

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Screening of Child-Care Personnel

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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Report of the Joint Subcommittee Studying
Screening of Child-Care Personnel
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
1987

To: Honorable Gerald Baliles, Governor of Virginia,
and
The General Assembly of Virginia

AUTHORITY FOR THE STUDY

House Joint Resolution No. 98, agreed to by the 1986 General Assembly, establishes a joint subcommittee to study the practice of investigating adults who seek to work with children in order to identify those adults with relevant criminal histories. (Appendix A) The joint subcommittee is directed to develop and report recommendations to the 1987 General Assembly regarding the types of facilities which should screen applicants, the crimes and other acts for which applicants should be screened, and uniform screening procedures.

BACKGROUND

In response to publicized reports of child sexual abuse by adults in positions of authority in schools and child-care facilities, twenty-five states, including Virginia, have enacted laws requiring criminal background checks on applicants for jobs in child-care facilities. This state legislative activity was also stimulated by the passage by Congress of P.L. 98-473 in late 1984. This legislation made available a portion of a \$25 million appropriation under Title XX of the Social Security Act for child-care and child abuse prevention training to any state enacting legislation requiring criminal background checks on applicants for employment by certain child-care facilities.

Virginia's process, described below, has resulted in the screening of 16,715 records between the legislation's July 1, 1985, effective date and May 29, 1986. Of that number, three clearances were refused because of two convictions for rape and one conviction for attempted rape, according to the Department of Social Services.

House Joint Resolution No. 98 was introduced in 1986 as a part of the legislative crime package proposed by the Governor and the Attorney General. The proposal sought to ensure effective and appropriate screening of child-care workers.

The Law in Virginia

Criminal record checks of persons seeking to work with children are performed in Virginia pursuant to §§ 19.2-389, 63.1-198, 63.1-198.1, 63.1-198.2, 63.1-199 and 22.1-296.1 of the Code of Virginia. The legislation was enacted in 1985 with amendments in 1986. The law prohibits licensed "child-caring institutions" or "child-care centers" from hiring employees or utilizing volunteers who have been convicted of criminal sexual assault or of taking indecent liberties with children, under penalty of suspension or revocation of license. Before hiring an employee or volunteer, the employer must obtain from the applicant a certificate from the Commissioner of Social Services indicating that a criminal record review was performed and that the applicant has no record of convictions for the specified offenses.

"Child-caring institutions" are generally residential facilities, and "child-care centers" are primarily day-care facilities; the statute applies only to these licensed facilities. Unlicensed facilities may at their discretion require prospective employees or volunteers to provide criminal history record information and may refuse employment to persons convicted of the specified offenses. In addition, applicants for licensure by the Department of Social Services as a facility providing care to children shall not have been convicted of the specified crimes. Each applicant pays \$5.00 for the records search.

The 1986 amendments to the statute provide a fifteen-day grace period after hiring within which the required certificate must be obtained by the employer. The amendments also exempt from screening (i) those volunteers who will not be alone with children and (ii) all parent-volunteers, defined as persons supervising groups of children which include their own children, for no more than four hours per day and under the supervision of a "screened" person.

An internal policy of the Department of Social Services authorizes limited release of information from the child abuse central registry for employment purposes. The registry contains a listing of all investigated child abuse cases, categorized as "founded," "unfounded with reason to suspect," or "unfounded." The Department releases such information for employment purposes only to child-care agencies licensed in Virginia when the applicant has signed a release and is applying for employment involving direct care of children.

The Department of Social Services is also authorized by § 19.2-389 to investigate criminal records of prospective foster and adoptive parents and does so by departmental policy.

The law also requires each applicant for employment in public schools to provide certification that he has not been convicted of "any offense involving the sexual molestation, physical or sexual abuse or rape of a child."

Public school teachers are also required by the certification process, set out in departmental regulation, to disclose any felony convictions or any certificate revocations in other states. The Department of Education routinely checks a nationwide computer index of certificate revocations to screen applicants. The state regulations governing the certification process authorize revocation, suspension or denial of a certificate for conviction of a felony or of any misdemeanor involving moral turpitude, obtaining or attempting to obtain a certificate by fraud or through misrepresentation of material facts, or for falsification of any relevant records. The Department is granted discretion regarding certification of applicants who have committed any of these offenses. In addition, in any case in which a holder of a teaching certificate is known to be guilty of any of the offenses described above, whether convicted or not, the regulations authorize the filing of a complaint against teachers by anyone with such knowledge, but require the filing of a complaint by certain school personnel with such knowledge.

Federal Law

Congress passed in October, 1984, P.L. 98-473, which made federal child-care training funds available, for one year only, to states with procedures in effect for criminal records screening of applicants for child-care employment (Appendix B). The funds were to be used only for training of licensed or registered child-care providers, state licensing and enforcement officials and parents in child-care and child abuse prevention. To qualify to receive funds, states were required by P.L. 98-473 to have in effect by September 30, 1985, state law or regulation requiring employment history and background checks. The checks were to include review of nationwide criminal records for current and prospective operators, staff or employees of child-care facilities, including any program with custody of children at least twenty hours per week, and all juvenile detention, correction or treatment facilities. States not meeting these requirements by September 30, 1985, received only half their share of the additional funds.

Virginia's criminal records screening procedures, described above, did not comply with the requirements of P.L. 98-473, and, as a result, Virginia received only half of its proportionate share of \$589,599 in federal training funds that would have otherwise been available. State officials note that compliance may have cost Virginia more than the training funds it could have received as a result. Of the more than twenty states which have enacted legislation requiring some form of background check and which have applied for a grant, the Department of Health and Human Services (HHS) has approved only three grants to date.

Other relevant federal action includes issuance in 1985 by HHS of proposed regulations governing the release of information from state child abuse registries. The regulations propose expanding the list of persons to whom such information may

be released to include directors of state day care licensing agencies, day care centers and foster care and adoption agencies. Current regulations authorize release only to courts, grand juries, physicians, persons responsible for the welfare of children and child abuse investigating authorities. The proposal is intended to explicitly authorize use of this information for employment purposes. Currently, many states, including Virginia, are releasing registry information for this purpose with the implicit approval of HHS on the grounds that the receiving agencies are responsible for the welfare of children.

Other States

Of the many states which have enacted legislation requiring criminal records screening, there is great diversity among the provisions included. The statutes vary in addressing whose records should be examined; categories of employees, such as prospective and current or paid and volunteer workers; how records are screened, whether by fingerprints, name or reference checks; information which may be provided, such as nature of crime or offense; recording systems which may be accessed, such as state criminal files, state non-criminal child abuse files or federal files; safeguards provided for the subject of the check; and the effect that the results of the check have on the subject of the investigation, such as automatic or discretionary denial of licensure or employment.

ACTIVITIES OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee met throughout 1986. Extensive assistance was provided in the form of testimony and materials by the Office of the Attorney General, Department of Social Services, Virginia State Police, Virginia Department for Children, Virginia School Boards Association, Virginia Education Association, Fairfax County Public Schools and the Federal Bureau of Investigation. The Joint Subcommittee received information from advocacy groups, including SCAN (Stop Child Abuse Now, affiliated with the National Committee for the Prevention of Child Abuse), Childwatch Virginia, Virginia Association of Youth Child Care Education, Proprietary Child Care Association of Virginia, Virginia Child Care Workers Association, and the International Montessori Society. The Joint Subcommittee gratefully acknowledges the cooperation and contributions of these agencies and organizations.

The Joint Subcommittee also reviewed legislative and regulatory efforts of other states to address the issues presented. Federal statutory and case law and federal responses to the problem of child sexual abuse in child care programs were reviewed. Finally, the Joint Subcommittee examined the literature available from the many agencies and organizations which have addressed these issues, including the American Bar Association, the American Civil Liberties Union, and the Child Care Law Center.

The Joint Subcommittee's findings and recommendations follow. Legislation proposed to implement the recommendations may be found in Appendix E.

FINDINGS AND RECOMMENDATIONS

SCOPE OF THE PROBLEM

Discussion

The American Humane Association, the federally funded national reporting system on abuse, reports that 95-98% of known child abuse occurs in the home and is perpetrated by close relatives, family, friends or neighbors, 77% of whom are parents and 16% other relatives. Figures in Virginia are comparable, as reported by the Virginia Department of Social Services in its Analysis of Child Protective Services, Statistics and Report of Program Initiatives, July 1, 1983, to June 30, 1984, the latest completed and reported year. Of 16,000 total reported incidents of child abuse, 83.2% of abusers are parents, with foster parents and babysitters responsible for only about 2% of incidents. The Analysis also reports that 9.1% of these total incidents of abuse were identified as sexual abuse, either confirmed or suspected. Of these incidents, 77.4% of the perpetrators were related to the victim. Of the 22.8% who were unrelated perpetrators, most were foster fathers and babysitters. These figures indicate that most abuse, including sexual abuse, does not take place in child care programs at the hands of nonrelative child care providers, the target of prevention through use of criminal records checks.

Other data relates to the effectiveness of record checks to prevent abuse. The American Humane Association, in its National Study of Child Abuse and Neglect, reports that 78-92% of sexual abusers are male, while 95-97% of child-care workers are female, indicating that there will be fewer abusers in this population than in the general population. Dr. Vincent Fontana, a national child abuse expert, stated for the New York Times (Nov. 7, 1984) that less than 1% of child sexual abusers have criminal records at all and therefore would not be screened out when applying for child-care employment. The U. S. Department of Health and Human Services Office of the Inspector General, Region X, in its 1985 report, Preventing Sexual Abuse on Day Care Programs, National Program Inspection, reported on discussions with prosecutors, police and other experts familiar with forty-five persons charged with sexual abuse of children in day care facilities, including private homes and centers. They reported that a national records check would have screened out only one of the forty-five perpetrators.

The Department of Social Services pointed out to the Joint Subcommittee some of the reasons why so few sexual abusers will have criminal records. The practice of plea-bargaining results in some criminal records reflecting crimes less serious than sexual abuse. The Department reports that this practice seems especially prevalent when sexual abuse charges are involved. If a crime is

reduced to a misdemeanor, it will only appear in the federal or state records file if it is one of a certain number of serious misdemeanors. Criminal records on sexual abusers may also be misleadingly few in number because child sexual abuse is difficult to detect, as there are seldom witnesses, and children are afraid to report it. Such crimes are difficult to prosecute when children are involved in the legal proceedings. Also, in Virginia, the practice of checking state records will not eliminate abusers convicted in other states. The state record search is a name check only, so any incorrectly reported identifying information, such as a misspelled name or wrong birth date, may obscure a record which exists on that individual.

Also, many perpetrators are not subject to screening. Therefore, an existing record will be of no use in prevention of abuse. These include male relatives and friends in day care homes or foster homes, janitors and drivers in day care facilities, and personnel in unlicensed facilities.

The DHHS report cited above reports that only 8% of record searches reveal any criminal record at all for any kind of offense. California and New York, with the nation's oldest screening laws, report that only 1% of those screened have records of crimes that would make them potentially dangerous around children, according to The Child Crisis: Impact on the Schools, published in 1985 by Capitol Publications. In Virginia, the Department of Social Services has refused three applicants out of 16,715 based on criminal records between July 1, 1985, and May 29, 1986. The California Department of Social Services, which clears applicants for employment in childrens' board and care programs and day care programs, reports that in the past year, out of 90,000 applicants cleared, about 1500, or 1.6 - 2%, had records for any crime. Of those 1500, only about 600, or .6%, had a record for a relevant serious felony. These are state checks only. National record checks are done only in certain cases in which officials have reason to believe crimes might have been committed in other states. These statistics were not available, but may be higher. The California Department of Education, which has required state and national fingerprint checks of teachers prior to credentialing since 1951, reports that in FY 85-86, thirteen applicants for initial credentialing out of 21,363 total applicants were denied credentials. This is a .06% rate of denial. Denial rates in FY 84-85, FY 83-84 and FY 82-83 were .10%, .15% and .30% respectively. Of the thirteen denials in FY 85-86, convictions were for rape, unlawful intercourse, willful cruelty, indecent exposure and oral copulation (all involving children), theft of school property, drug offenses and fraud in application. These incidents were denials of initial credentials only. California has established a subsequent arrest notice system which automatically provides arrest and conviction records to education authorities on teachers already holding credentials. In FY 85-86, 133 credentials were revoked on the basis of criminal convictions.

The Department of Social Services reports that some pedophiles have probably been deterred from applying for child-care employment, although it is difficult to evaluate this effect. The manner of withdrawal of employment applications when a criminal history is requested, however, has left some officials with the impression that there has been some deterrent effect.

In assessing the significance of only three "hits" out of 16,715 record searches, it has been noted that rates of repeat offenses among pedophiles are thought to be very high, described as "extremely high" by Kenneth V. Lanning, Supervisory Special Agent of the Behavioral Science Unit of the F.B.I., in testimony before the U. S. Senate in 1984. Therefore, three convictions for child sexual abuse could actually represent a much higher number of offenses committed prior to conviction.

The Joint Subcommittee considered the cost of records screening. The Department of Social Services estimates the charge for a state check to the requester as about \$7.50, including a \$5 fee to the State Police and \$2 for the required notarization. At an estimated rate of 18,000 checks per year, this represents a total cost to requesting individuals or facilities of \$135,000. The Department estimates the cost to the State as about \$172,000, accounting for personnel, printing and data systems costs. These are costs of current screening practices. If other child care personnel are included, costs would rise.

Based on Department estimates, if a national check were required, at a \$14 fee per check for 1,000 checks per month, total costs to requesting individuals and facilities would be about \$168,000. Corresponding costs to the State would include time and staff required by the State Police to send fingerprint cards to the FBI and interpret federal records and determine relevant crimes. Costs to local law enforcement authorities, which include taking fingerprints and forwarding them to the State Police, have not been estimated. Delays associated with screening must also be added to the cost.

The Department of Health and Human Services, in its report cited above, estimated the cost of diverting abusers through a criminal records screening at about \$25,000 per abuser. This figure was reached by estimating the number of current child care employees at about one million nationwide. At an average national cost per state screen of \$13 and \$12 per national screen (fee has since been raised to \$14), the total cost is about \$25 million. Of those, about 5%, or 50,000, will have some criminal record. Only about .1%, or 1,000, will have a record containing convictions related to sexual abuse of children. Even at this cost, the screening will not catch abusers without criminal records or those who do not fall within the class of employees to be screened.

Finally, concerns have been expressed that the expense involved in criminal records screening will discourage competent, caring persons from applying for traditionally low-paying child-care positions.

Recommendation

The Joint Subcommittee recognizes limits to the effectiveness of criminal records screening to reduce the incidence of child sexual abuse, particularly in an institutional setting. However, the practice represents an effort which does keep a number of inappropriate applicants from employment in child-care settings and probably deters some dangerous persons from applying. The Joint Subcommittee wishes to ensure that the public is not lulled into a false sense of security based on the mistaken belief that screening will prevent such child abuse. Therefore, the Joint Subcommittee recommends that screening practices be maintained at least at their current level but be supplemented by prevention and treatment efforts, which should include increased state monitoring; education of children, parents, teachers and caretakers in identifying abuse and reacting appropriately; improved counseling to families at risk; improved treatment for victims and abusers; better judicial procedures which reflect developmental differences between adults and children; more vigorous prosecution of abusers; more involvement of parents in day-care programs; and prevention of abuse by staff training, checking of references and use of disclosure statements, use of probation for staff, and careful staff supervision, including maintenance of open spaces and prohibiting staff from being alone with children.

RECORDING SYSTEMS USED

Current record screening procedures in Virginia access only state criminal record files, contained in the Central Criminal Records Exchange (CCRE). This method provides information only on felonies and serious misdemeanors committed within Virginia. The search is a name check only, increasing the chances that a record will be misidentified or an existing record will not be located because of inaccurate identifying information. The Department of Social Services sees the latter as a greater potential problem. The Virginia State Police report that a fingerprint check would be significantly more accurate but would require twice the current staff within the force. A problem with any criminal record file is accuracy. The A.C.L.U. estimates that the rate of inaccurate disposition reporting in the states could be as high as 48%.

The State Police must now manually screen records to pull only those with the specified crimes appearing. They suggest sending the entire record to the screening agency or employer, which would then review the record. A privacy problem arises, however, when an entire and perhaps irrelevant criminal record is provided to the agency or employer.

Nationwide Checks

Northern Virginia school systems, especially Fairfax, Arlington, Loudoun and Alexandria, have requested authority to do national checks because of a transient applicant pool, a high percentage of which has lived in other states. A national criminal records check is possible through the F.B.I.'s record files, when authorized by state statute, upon payment of a fee of \$14 for each search. The file contains records of felonies and serious misdemeanors. The file can be accessed only with the submission of fingerprints, however, which must be taken by local law enforcement authorities. The fingerprint card is sent to the FBI by the Virginia State Police/CCRE. The full record, if one exists, is then sent back to the CCRE. Records include all arrest information accompanied by final dispositional data and arrest information less than one year old which is not accompanied by final dispositional data. Juvenile offenses are not included if the subject was tried as an adult. According to the FBI, processing requires from seven days to three months, but states using the system report that the usual time required is six to eight weeks.

The interpretation of FBI records requires a significant labor-intensive effort. Crimes may be disguised by the charge recorded, which will differ from state to state. Follow-up on the circumstances of the crime, not included on the file, may be required. A sexual offense against a child may be recorded simply as "assault" and, therefore, not be recognized as such.

The issue of accuracy of records is raised with federal as with state records. Data is provided voluntarily by state and local law enforcement agencies. The F.B.I. reports that California, for example, sends only about 40% of its records to the FBI. The Department of Health and Human Services (DHHS) reports that some states send 90% of their records and others only 15%. One state identification bureau reported that 100 out of 400 local law enforcement jurisdictions had not sent any data to the FBI for the entire year. In addition, some of the information reported to the FBI is not maintained. The ACLU estimates that 30% of FBI Identification Division records and 27% of FBI National Crime Information Center records lack up-to-date information on court disposition.

A third possible recording system available for employment and licensing purposes is the State Child Abuse Protective Service Central Registry (CPSIS). The DHHS reported that, as of January, 1985, fifteen states were using the registry for employment screening. The registry is used primarily by protective service personnel to track abuse victims and ensure provision of treatment and follow-up services. Listings are categorized as "founded," "unfounded with reason to suspect," or "unfounded." Founded records are kept ten years after the victim's eighteenth birthday and "unfounded with reason to suspect" listings are kept one year from the reporting date. In Virginia, the registry is currently

available for employment purposes to licensed public or private child-care agencies and to local social service agencies for processing day care, foster care and adoption applications or for residential placement of children. A signed release from the applicant is required. Statutory confidentiality requirements are complied with. There are a number of concerns with using the registry more widely for employment purposes. The intended treatment purposes of the register may be frustrated by such use, as social workers will be more cautious about including names when they know reports will be disseminated for other purposes. Names are included simply based on the professional judgment of an investigating protective service social worker. Denial of employment based on these listings may be a denial of due process rights as persons listed have never been charged or given an adequate opportunity to defend themselves. California began using the child abuse registry for employment screening on January 1, 1986. Since then, of 8,773 checks, they have positively identified sixty-five listed abusers. Only registry entries up to five years old are used, and California has extensive procedures to ensure accurate identification.

Recommendations

The Joint Subcommittee agreed not to expand screening to include nationwide criminal records. Statistics available from other states indicate that the expense of such checks, generally borne by low-paid child-care workers or the child care programs themselves, has not been justified by the results.

The Joint Subcommittee agreed not to use the state child abuse registry beyond its current use. The registry is a teaching and a therapeutic tool and its expanded use for employment screening would jeopardize its usefulness for its intended purpose.

The Joint Subcommittee recommends, however, that applicants for licensure or for employment in child-care facilities licensed by the Department of Social Services submit a sworn statement disclosing whether or not the applicant has ever been convicted of or the subject of pending charges for any of the crimes specified in the statute. A person making a false statement in the disclosure shall be guilty of perjury.

The Joint Subcommittee addressed the issue of reported inaccuracy of records systems by recommending that any information supplied to the Department of Social Services or a prospective employer which results in a determination adverse to the applicant be provided to the applicant. The applicant should then be provided an opportunity to correct any inaccurate information reported.

EMPLOYEES AND FACILITIES SUBJECT TO SCREENING

Current law requires screening of applicants, employees and volunteers in licensed "child-caring institutions," primarily residential facilities as defined in

§ 63.1-195, and "child-care centers," primarily day care programs as defined in that section. Also, applicants for licensure of these two types of facilities must be screened. Volunteers who will not be alone with any child in the performance of their duties are exempt, as are parent-volunteers. Applicants for employment and volunteers in unlicensed facilities may be screened at the discretion of the facility operator.

The Central Criminal Records Exchange (CCRE) is used to screen foster parents, adoptive parents, and adult household members with whom a child will have contact, pursuant to Department of Social Services policy. This procedure is completed at the time of the initial application and repeated at each renewal. The criminal records information may be obtained by the local social service agency without a notarized statement from the foster parents or adoptive parents and no fee is charged. However, for other adult household members, a notarized request and a \$5.00 fee is required.

The Virginia State Police Central Criminal Records Exchange will return the request form indicating either that no record was found or accompanied by conviction data which will include identifying information, contributing agency, date of occurrence, charge, and disposition. Information on foster parents and adoptive parents will include arrest and conviction information. Information on other adult household members will include conviction information only.

A foster parent's or an adoptive parent's application will be denied if a record of conviction is found for criminal sexual assault (Title 18.2, Chapter 4, Article 7) or taking indecent liberties with children (§ 18.2-370 or § 18.2-370.1). The local agency will exercise judgment in approving or denying applications when convictions of other felonies and misdemeanors are found.

Public schools must obtain a certified statement from applicants that they have not been convicted of certain crimes against children. The CCRE is available to local school boards for criminal records checks pursuant to a duly enacted local ordinance authorizing such checks.

In considering the scope of criminal records checks, the Department of Health and Human Services (DHHS) in its report cited above described the following possible national scenario of the volume of checks needed. The figures do not include family members; volunteers; support staff with access to children, such as janitors; or unlicensed day care. The U. S. Bureau of Labor Statistics reports that there are 1,041,000 employed child-care workers in the nation. Of these, 408,000 are in private day care homes and 633,000 in other programs; most of the latter are probably regulated. The 1981 National Day Care Home Study, published by DHHS, reported that of 1.3 million day care homes, only 10.6% were regulated. Employees in licensed private day care were

estimated at 10.6% of 408,000 homes, or 43,200 workers. Total employees in licensed day care, therefore, were estimated at 633,000 plus 43,200, or 676,200. With a 58.8% annual turnover rate in homes and a 41.7% rate in centers, about 908,409 persons were employed in licensed day care in the nation in 1985, all of whom must be screened. Any expansion of the list of programs required to screen applicants will raise this figure accordingly.

Recommendations

The DSS reports that licensed "child-caring institutions" and "child-care centers" include 805 facilities in Virginia, providing services to 60,000 children. These facilities represent only two of the categories of facilities licensed by DSS, which also licenses "child-placing agencies," "family day-care homes," "family day-care systems," and "independent foster homes," all of which serve a total of about 5400 children in about 900 facilities. The Joint Subcommittee recommends the screening of applicants for employment in and licensure of these programs. Only prospective employees in these programs should be included rather than screening all current employees.

The Joint Subcommittee considered requiring screening of all childrens' programs administered by other state agencies, including the Departments of Corrections, Health, Education and Mental Health and Mental Retardation, and the Division of Recreation and Parks. Estimates indicated that about 227,500 additional records checks would be required by such a change, without accounting for turnover (Appendix C). The Joint Subcommittee believes that such an effort is not advisable at this time. Both the Departments of Corrections and of Mental Health and Mental Retardation are requiring records checks of their employees by departmental policy.

About half, or 110,000, of these 227,500 additional employees are instructional and administrative and support personnel in the State's public schools. While the Joint Subcommittee does not recommend records checks for all these employees, it does recommend strengthening the current requirement that applicants submit a certified statement regarding criminal history by requiring that the statement be made under penalty for perjury. Conviction for perjury in such cases will result in revocation of an applicant's certificate to teach.

SPECIFICATION OF CRIMES IN THE STATUTE

Discussion

Currently, the Virginia statute screens out child care personnel who have been convicted of any crime categorized as criminal sexual assault in Article 7 of Chapter 4 of Title 18.2, or of taking indecent liberties with children whether or not in a custodial or supervisory relationship.

Arguably, persons convicted of numerous other crimes pose a danger to children. In determining additional crimes for which personnel should be screened, an important consideration is the relevance of the crime to the applicant's suitability for working with children. Appendix D contains a list of crimes for which child care applicants or employees screened between July 1, 1985, and April, 1986, have been convicted, as reported by the State Police. Because the crimes are not specified in the statute, they could not be reported to the Department of Social Services.

Recommendation

The Joint Subcommittee agreed that crimes for which applicants should be screened should be divided into two categories. Conviction of any crimes in the first category should be an absolute bar to employment; conviction of crimes in the second should be reported to authorities, which should investigate the circumstances and exercise discretion regarding the applicant's fitness for child-care employment.

The category of crimes which would absolutely bar employment now includes all crimes categorized as criminal sexual assault and the crime of taking indecent liberties with children. It should be expanded to include the following:

1. Murder (§§ 18.2-31, 18.2-32, and 18.2-33)
2. Neglect of children. (§ 18.2-371.1)
3. Production, publication, sale, possession, etc., of obscene items involving children. (§ 18.2-374.1)
4. Employment of or permitting a minor to assist in obscenity or related offense. (§ 18.2-379)
5. Abduction for immoral purpose (§§ 18.2-48 and 18.2-49)

A second category of crimes which may bar employment would be new to the statute. It should include the following crimes:

1. Manslaughter (§§ 18.2-35 and 18.2-36)
2. Abduction (§ 18.2-47)
3. Malicious wounding. (§ 18.2-51 et seq.)
4. Robbery. (§ 18.2-58)
5. Arson. (§§ 18.2-77 and 18.2-79)
6. Peeping or spying into structure occupied as dwelling. (§ 18.2-130)
7. Offenses related to drugs and drug paraphernalia. (§§ 18.2-255, 18.2-255.1 and 18.2-255.2)
8. Failing to secure medical attention for injured child. (§ 18.2-314)
9. Prostitution involving parent and child. (18.2-355)
10. Crimes against nature involving children. (§ 18.2-361)
11. Indecent exposure. (§ 18.2-387)

The Department of Social Services should continue to receive criminal record information rather than the employer. This protects privacy and provides greater expertise and uniformity in decision-making. The Department should decide for each applicant convicted of crimes in the discretionary category whether such applicant is fit for child-care employment. The decision should be made on the basis of guidelines in the statute, including time elapsed since commission, number of offenses, circumstances of commission that demonstrate unlikelihood of repetition, activities since conviction indicating rehabilitation, and character references. If the Department exercises discretion in the case of certain convictions, the statute should establish an appeals process for applicants denied licensure or employment.

SCREENING BY USE OF BEHAVIORAL PROFILES

Discussion

The Joint Subcommittee investigated the feasibility of identifying potential or actual child sexual abusers by use of a behavior profile similar to that used by airlines to identify potential hijackers. If such a tool could be developed and used, then only those applicants matching the profile would need to undergo thorough background checks.

Regarding legality of such screening, the few reported cases hold that "an anti-hijacking system which employed, in progression, the profile, magnetometer, interviews, and finally a weapons frisk, was constitutional." The profile must establish characteristics in which hijackers differ significantly from the air-traveling public; characteristics must be easily observed by airport personnel without exercising judgment. Characteristics must not discriminate against any group on the basis of race, religion, origin or political views and must be precisely designed to select only those who present a high probability of being dangerous, so that equal protection standards are not violated. In application, the observer cannot eliminate from or add characteristics to the profile, or objectivity and neutrality is lost, and the profile's use is unconstitutional. Profile use was also upheld because development procedures were accurate. Appropriate statistical, sociological and psychological data and techniques were utilized by the task force which developed it. The profile is continuously reevaluated in view of changes in hijacking practices.

The Joint Subcommittee conferred with Dr. John T. Dailey, a psychologist who contributed to the development of the hijacker profile while working for the Federal Aviation Administration, and with Dr. Charles Ullmann, a practicing clinical psychologist. They agreed that such a profile, while not now available, could be developed. Dr. Ullmann noted that most of the literature on child molestation deals with what can be done with, for and about the child or the molester after the event, but there is very little data on early identification

screening of potential child molesters within the general population. in general. A single, homogeneous typology has not emerged and child molesters do not appear to be a "breed apart" in the sense of presenting a well-defined disease group. Other than the sexual preference itself and inadequacies in interpersonal skills that set the stage for deviant preference, molesters do not make up a distinct personality type. Therefore, screening for potential child molesters would have to be based more on the tactics used by molesters to gain access to children than upon psychological attributes of molesters or a well-defined personality profile not shared with large numbers of non-molesters.

Screening is dependent upon gathering predictive information, usually judgments by others or data provided by the individual himself. As a general rule, ratings or judgments about people by observers tend to have relatively little in common with self-descriptions of feelings which are usually obtained by psychological tests taken by the individual. Both the circumstances under which screening for employment can be conducted and the nature of the child molestation phenomenon itself suggest that the focus should be upon observable evidence; that is, the search should be for disqualifying behavior rather than the disclosure of thought patterns and feeling states.

Dr. Ullmann described a process for using a behavioral profile to screen applicants. The process should involve collecting disqualifying information generated on the basis of total employment history rather than on criminal background investigations standing alone. Such employment history should be supplemented by a subsequent employment interview whenever gaps in information suggest a problem. The emphasis in the interview is on the gaps that cannot be explained and evidence of dissembling in the interview itself. Employers can apply these principles by requiring that each employment application include a full employment history and two references who know the applicant well and two additional references developed by prospective employers from all available sources. These four references should be checked with due regard to gaps in the employment record and traits or behaviors identified by the profile. A spousal reference check should be requested whenever the applicant has been married. An investigative or evaluative interview should be conducted focusing on gaps in the employment history, with special attention to those features suggested by the profile.

Current research indicates that characteristics which a profile may identify as consistent with a child sexual abuser may include premature separation from the military, frequent and unexpected moves, prior arrests for various offenses, difficulty in performing sexually with adults, limited dating relationships if not married, excessive interest in children and children's activities, courting behavior toward children, or limited or transitory peer relationships.

Recommendation

The Joint Subcommittee agrees that further study was needed of the issues raised by development and use of behavioral profiles to identify potential child sexual abusers and, therefore, recommends that the Departments of Education and of Social Services and the Attorney General's Office study the feasibility of developing such a profile. The study should examine, among other issues, the likelihood of discovering traits or behaviors which child sexual abusers share, the legality of using a profile in employment screening, the ability of child-care employers to apply the profile, and the cost of developing the profile compared to benefits derived.

Respectfully submitted,

Delegate Clifton A. Woodrum
Senator Thomas J. Michie, Jr.
Senator Benjamin J. Lambert, III
Delegate Alan E. Mayer
Delegate Yvonne, B. Miller

GENERAL ASSEMBLY OF VIRGINIA -- 1986 SESSION
HOUSE JOINT RESOLUTION NO. 98

Establishing a joint subcommittee to study and develop recommendations for ensuring appropriate screening of all adults who seek to work with children.

Agreed to by the House of Delegates, February 11, 1986

Agreed to by the Senate, March 6, 1986

WHEREAS, while the vast majority of persons working with children in organizations and institutions are dedicated people who would never harm a child, many child sexual assault victims are molested by adults in a position of trust and authority over them; and

WHEREAS, Virginia in 1985, enacted legislation requiring criminal record checks on persons seeking employment in certain child-care facilities in an effort to protect children from such exploitation; and

WHEREAS, the Washington Post recently reported that only one in 11,000 checks performed in Virginia since enactment of such legislation has resulted in discovery of an applicant's suspect background; and

WHEREAS, questions have been raised as to types of facilities which should screen potential employees, crimes for which they should be screened and lack of uniform guidelines for performing records checks; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study and develop recommendations for ensuring that all adults who seek to work with children in the absence of the childrens' parents or guardians are appropriately screened, with consideration given to protection of children and cost-effectiveness.

The joint subcommittee shall consist of five members who shall be appointed in the following manner: two members from the House Committee on Health, Welfare and Institutions and one member of the House Committee for Courts of Justice, all to be appointed by the Speaker of the House of Delegates; and one member of the Senate Committee on Rehabilitation and Social Services and one from the Senate Committee for Courts of Justice, both to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall report its recommendations to the 1987 Session of the General Assembly.

The direct and indirect costs of this study are estimated to be \$7,120.

APPENDIX B

P.L. 98-473, Title IV, § 401
(Oct. 12, 1984)

- “(a)(1) Notwithstanding any provision of title XX of the Social Security Act [42 USCS §§ 1397 et seq.], the amount applicable under section 2003(c)(3) of such Act [subsec. (c)(3) of this section] shall be \$2,725,000,000 for fiscal year 1985. Of such amount, \$25,000,000 shall be allotted and used in accordance with this section.
- “(2) In addition to any other amounts appropriated under this resolution [this note, among other things; for full classification, consult USCS Tables volumes] or any Act, there are hereby appropriated \$25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act [42 USCS §§ 1397 et seq.], to be used in accordance with the provisions of this section.
- “(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution [unclassified].
- “(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of \$25,000,000 as such State's proportional allotment of other title XX [42 USCS §§ 1397 et seq.] funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [this section].
- “(b) The additional \$25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—
- “(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;
- “(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [42 USCS §§ 1397 et seq.] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and
- “(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [42 USCS § 1397e].
- “(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [42 USCS §§ 1397 et seq.] not later than 3 months after the date of enactment of this section [enacted Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—
- “(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—
- “(i) the training, development, supervision, and evaluation of staff;
- “(ii) staff qualification requirements, by job classification;
- “(iii) staff-child ratios;
- “(iv) probation periods for new staff;
- “(v) employment history checks for staff; and
- “(vi) parent visitation; and
- “(2)(A) Any State receiving an allotment under such title [42 USCS §§ 1397 et seq.] from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—
- “(i) procedures, established by State law or regulation, to provide for employment history and background checks; and
- “(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) [Act Oct. 25, 1972; for full classification, consult USCS Tables volumes] requiring nationwide criminal record checks for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), ~~juvenile detention, correction or treatment facilities~~, with the objective of protecting the children involved and ~~promoting~~ such children's safety and welfare while receiving service through such facilities or programs.
- “(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title [42 USCS §§ 1397 et seq.] was increased for fiscal year 1985 as a result of subsection (a).
- “(d) The determination and promulgation required by section 2003(b) of the Social Security Act [subsec. (b) of this section] with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [enacted Oct. 12, 1984].”

ESTIMATED CHILD-RELATED PERSONNEL IN
GOVERNMENT-REGULATED PROGRAMS FOR
WHOM STATUTE DOES NOT REQUIRE CLEARANCE

Department of Social Services

Family day care homes (255)	1,020 employees
Family day care systems (607)	1,821 employees
Child-placing agencies (30 agencies using foster and adoptive homes)	8,715 employees

* Total: 11,600

Department of Corrections

Learning centers, detention & crisis facilities, community youth homes, & family group homes (79)	1,586 employees 1,800 volunteers
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* Total: 3,400

Department of Health

Local health departments.	2,700 employees
Hospitals	78,000 FTE

* Total: 80,700

Division of Recreation & Parks
(Dept. of Conservation & Historic Resources)

15,000-16,000
(includes seasonal)

* Total: 16,000

Department of Education

Instructional personnel	65,752 FTE
Administrative & support personnel	43,321 FTE

* Total: 110,000

Department of Mental Health & Mental Retardation

State-operated hospitals and training centers (17)	2,776 employees
Community services boards (only positions funded by DMHMR; do not all have contact with children)	3,000 employees

* Total: 5,800

Grand Total: 227,500

APPENDIX C

* Approximate number of current employees; does not include turnover.

APPENDIX D

<u>Charge</u>	<u>Arrest</u>	<u>Convicted</u>	<u>Dismissed</u>	<u>Nolle Pross</u>
Abduction	1	0	0	0
Arson	0	0	1	0
Assault	28	28	46	8
Brandish Firearm	2	4	4	4
Breaking and Entering	1	9	1	3
Burglary	0	3	0	0
Child Neglect	0	0	1	0
Cohabitation	0	1	0	0
Concealed Weapon	1	4	0	0
Contribute to Delinquency of Minor	0	1	4	1
Crimes Against Nature	1	1	0	0
Destroy Property	2	6	3	1
Drugs	11	39	11	9
Embezzlement	1	4	1	1
False Information to Police	0	4	1	0
Forgery	3	13	3	16
Fraud	30	90	30	16
Indecent Exposure	1	0	0	0
Larceny (Felony)	7	16	6	4
Larceny (Misdemeanor)	21	79	31	6
Manslaughter	0	1	1	0
Murder	2	1	0	2
Obstruct Justice	4	7	2	2
Operate Lottery	1	0	0	0
Profane Language	0	0	2	0
Prostitution	0	1	0	0
Resist Arrest	2	1	1	0
Robbery	2	6	1	3
Sexual Battery	0	0	0	1
Shoplifting	5	24	6	0
Threaten Harm	3	2	3	1
Trespass	6	10	2	2
TOTAL	135	355	161	80

1987 SESSION

HOUSE BILL NO. 1171

Offered January 22, 1987

A BILL to amend and reenact § 19.2-389, 63.1-198.1, 63.1-198.2 and 63.1-199 of the Code of Virginia, and to amend the Code of Virginia, by adding a section numbered 63.1-198.3, relating to licensure of and employment in child-care programs.

Patrons—Woodrum; Senator: Lambert

Referred to the Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389, 63.1-198.1, 63.1-198.2 and 63.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.1-198.3 as follows:

§ 19.2-389. Dissemination of criminal history record information.—A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants;

2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data;

5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1 of the Code of Virginia, for the conduct of investigations of applicants for

1 employment when such employment involves personal contact with the public or when past
2 criminal conduct of an applicant would be incompatible with the nature of the employment
3 under consideration;

4 10. The appropriate authority for purposes of granting citizenship and for purposes of
5 international travel, including but not limited to, issuing visas and passports;

6 11. A person requesting a copy of his own criminal history record information as
7 defined in § 9-169, paragraph 4, at his costs;

8 12. The Commissioner of the Department of Social Services for the conduct of
9 investigations with respect to applicants for a license to operate a child-caring institution or
10 child-care center as defined in § 63.1-195 pursuant to § 63.1-198 and employees of and
11 volunteers at such facilities pursuant to § 63.1-198.1, subject to the limitations set out in
12 subsection E; and

13 13. As otherwise provided by law.

14 Upon an ex parte motion of a defendant in a felony case, and upon the showing that
15 the records requested may be relevant to such case, the court shall enter an order
16 requiring the Central Criminal Records Exchange to furnish the defendant as soon as
17 practicable, copies of any records of persons designated in the order on whom a report has
18 been made under the provisions of this chapter.

19 Notwithstanding any other provision of this chapter to the contrary, upon a written
20 request sworn to before an officer authorized to take acknowledgments, the Central
21 Criminal Records Exchange or the criminal justice agency in cases of offenses not required
22 to be reported to the Exchange, shall furnish a copy of conviction data covering the person
23 named in the request to the person making the request; provided, however, such person on
24 whom the data is being obtained shall consent in writing, under oath, to the making of
25 such request. A person receiving a copy of his own conviction data may utilize or further
26 disseminate that data as he deems appropriate. In the event no conviction data is
27 maintained on the data subject, the person making the request shall be furnished at his
28 cost a certification to that effect.

29 B. Use of criminal history record information disseminated to noncriminal justice
30 agencies under this section shall be limited to the purposes for which it was given and
31 may not be disseminated further.

32 C. No criminal justice agency or person shall confirm the existence or nonexistence of
33 criminal history record information for employment or licensing inquiries except as
34 provided by law.

35 D. Criminal justice agencies shall establish procedures to query the Central Criminal
36 Records Exchange prior to dissemination of any criminal history record information on
37 offenses required to be reported to the Central Criminal Records Exchange to assure that
38 the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made
39 prior to any dissemination except in those cases where time is of the essence and the
40 normal response time of the Exchange would exceed the necessary time period. A criminal
41 justice agency to whom a request has been made for the dissemination of criminal history
42 record information that is required to be reported to the Central Criminal Records
43 Exchange may direct the inquirer to the Central Criminal Records Exchange for such
44 dissemination. Dissemination of offenses not required to be reported to the Exchange shall
45 be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

46 E. Criminal history information provided to the Commissioner of the Department of
47 Social Services pursuant to subsection A (12) shall be limited to convictions on file with the
48 Exchange for any offense set out in Article 7 (~~§ 18.2-61 et seq.~~) of Chapter 4 of Title 18.2
49 ~~or in § 18.2-370 or § 18.2-370.1 specified in §§ 63.1-198.1 and 63.1-199~~. The information
50 provided to the Commissioner shall not be disseminated except as provided in §§ 63.1-198
51 and 63.1-198.1.

52 § 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of
53 certain offenses prohibited; criminal records check required; suspension or revocation of
54 license.— A. A child-caring institution or child-care center licensed in accordance with the

1 provisions of this chapter shall not employ for compensation or utilize as volunteer
 2 personnel persons who have been convicted of any offense set out in Article 7 (~~§ 18.2-61 et~~
 3 ~~seq.~~) of Chapter 4 of Title 18.2 or in ~~§ 18.2-370 or § 18.2-370.1~~ murder, abduction for
 4 immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61
 5 et seq.) of Chapter 4 of Title 18.2, taking indecent liberties with children as set out in §
 6 18.2-370 or § 18.2-370.1, neglect of children as set out in § 18.2-371.1, or obscenity offenses
 7 as set out in § 18.2-374.1 or § 18.2-379 .

8 *B. The Commissioner, at his discretion, may refuse to issue the certificate provided for*
 9 *by this section to any applicant for paid or volunteer employment in a licensed facility if*
 10 *he finds that the applicant has been convicted of any of the following offenses:*
 11 *manslaughter; malicious wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4*
 12 *of Title 18.2; robbery; arson as set out in § 18.2-77 or § 18.2-79; peeping or spying into a*
 13 *structure occupied as a dwelling; a drug offense as set out in § 18.2-255, § 18.2-255.1, or §*
 14 *18.2-255.2; failing to secure medical attention for an injured child; prostitution as set out*
 15 *in § 18.2-355; crimes against nature involving children as set out in § 18.2-361; or indecent*
 16 *exposure. The Commissioner shall have access to any information or records which the*
 17 *Department of Corrections or the Parole Board can by law provide, in order to assist the*
 18 *Commissioner in his decision regarding an applicant's fitness to care for children. In*
 19 *determining an applicant's fitness to care for children, the Commissioner shall consider*
 20 *time elapsed since commission of the crime, the number of offenses committed, the*
 21 *circumstances of commission which demonstrate unlikelihood of repetition, activities since*
 22 *conviction indicating rehabilitation, and character references.*

23 *C. Any person desiring to work at a licensed facility shall obtain, within fifteen days*
 24 *after he commences work as a compensated employee or as a volunteer, a certificate from*
 25 *the Commissioner indicating that (i) a criminal records check was conducted at the request*
 26 *of the Commissioner in accordance with § 19.2-389 and , (ii) no information with respect to*
 27 *convictions for offenses specified in subsection A of this section was obtained and (iii) any*
 28 *information obtained with respect to convictions for offenses in subsection B was reviewed*
 29 *by the Commissioner, who deems the applicant suitable for employment . Failure to obtain*
 30 *a certificate from the Commissioner for each employee or volunteer shall be grounds for*
 31 *suspension or revocation of the license issued pursuant to this chapter.*

32 *D. The provisions of this section referring to volunteers shall apply only to volunteers*
 33 *who ~~who~~ will be alone with any child in the performance of their duties.*

34 *E. The provisions of this section shall not apply to a parent-volunteer of a child*
 35 *attending such licensed facility whether or not such parent-volunteer will be alone with any*
 36 *child in the performance of his duties. A parent-volunteer is someone supervising, without*
 37 *pay, a group of children which includes the parent-volunteer's own child in a program of*
 38 *care which operates no more than four hours per day, provided that the parent-volunteer*
 39 *works under the direct supervision of a person who has received a clearance pursuant to*
 40 *this section or § 63.1-198.2.*

41 *§ 63.1-198.2. Records check by unlicensed facility.—Any facility providing child care*
 42 *services which is exempt from the licensing requirements of this chapter may require a*
 43 *prospective employee or volunteer to first obtain a criminal records check as provided in §*
 44 *19.2-389 A (x) and may refuse employment or work to any person who has been convicted*
 45 *of any offense set out in Article 7 (~~§ 18.2-61 et seq.~~) of Chapter 4 of Title 18.2 or in §§*
 46 *18.2-370 and 18.2-370.1 specified in subsection A or B of § 63.1-198.1 . Further*
 47 *dissemination of the information provided to the facility is prohibited.*

48 *§ 63.1-198.3. Review of adverse decision.—When the Commissioner denies employment*
 49 *because of convictions appearing on an applicant's criminal record, he shall notify the*
 50 *applicant of such decision in writing by certified mail and inform the applicant that*
 51 *within fifteen days after receiving the notice, he may request a hearing before the State*
 52 *Board. If a hearing is requested, the State Board shall make or cause to be made an*
 53 *investigation of the facts. The State Board shall give fair and impartial consideration to*
 54 *the testimony of witnesses or other evidence produced at the hearing, reports of*

1 investigations of the Commissioner or of investigations made or caused to be made by the
2 State Board, or any facts which the State Board may deem proper to fairly review the
3 matter. The Board may appoint a committee consisting of any three of its members to
4 consider and make final determinations on any such appeal or review.

5 The decision of the State Board shall be final and binding and shall not be subject to
6 further review or appeal, except that the State Board may thereafter reopen and review
7 the matter.

8 § 63.1-199. Issuance or refusal of license; notification.—Upon completion of such
9 investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the
10 applicant has made adequate provision for such activities, services and facilities as are
11 reasonably conducive to the welfare of the children over whom he may have custody or
12 control, (ii) his financial responsibility is such as to give reasonable assurance of the
13 continued maintenance of such activities, services and facilities, and (iii) he, or the officers
14 and agents of the applicant if it is an association, partnership or corporation, is or are of
15 good character and reputation. Otherwise, the license shall be refused. A license shall not
16 be granted to any applicant who has been convicted of any offense set out in Article 7 (§
17 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in § 18.2-370 or § 18.2-370.1 specified in
18 subsection A of § 63.1-198.1. The Commissioner, at his discretion, may deny a license to
19 any applicant who has been convicted of any offense specified in subsection B of §
20 63.1-198.1. The provisions of § 63.1-198.1 B regarding the Commissioner's decision of an
21 applicant's fitness to care for children shall apply. Immediately upon his taking final
22 action, the Commissioner shall notify the applicant of such action.

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Official Use By Clerks	
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Date: _____	Date: _____
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Clerk of the House of Delegates	Clerk of the Senate

1987 SESSION
ENGROSSED

HOUSE BILL NO. 1188

House Amendments in [] - February 2, 1987

A BILL to amend and reenact §§ 63.1-198.1, 63.1-198.2 and 63.1-199 of the Code of Virginia, relating to employment and licensure of child-care providers.

Patrons—Woodrum, Mayer and Miller, Y. B.; Senators: Michie and Lambert

Referred to the Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-198.1, 63.1-198.2 and 63.1-199 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.—A child-caring institution or child-care center licensed in accordance with the provisions of this chapter shall not employ for compensation or utilize as volunteer personnel persons who have been convicted of any offense set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in § 18.2-370 or § 18.2-370.1. Any person desiring to work at a licensed facility shall obtain, within fifteen days after he commences work as a compensated employee or as a volunteer, a certificate from the Commissioner indicating that (i) a criminal records check was conducted at the request of the Commissioner in accordance with § 19.2-389 and (ii) no information with respect to convictions for offenses specified in this section was obtained. Failure to obtain a certificate from the Commissioner for each employee or volunteer shall be grounds for suspension or revocation of the license issued pursuant to this chapter. *If an applicant is denied employment because of convictions appearing on his criminal history record, [a copy of the record shall be provided the Commissioner shall provide a copy of the information obtained from the Central Criminal Records Exchange] to the applicant.* The provisions of this section referring to volunteers shall apply only to volunteers who ~~who~~ will be alone with any child in the performance of their duties.

The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in the performance of his duties.

A parent-volunteer is 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 this section or § 63.1-198.2.

§ 63.1-198.2. Records check by unlicensed facility.—Any facility providing child care services which is exempt from the licensing requirements of this chapter may require a prospective employee or volunteer to first obtain a criminal records check as provided in [subdivision A 11 of § 19.2-389 A ~~(x)~~] and may refuse employment or work to any person who has been convicted of any offense set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in §§ 18.2-370 and 18.2-370.1. *If an applicant is denied employment because of convictions appearing on his criminal history record, [a copy of the record shall be provided the Commissioner shall provide a copy of the information obtained from the Central Criminal Records Exchange] to the applicant.* Further dissemination of the information provided to the facility is prohibited.

§ 63.1-199. Issuance or refusal of license; notification.—Upon completion of such investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the children over whom he may have custody or control, (ii) his financial responsibility is such as to give reasonable assurance of the continued maintenance of such activities, services and facilities, and (iii) he, or the officers

1 and agents of the applicant if it is an association, partnership or corporation, is or are of
 2 good character and reputation. Otherwise, the license shall be refused. A license shall not
 3 be granted to any applicant who has been convicted of any offense set out in Article 7 (§
 4 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in § 18.2-370 or § 18.2-370.1. *If an applicant is*
 5 *denied licensure because of convictions appearing on his criminal history record, [a copy*
 6 *of the record shall be provided the Commissioner shall provide a copy of the information*
 7 *obtained from the Central Criminal Records Exchange] to the applicant. Immediately*
 8 upon his taking final action, the Commissioner shall notify the applicant of such action.

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Official Use By Clerks	
Passed By	Passed By The Senate
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Clerk of the House of Delegates	Clerk of the Senate

1987 SESSION

HOUSE BILL NO. 1189

Offered January 22, 1987

A BILL to amend and reenact §§ 63.1-197, 63.1-198.1 and 63.1-198.2 of the Code of Virginia, relating to child-care facilities; penalty.

Patrons—Woodrum, Mayer and Miller, Y. B.; Senator: Lambert

Referred to the Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-197, 63.1-198.1 and 63.1-198.2 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-197. Form and requisites of application for license.—Each application for a license, or for a renewal thereof, shall be made to the Commissioner, in such form as he may prescribe. It shall contain a statement of the name and address of the applicant, and, if the applicant ~~be~~ *is* an association, partnership or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with such other pertinent information as the Commissioner may require. *The applicant shall also provide the Commissioner with a sworn statement or affirmation disclosing whether or not the applicant has ever been convicted of or is the subject of pending charges for any offense set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in § 18.2-370 or § 18.2-370.1 within the Commonwealth or of any equivalent offense outside the Commonwealth. Any person making a false or fraudulent statement in such disclosure shall be guilty of perjury and shall be proceeded against and punished in accordance with the provisions of § 18.2-434. Further dissemination of the information provided is prohibited.* The Commissioner or his designated agents shall, upon request, consult with, advise and assist any person interested in securing and maintaining any license prescribed in § 63.1-196.

§ 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.—A child-caring institution or child-care center licensed in accordance with the provisions of this chapter shall not employ for compensation or utilize as volunteer personnel persons who have been convicted of any offense set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in § 18.2-370 or § 18.2-370.1. *Any person desiring to work at a licensed facility shall provide the hiring facility and the Commissioner with a sworn statement or affirmation disclosing whether or not the applicant has ever been convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth. Further dissemination of the information provided is prohibited. Any person making a false or fraudulent statement in such disclosure shall be guilty of perjury and shall be proceeded against and punished in accordance with the provisions of § 18.2-434.* Any person desiring to work at a licensed facility shall also obtain, within fifteen days after he commences work as a compensated employee or as a volunteer, a certificate from the Commissioner indicating that (i) a criminal records check was conducted at the request of the Commissioner in accordance with § 19.2-389 and (ii) no information with respect to convictions for offenses specified in this section was obtained. Failure to obtain a certificate from the Commissioner for each employee or volunteer *or the disclosure statement required by this section* shall be grounds for suspension or revocation of the license issued pursuant to this chapter. The provisions of this section referring to volunteers shall apply only to volunteers who ~~who~~ will be alone with any child in the performance of their duties.

The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in

1 the performance of his duties.

2 A parent-volunteer is someone supervising, without pay, a group of children which
3 includes the parent-volunteer's own child in a program of care which operates no more
4 than four hours per day, provided that the parent-volunteer works under the direct
5 supervision of a person who has received a clearance pursuant to this section or §
6 63.1-198.2.

7 § 63.1-198.2. Records check by unlicensed facility.—Any facility providing child care
8 services which is exempt from the licensing requirements of this chapter may require a
9 prospective employee or volunteer to first obtain a criminal records check as provided in
10 *subdivision A 11 of § 19.2-389 A 11* and may refuse employment or work to any person
11 who has been convicted of any offense set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4
12 of Title 18.2 or in §§ 18.2-370 and 18.2-370.1. *Such facility may also require a prospective*
13 *employee to provide a sworn statement or affirmation disclosing whether or not the*
14 *applicant has ever been convicted of or is the subject of pending charges for any offense*
15 *specified in this section within the Commonwealth or any equivalent offense outside the*
16 *Commonwealth. Any person making a false or fraudulent statement in such disclosure*
17 *shall be guilty of perjury and proceeded against and punished in accordance with the*
18 *provisions of § 18.2-434. Further dissemination of the information provided to the facility is*
19 prohibited.

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1987 SESSION
ENGROSSED

HOUSE BILL NO. 1190

House Amendments in [] - February 5, 1987

A BILL to amend and reenact §§ 19.2-389 and 63.1-198.1 of the Code of Virginia, relating to child-care programs; criminal history record information.

Patrons—Woodrum, Mayer and Miller, Y. B.; Senators: Lambert and Michie

Referred to the Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389 and 63.1-198.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-389. Dissemination of criminal history record information.—A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants;

2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data;

5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1 of the Code of Virginia, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment

1 under consideration;

2 10. The appropriate authority for purposes of granting citizenship and for purposes of
3 international travel, including but not limited to, issuing visas and passports;

4 11. A person requesting a copy of his own criminal history record information as
5 defined in § 9-169, ~~paragraph 4~~, at his costs;

6 12. The Commissioner of the Department of Social Services for the conduct of
7 investigations with respect to applicants for a license to operate a child-caring institution ~~or~~
8 , child-care center , *child-placing agency, independent foster home, family day-care home*
9 *or family day-care system* as defined in § 63.1-195 pursuant to § 63.1-198 and employees of
10 and volunteers at such facilities [, *caretakers in homes approved by family day-care*
11 *systems, and foster parents and adoptive parents approved by child-placing agencies*]
12 pursuant to § 63.1-198.1, subject to the limitations set out in subsection E; and

13 13. As otherwise provided by law.

14 Upon an ex parte motion of a defendant in a felony case, and upon the showing that
15 the records requested may be relevant to such case, the court shall enter an order
16 requiring the Central Criminal Records Exchange to furnish the defendant as soon as
17 practicable, copies of any records of persons designated in the order on whom a report has
18 been made under the provisions of this chapter.

19 Notwithstanding any other provision of this chapter to the contrary, upon a written
20 request sworn to before an officer authorized to take acknowledgments, the Central
21 Criminal Records Exchange or the criminal justice agency in cases of offenses not required
22 to be reported to the Exchange, shall furnish a copy of conviction data covering the person
23 named in the request to the person making the request; provided, however, such person on
24 whom the data is being obtained shall consent in writing, under oath, to the making of
25 such request. A person receiving a copy of his own conviction data may utilize or further
26 disseminate that data as he deems appropriate. In the event no conviction data is
27 maintained on the data subject, the person making the request shall be furnished at his
28 cost a certification to that effect.

29 B. Use of criminal history record information disseminated to noncriminal justice
30 agencies under this section shall be limited to the purposes for which it was given and
31 may not be disseminated further.

32 C. No criminal justice agency or person shall confirm the existence or nonexistence of
33 criminal history record information for employment or licensing inquiries except as
34 provided by law.

35 D. Criminal justice agencies shall establish procedures to query the Central Criminal
36 Records Exchange prior to dissemination of any criminal history record information on
37 offenses required to be reported to the Central Criminal Records Exchange to assure that
38 the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made
39 prior to any dissemination except in those cases where time is of the essence and the
40 normal response time of the Exchange would exceed the necessary time period. A criminal
41 justice agency to whom a request has been made for the dissemination of criminal history
42 record information that is required to be reported to the Central Criminal Records
43 Exchange may direct the inquirer to the Central Criminal Records Exchange for such
44 dissemination. Dissemination of offenses not required to be reported to the Exchange shall
45 be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

46 E. Criminal history information provided to the Commissioner of the Department of
47 Social Services pursuant to ~~subsection~~ *subdivision A 12* shall be limited to convictions on
48 file with the Exchange for any offense set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4
49 of Title 18.2 or in § 18.2-370 or § 18.2-370.1. The information provided to the Commissioner
50 shall not be disseminated except as provided in §§ 63.1-198 and 63.1-198.1.

51 § 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of
52 certain offenses prohibited; criminal records check required; suspension or revocation of
53 license.— *On or after January 1, 1988, a child-caring institution ~~or~~ , child-care center ,*
54 *child-placing agency, independent foster home, family day-care home or family day-care*

1 *system* licensed in accordance with the provisions of this chapter shall not ~~employ~~ hire for
 2 ~~compensation~~ compensated or ~~utilize as volunteer personnel~~ *voluntary employment* [*nor*
 3 *shall child-placing agencies approve as foster or adoptive parents or family day-care*
 4 *systems approve as caretakers*] persons who have been convicted of any offense set out in
 5 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or in § 18.2-370 or § 18.2-370.1. Any
 6 person desiring to work at a licensed facility shall obtain, within fifteen days after he
 7 commences work as a compensated employee or as a volunteer, a certificate from the
 8 Commissioner indicating that (i) a criminal records check was conducted at the request of
 9 the Commissioner in accordance with § 19.2-389 and (ii) no information with respect to
 10 convictions for offenses specified in this section was obtained. Failure to obtain a
 11 certificate from the Commissioner for each employee or volunteer shall be grounds for
 12 suspension or revocation of the license issued pursuant to this chapter. The provisions of
 13 this section referring to volunteers shall apply only to volunteers who will be alone with
 14 any child in the performance of their duties.

15 The provisions of this section shall not apply to a parent-volunteer of a child attending
 16 such licensed facility whether or not such parent-volunteer will be alone with any child in
 17 the performance of his duties.

18 A parent-volunteer is someone supervising, without pay, a group of children which
 19 includes the parent-volunteer's own child in a program of care which operates no more
 20 than four hours per day, provided that the parent-volunteer works under the direct
 21 supervision of a person who has received a clearance pursuant to this section or §
 22 63.1-198.2.

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1987 SESSION

HOUSE BILL NO. 1191

Offered January 22, 1987

A BILL to amend and reenact § 22.1-296.1 of the Code of Virginia, relating to employment of teachers.

Patrons—Woodrum, Mayer and Miller, Y. B.; Senator: Michie

Referred to the Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-296.1 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-296.1. Data on convictions for child abuse or molestation required.—As a condition of employment for all of its public school employees, every school board shall require on its application for employment certification that the applicant has not been convicted of any offense involving the sexual molestation, physical or sexual abuse or rape of a child. Any person making a false or fraudulent statement regarding any such offense shall be guilty of perjury, and the Board of Education shall revoke such person's certificate to teach.

Official Use By Clerks

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The House of Delegates
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Clerk of the House of Delegates

Clerk of the Senate

1987 SESSION

HOUSE JOINT RESOLUTION NO. 258

Offered January 26, 1987

Requesting a study of the feasibility of development of a behavioral profile to screen prospective workers in child-caring positions.

Patrons—Mayer, Woodrum, Melvin, Grayson, Plum, Slayton and Saunders

Referred to the Committee on Rules

WHEREAS, the issue of child molestation which occurs while a child is in the care of an individual or business licensed to provide such care has become volatile and the cause for much concern by all affected; and

WHEREAS, study has revealed little on early identification and screening of potential child molesters, and a "single homogeneous typology has not emerged and child molesters do not appear to be a well-defined disease group"; and

WHEREAS, screening would have to be based now on a behavioral profile rather than a psychological profile of potential molesters; and

WHEREAS, according to various experts in this field, screening could possibly be done by means of the evaluation of employment history and reference data which would direct attention to underlying weaknesses on the part of the prospective employee; and

WHEREAS, this method as well as others needs to be thoroughly examined and evaluated for effectiveness and usefulness in identifying potential child molesters; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Departments of Social Services and Education in conjunction with the Office of the Attorney General study and evaluate the feasibility and development of a behavioral profile to aid in identifying potential child molesters; and, be it

RESOLVED FURTHER, That the study be completed in time to submit recommendations to the 1988 Session of the General Assembly.

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