reports with him. The facility shall retain a copy of the report or reports. The facility shall write on the criminal record report copy that it is a photocopy of an original that the facility verified.

B. A background clearance shall remain valid at the facility as long as no more than 12 months have elapsed from when a person:

1. Began a leave of absence;

2. Was terminated from employment; or

3. Was transferred to a center owned and operated by the same employer or entity.

Once a period of 12 consecutive months has expired, new background clearances shall be obtained.

C. When an officer or board member changes positions within the board or organization, additional background clearances are not required.

PART IX.

MAINTENANCE OF BACKGROUND CLEARANCES.

22 VAC 40-191-110. Maintenance of background clearances.

A. Background clearances shall be made available by the facility to the department representative upon request.

B. The background clearances shall be maintained at the facility where the person is an employee, contract employee, volunteer, or officer or board member.

C. A facility shall maintain at the primary work place, or designated location, the required background clearances.

D. If a facility is not a primary work place for a person, the facility shall maintain at a designated location the following:

1. A copy of the central registry report,

2. An original sworn disclosure statement, and

 3. A copy of the original criminal record report with a statement that the facility designee has viewed and verified the original.
- E. Background clearances shall be maintained for one year after a required person terminates his duties with the facility or no longer resides in the home.

PART X.

THE WAIVER.

22 VAC 40-191-120. General provisions.

- A. Persons disqualified from operating, working, or volunteering at a religious exempt center or child welfare agency facility as listed in Part III, 22 VAC 40-191-50 because of (i) a child abuse or neglect founded complaint or (ii) conviction of a felony within the five years prior or the application date for licensure, registration, employment, volunteer service, or approval may apply in writing for a waiver from

the commissioner.

EXCEPTION: The commissioner shall not grant a waiver to a person who has been convicted of the crimes specifically excepted by the Code of Virginia § 63.1-198.4. These are listed in 22 VAC 40-191-30 A 1-30 and qualified in C and D.

B. The commissioner may grant the waiver if he determines that:

1. The person is 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.

C. A waiver granted shall be available for inspection by the public.

D. The facility shall provide a copy of the waiver to every parent and guardian of the children in its care for a waiver granted for its operators, employees, or volunteers.

22 VAC 40-191-130. The application.

A. The application shall consist of a personally prepared waiver request and other documents required by this section.

B. The waiver request shall be submitted in typewritten form and shall include the following:

1. A statement that the request was solely and personally prepared by the requester and that the content has neither been edited nor altered by another person, provided, however, that the document may have been 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 of the children in its care if the waiver is granted.

3. A statement that the requester understands that information in the waiver request and accompanying documents will be made available by the commissioner to any person upon request if the waiver is granted.

4. Personal and employment information including:

**VIRGINIA DEPARTMENT OF SOCIAL SERVICES
MINIMUM STANDARDS FOR BACKGROUND CLEARANCES
FOR CHILD WELFARE AGENCIES - 22 VAC 40-191-10 et seq.**

a. Name;

b. Address;

c. Home number, work number, and other contact information;

d. Social security number;

e. Birth date;

f. Listing all members of the household and their relationship;

g. Current employment; and

h. Employment history.

5. A factual account of the child protective services founded complaint or crime for which the requester was convicted, including the type of complaint, crime, dates, locales, circumstances, etc.

6. A factual explanation of the requester's history and current status with relevant justice systems or

the child protective service agencies.

7. Any other information the requester wishes the commissioner to consider, such as training, treatments, interests hobbies, community involvement, etc.

8. An explanation of why the requester thinks the waiver should be granted, for example, how granting it would benefit all affected parties.

9. Notarized signature and date.

C. The application, which may include additional documents at the requester's discretion, shall include the following:

1. A non-refundable check, made payable to the Treasurer of Virginia, in the amount of \$50 for application processing.

2. A copy of the criminal history screening report that was the basis for disqualification.

3. A copy of all necessary documents verifying the requester's statements regarding past and

current involvement with relevant justice systems or child protective service agencies, for example, court orders, discharge papers, parole status reports, etc.

4. A statement by the sponsoring agency or facility, which specifies:

a. Type of position for which the requester is being considered;

b. Rationale for its decision to offer or consider employment, volunteer service, or approval to the person;

c. Rationale for believing that accepting the person would be in the consumer's interest; and

d. The sponsoring agency's plan for supervision and monitoring of the person's performance if accepted.

5. At least four references who will vouch for the requester's good character and reputation.

Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

NOTE: See 22 VAC 40-191-10 for definition of good character and reputation.

6. A statement by the sponsoring agency that it will, if the waiver is granted and the person is accepted, conscientiously comply with all posting and notification requirements for the duration of the waiver.

D. The requester shall be responsible for submitting the application to the commissioner.

22 VAC 40-191-140. Evaluation of the request.

A. The commissioner may delegate all aspects of processing and evaluating the request, provided that responsibility for making the final decision may not be delegated below the level of a division director.

B. The commissioner will evaluate the request and base his conclusions on at least the following considerations:

1. Content of all submissions;

2. Nature of the disqualifying background and relevance to decision criteria;

3. Extent and pattern of criminal history or child abuse or neglect, including the age at commission and length of time since the disqualifying background event or events occurred; and

4. In the case of prospective foster parents for a licensed child-placing agency, a review of the criminal record requirements of the Safe Families and Adoption Act of 1997 to determine if this federal law would permit a waiver.

C. The commissioner may request additional information that is reasonable and necessary to evaluate the application.

D. The commissioner may interview the applicant or other persons in the course of conducting an investigation sufficient to verify and evaluate the information received.

E. The commissioner may attach stipulations to the granting of the waiver that he may deem advisable, such as restrictions on the type of position, type of children in the person's care or proximity, nature of supervision required, etc.

22 VAC 40-191-150. The decision notification process.

A. Notifications shall be sent concurrently to the requester and the sponsoring agency.

B. The commissioner will acknowledge, in writing, receipt of the application and will notify the requester and the sponsoring agency whether the request appears to be complete.

C. The commissioner will notify the requester and the sponsoring agency of his decision in writing by certified mail.

D. If granted, the waiver shall be issued for a specific person and a specific facility or agency and shall include the following:

1. Name of person,

2. Name of facility or agency,

3. Effective dates,

4. Terms and conditions,

5. Stipulations, if any,

6. Criminal conviction or child abuse or neglect founded complaint for which waiver was granted,

7. Date of criminal conviction or child abuse or neglect founded complaint,

8. Relevant court and location,

9. Sentence served; and

10. Signature of commissioner and date.

E. If the waiver application is denied, the requester shall be advised of the reasons for the denial and that appeal provisions are available under the Administrative Process Act.

F. The commissioner shall consider an application abandoned and close the file, without the requester

having recourse to appeal, when the following circumstances exist:

1. More than 60 days have elapsed since the commissioner advised the requester and the sponsoring agency that the application was incomplete or since the commissioner requested additional information reasonably necessary to evaluate the application; and

2. The commissioner warns the requester by certified mail that the application shall be ruled abandoned unless the requester responds with complete information within 15 days.

22 VAC 40-191-160. Modification, revocation, and expiration.

A. The person and the sponsoring agency may request a modification to the waiver if a change is desired for any of the terms, conditions, or stipulations. The commissioner will respond to the modification request after the information he requires is provided.

B. The commissioner may revoke a waiver if, after investigation, he determines that:

1. The application contained false, deceptive, or misleading information;

2. The terms, conditions, or stipulations of the waiver have been violated; or

3. New or expanded information becomes known about the person that would change the previous decision made about the person's character, reputation, or suitability to work with or in proximity to children.

C. If a waiver is revoked, the commissioner shall advise the person and the sponsoring agency, by certify mail, of the reasons for the revocation and the appeal provisions available to the requester in the Administrative Process Act.

D. A waiver shall automatically expire when one of the following circumstances exists:

1. The person terminates the approved arrangement with the sponsoring facility; or

2. Five years from the last date of a conviction, for the felony or felonies for which the waiver was granted.

22 VAC 40-191-170. Posting and parental notification.

A. A facility employing staff, allowing volunteers, or operated by a person whose disqualification has been waived by the commissioner shall post a copy of the waiver in a prominent place at each public entrance.

B. For a person for whom a waiver was granted, at the time the person accepts employment, volunteer service, or is allowed to begin operating a facility, the facility shall provide a copy of the waiver to every parent and guardian of the children in its care.

C. Prior to enrollment, each parent or guardian of a child who is a prospective new admission to a facility shall be provided, by the facility, a copy of a waiver granted for its employees, volunteers, or operators.

D. A child-placing agency shall provide a copy of the waiver to the parents or other legal guardian if their child is placed with a foster parent whose disqualification has been waived by the commissioner.

E. In parental placement adoptions, a child-placing agency shall provide a copy of the waiver to the birth parents if their child is to be placed with an adoptive parent whose disqualification has been waived by the commissioner.

F. In agency adoptions, a child-placing agency shall provide the birth parents with a written notification that a waiver has been granted to the adoptive parent. The notification shall only provide information about the nature of the conviction or founded complaint, but shall not give identifying information about the adoptive parent to the birth parents.