

**REPORT OF THE VIRGINIA
DEPARTMENT OF SOCIAL SERVICES**

**Report on National
Fingerprint Criminal History
Background Checks**

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



HOUSE DOCUMENT NO. 17

**COMMONWEALTH OF VIRGINIA
RICHMOND
2014**



COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

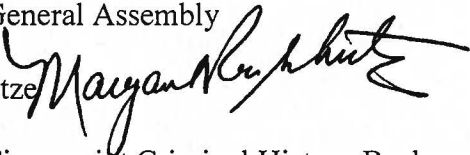
Margaret Ross Schultze
COMMISSIONER

November 1, 2014

MEMORANDUM

TO: The Honorable Terence R. McAuliffe
Governor of Virginia

Members, Virginia General Assembly

FROM: Margaret Ross Schultze 

SUBJECT: Report on National Fingerprint Criminal History Background Checks

The attached report is submitted pursuant to Chapter 128 of the 2014 Acts of Assembly, which directs the Department of Social Services to convene a workgroup to review current laws and regulations governing criminal history background checks for child care providers and develop a plan to implement national fingerprint-based background checks for all child care providers in the Commonwealth. If you have questions or need additional information, please contact me.

MRS:kc

Attachment

Preface

This report is submitted pursuant to Chapter 128 of the 2014 Acts of Assembly, which requires the Virginia Department of Social Services to convene a work group to develop a plan for implementation of national fingerprint-based criminal history record checks for all child care providers in the Commonwealth. This report reviews preliminary research and offers recommendations towards a requirement for national fingerprint criminal history checks for licensed and regulated child care providers in Virginia.

Table of Contents

Preface.....	page i
Executive Summary.....	page iii
Introduction.....	page 1
Types of Child Day Programs.....	page 2
Current Laws and Regulations Regarding Criminal History Record Checks	page 3
Name-based and National Fingerprint-based Criminal Record Checks	page 5
Fingerprint Companies	page 6
Portability of Fingerprint-based National Criminal History Record Checks	page 9
Estimate of the Number of National Fingerprint-based Criminal History Record Checks Required Annually	page 10
Budget	page 11
Statutory Changes Needed.....	page 12
Regulatory Changes Needed.....	page 13
Recommendations	page 13
References	page 16
Workgroup Mandate	Appendix A
List of Workgroup Members	Appendix B
Costs Without Using Fingerprint Company	Appendix C
Costs Using Fingerprint Company.....	Appendix D

Executive Summary

This report is submitted pursuant to Chapter 128 of the 2014 Acts of Assembly, which requires the Virginia Department of Social Services (Department) to convene a work group to develop a plan for implementation of national fingerprint-based criminal history record checks for all child care providers in the Commonwealth. In conducting this workgroup, representatives from the Department, Virginia Department of State Police (Virginia State Police), and stakeholder groups of child care providers (licensed and unlicensed) researched and gathered preliminary information to implement national fingerprint-based criminal history record checks for licensed and regulated child care providers.

Recommendations

1. All licensed and regulated child day programs should be required to obtain a state and national fingerprint-based criminal record check for employees, volunteers who will be alone with children, applicants, agents involved in the day-to-day operations or who will be alone with children, and adult household members in family day homes. This requirement would convey to all child care programs that receive payment through the Child Care Subsidy Program (Subsidy), even if these programs are not licensed or regulated. All children in licensed and regulated programs and children in programs that accept Subsidy reimbursement should be protected by this requirement.
2. The Department's Office of Background Investigations should screen fingerprint check results using the barrier crime list in § 63.2-1719 of the Code and notify child day programs of the individual's eligibility for employment or volunteering. The Virginia State Police stated it cannot screen the results of the fingerprint checks for all child care providers, as they are not primarily a screening agency.
3. A fingerprint vendor that can take fingerprints and electronically transmit the fingerprints to the Virginia State Police should be considered by the Commonwealth because of the potential administrative savings and the reduced turn-around time in receiving criminal history record results. To further reduce costs, the Commonwealth should consider extending the use of a fingerprint vendor to the following groups of employees for whom national fingerprint-based criminal history record checks are currently required: public and private schools, Department of Behavioral Health and Developmental Services, Virginia Lottery, children's residential facilities, foster and adoptive families, and Department of Criminal Justice Services. If a fingerprint company is used, the Commonwealth should consider limiting the options used by the fingerprint company (photo, signature pad, distance and availability of fingerprint stations) to reduce the fingerprint fee, while still ensuring availability of fingerprint stations across the Commonwealth.
4. The workgroup does not recommend portable criminal history record checks at this time because the technology is not available to notify agencies when there is a new arrest or new conviction of an employee or volunteer. Once this 'rap back' technology is readily available in Virginia, the work group would like to see the issue of portable criminal history record checks

considered for individuals required to be fingerprinted. Portability at this time reduces safety for children in care.

5. The requirement for repeat criminal record checks every three years should be continued. The repeat criminal record check should be a national fingerprint-based criminal history record check.

6. An effective date for implementation should be at least two years from the date the law is signed to allow sufficient time for state-wide implementation. New information systems and equipment will need to be in place, decisions will need to be made and implemented regarding the use of a fingerprint company, and changes will need to be made in the Virginia State Police and Virginia Department of Social Services Office of Background Investigations Unit to accommodate the processing of child care provider fingerprint criminal history record checks. All new individuals hired, volunteering, licensed, registered, approved as a Subsidy provider, or approved after this date must have a national fingerprint-based criminal history check. This would include new employees, new volunteers who will be alone with children, new applicants, new agents involved in the day-to-day operations of the program or who will be alone with children, and new adult household members residing in a family day home.

7. Implementation of national fingerprint-based criminal history record checks should be phased in over a three year-period for current employees. Current employees and volunteers should be required to obtain a fingerprint-based record check at the three year expiration of their existing name background check. Current applicants, agents involved in the day to day operations of the program or that will be alone with children, and adult household members residing in family day homes should obtain a national fingerprint-based criminal history record check upon renewal of the license, registration, approval for Subsidy participation, and/or approval.

8. Efforts should be made to limit the cost of national fingerprint-based criminal history record checks to individuals and child care providers. Fingerprint record checks are costly to implement and continue, but are necessary to provide increased protection to children and to meet potential federal requirements. If the proposed federal Child Care and Development Fund (CCDF) requirement for national fingerprint-based criminal record checks becomes final, Virginia will not be eligible for \$108,717,766 in federal funds if national fingerprint-based criminal history record checks are not required for child care providers.

9. Efforts should be made to ensure the fingerprint checks are conducted in an efficient manner with a reasonable turnaround time, as child care providers need to know screening results as soon as possible in order to make hiring decisions and obtain licensing and regulatory approvals.

10. Once decisions have been made regarding the parameters of the requirements for national fingerprint-based criminal history record checks, further research is needed prior to fully implementing this requirement. This research should include determining specific information system requirements and upgrades needed, parameters for the use of a fingerprint company if this option is used, analysis of the final federal rule for CCDF, and other issues as needed.

11. Existing barrier crimes should be reviewed to ensure that the barrier crimes are appropriate as lifetime prohibitions for employment in child day programs and to ensure consistency between programs.

12. Further research is recommended on background check requirements for child day programs in the Code of Virginia. Background check requirements are redundant and duplicative in several different sections of the Code and for ease of understanding, it is recommended that requirements be consolidated and combined as applicable.

National Fingerprint Criminal Records for Child Care Providers

Introduction

The Virginia Department of Social Services (Department) is tasked with protecting vulnerable populations, which includes children receiving care from licensed and regulated child day programs. To better ensure the safety of children, background checks for individuals who work in licensed and regulated child day programs are required. Current background check requirements include obtaining a Virginia criminal history name check, to determine if an individual has criminal convictions in Virginia that are barrier crimes to employment or providing services. Controversy has existed in recent years on whether or not a Virginia criminal background history based on a name check provides the necessary information to adequately protect children and other vulnerable populations receiving care in licensed or regulated care. Many advocates for safety favor a national criminal background check based on fingerprints received from all states, the District of Columbia and United States territories as the source of information on convictions. Fingerprint checks are more reliable than a name check, as they are more difficult to falsify. Names change; however, fingerprints are generally consistent.

As early as 1994, a law was passed by the General Assembly to require national criminal fingerprint checks for all staff of children's residential facilities and certain volunteers and contractual service providers (§ 63.2-1726 of the Code of Virginia). In 2007, the law was amended to require that the background check be received before the individual could work with children. Previous legislation from the 2006 session of the General Assembly that required national fingerprint-based criminal history record checks for child care providers passed but was dependent on having funds appropriated for implementation (Senate Bill 421). As no funds were appropriated, the national fingerprint-based criminal history record requirement was not implemented. In 2007, a law was passed that required national fingerprint criminal records checks for foster and adoptive parents and adult household members (§ 63.2-901.1 of the Code of Virginia). These background checks had to be completed before the individual could provide services to children. This law was implemented to be in compliance with federal requirements for Title IV-E child welfare funding.

In the 2014 session of the General Assembly, several bills were introduced requiring national fingerprint-based criminal history record checks for child care providers: House Bill 552, House Bill 412, House Bill 1252, and Senate Bill 639. House Bill 552 and House Bill 1252 were tabled in the House Health, Welfare and Institutions Committee. Chapter 128 of the 2014 Acts of Assembly, formerly House Bill 412 and Senate Bill 639, (Appendix A) required the Department to convene a work group (Appendix B) to develop a plan for implementation of national fingerprint-based criminal history record checks for all child care providers in the Commonwealth. This report is the result of that work group.

Currently, regulations to require national fingerprint-based criminal history record checks for child care providers are being developed at the federal level. The U.S. Department of Health and Human Services, Administration of Children and Families, Office of Child Care has

proposed changes to the Child Care and Development Fund (CCDF) requirements. The Notice of Proposed Rulemaking includes a requirement for national fingerprint-based criminal history record checks for all child care providers whose programs receive CCDF funds through the Child Care Subsidy Program (Subsidy). A legally operating child day program that meets all CCDF program requirements is eligible to participate in the Subsidy program. The final CCDF federal regulation is expected early next year, and Virginia's FFY 2016-2017 CCDF plan will have to show compliance with these new federal requirements in order to continue receiving federal CCDF funds. Virginia currently receives \$108,717,766 in federal CCDF funds.

The Department believes the increased protection afforded by national fingerprint-based criminal history record checks should be available to all children receiving care in licensed and regulated child day programs, not just for children receiving care in the programs that receive CCDF Subsidy reimbursement. It is estimated that 75% of child day programs licensed and regulated by the Department's Division of Licensing Programs are eligible Subsidy vendors. It would be operationally difficult to have different requirements for Subsidy programs and non-Subsidy programs, as the list of eligible Subsidy programs changes frequently. There are other eligible Subsidy vendors that are not required to be licensed or registered by the Division of Licensing, as they meet a licensing exemption or operate below the capacity threshold for licensure. (Licensure is required for family day homes serving six or more children.) These non-regulated programs would also be required to comply with new CCDF requirements for national fingerprint-based criminal history record checks in order to continue to receive Subsidy reimbursement.

This report reflects preliminary research on issues to be considered in implementing national fingerprint-based criminal history record checks. There are many factors yet to be determined that will impact the implementation of this requirement. State decision-makers need to determine who will be covered by the requirement to conduct national fingerprint background checks and the structure that will be used to conduct these checks before a more defined implementation plan, including a more specific budget, can be developed. In addition, once further information is available regarding comprehensive background check requirements in the final federal rule for the CCDF, the recommendations should be reviewed to ensure they remain appropriate and comply with federal requirements.

This report discusses criminal history record checks only and does not include information regarding Child Protective Services Central Registry checks. Central Registry checks determine if an individual has a founded complaint of abuse or neglect in the Central Registry and is a very different background check than a criminal history record check.

Types of Child Day Programs

A child day program is defined in § 63.2-100 of the Code of Virginia (Code) as a "regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period." Child day programs are either family day homes or child day centers. Specific definitions of these programs are found in § 63.2-100 of the Code. Licensed programs are licensed by the

Department's Division of Licensing Programs. Regulated programs are approved or certified by the Department's Division of Licensing Programs and have a regulation and/or Code section that specifies program requirements. Virginia's eligible Subsidy vendor programs are required to be licensed, regulated, operate below the threshold for licensure, or meet an exemption for licensure.

Types of Family Day Homes

- Licensed: Licensed family day homes
- Regulated (not licensed): Voluntary registered family day homes
- Approved: Family day homes approved by a licensed family day system (these homes are not required to be licensed or registered)
- Not licensed or regulated, but eligible as a Subsidy vendor: Family day homes that operate below the threshold for licensure, serving fewer than six children, exclusive of the provider's own children or children who reside in the home and have entered into a contract with the Department as a Subsidy vendor.

Types of Child Day Centers

- Licensed: Licensed child day centers
- Regulated (not licensed): Religious exempt child day centers, requirements found in § 63.2-1716 of the Code, and certified preschools, requirements found in § 63.2-1717 of the Code.
- Not licensed or regulated, but eligible as a Subsidy vendor: Child day centers that meet an exemption from licensure in § 63.2-1715 of the Code and have entered into a contract with the Department as a Subsidy vendor.

Additionally, there are an unknown number of child day programs that operate below the threshold for licensure and do not receive Subsidy reimbursement. These exempt, non-regulated child day programs include small family day homes, serving fewer than six children, and exempt, non-regulated child day centers that meet a licensing exemption in § 63.2-1715 of the Code. These unlicensed, non-regulated child day programs are not subject to any requirements (including background check requirements) and thus would not be required to obtain fingerprint-based criminal record checks. The Department has no way of knowing how many of these providers exist, as there is no requirement for these providers to identify themselves or their location to any organization.

Current Laws and Regulations Regarding Criminal History Record Checks

Employees and household members in Department-licensed and regulated child day programs are required to provide:

1. A statement disclosing any criminal convictions or pending criminal charges within or outside the Commonwealth; and
2. A criminal history record name check through the Virginia State Police. Employees

must have the criminal record check within 30 days of employment and before working alone with children and the check must be no more than 90 days old (§§ 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code).

The following individuals are required to have criminal history record checks:

- Employees involved in the day-to-day operations of the program or who will be alone with children
- Volunteers who will be alone with children
- Applicants for licensed or regulated programs
- Agents (individuals who are empowered to act on behalf of the applicant) who will be involved in the day-to-day operations of program or alone with, in control of, or supervising children; and
- Any other adult living in the family day home of an applicant for licensure or registration.

Regulatory requirements for background checks for licensed and regulated programs are found in *Background Checks for Child Welfare Agencies*, 22VAC40-191. Child welfare agencies include child day centers, family day homes, and family day systems. Regulatory requirements for background checks for non-licensed and non-regulated child care programs that receive Subsidy reimbursement are found in *Child Care Program*, 22VAC40-661.

The regulation *Background Checks for Child Welfare Agencies* requires repeat criminal history record checks for licensed programs every three years (22VAC40-191-40-D-1). Employees and volunteers in religious exempt child day centers are not required to have repeat criminal history checks; only one initial criminal history check is required (22VAC40-191-40-D-2). Employees, volunteers, and household members in voluntary registered family day homes are required to have repeat criminal history checks at the renewal of registration, which is every two years (22VAC40-191-D-1).

The Virginia Subsidy regulation, *Child Care Program*, 22VAC40-661, requires programs that accept Subsidy reimbursement to obtain background checks as required by the regulations for their type of care. If a program is not licensed or regulated and is eligible for Subsidy reimbursement, the program must follow background checks as required in the regulation *Child Care Program* and in § 63.2-1725 of the Code. Subsidy background history check requirements include criminal record name checks for applicants, agents involved in the day-to-day operations of the program or alone with children, employees, volunteers, and adult household members. Three-year repeat criminal record checks are required in 22VAC40-661-57.

Virginia law currently allows for national fingerprint-based criminal history background checks for businesses and organizations (called 'qualified entities') providing care to children, elderly and disabled. These checks are not required for child day programs, but are currently available through the Virginia State Police (§ 19.2-392.02 of the Code). If a child day program wants to have a national fingerprint check on an employee, they can request this check through the Virginia State Police.

The current federal regulation, *Child Care and Development Fund Regulation*, does not require background checks, but does require providers to follow state licensing laws and

regulations (45CFR 98). Virginia state laws and regulations require criminal record name checks for licensed and regulated child care providers. The proposed federal regulation for CCDF is expected to require comprehensive background checks for all child care programs that receive CCDF funds. Comprehensive background checks include “use of national fingerprint-based criminal history records for state checks of criminal history records, use of national fingerprint-based criminal history records for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry (if available), and clearance through sex offender registries (if available).”

Name-based and National Fingerprint-based Criminal Record Checks

Current background check requirements in Virginia require a criminal history record check through the Central Criminal Records Exchange, an information system containing criminal history data, maintained by the Virginia State Police. This criminal record check is based on a name check using the individual’s name and date of birth. This process looks for criminal history records in Virginia using the person’s name. Any criminal charges found using the name check are sent to the child care provider entity to compare with the list of barrier crimes in § 63.2-1719 of the Code to determine if the individual has a barrier crime conviction.

A national fingerprint-based criminal history record check is conducted by the Federal Bureau of Investigation (FBI) and checks convictions in all states, the District of Columbia, and U. S. territories. National fingerprint-based criminal history records are more accurate and provide more information with which to ensure correct identity. When the Virginia State Police run a fingerprint-based criminal history check, a check is done to see if the individual is listed in the Virginia Sex Offender and Crimes against Minors Registry.

To conduct a national fingerprint-based criminal history record check for an FBI record, the individual’s fingerprints are submitted to the state police, who transmit the fingerprints to the FBI. The FBI conducts the national criminal history record search, and returns the record to the state police. The state police screen the results or send the results to a screening agency, which must be a government agency, to be screened against the respective barrier crime list (Public Law 92-544). This government agency ‘screener’ compares convictions on the record with the barrier crimes list and conducts research to determine disposition of criminal charges and other missing information. The screening agency then notifies the employer (child care program) whether or not the individual is ‘eligible’ to be hired or to volunteer.

Public Law 92-544 authorizes the FBI to exchange identification records with officials of state and local governments for purposes of licensing and employment, if such exchanges are also authorized by a state statute that has been approved by the United States Attorney General. This exchange of criminal history information is limited to government agencies with the employing agency receiving record screening results, not the full national criminal history record. Further dissemination of criminal history results is prohibited unless approved by the United States Attorney General and the Virginia State Police.

While the Virginia State Police currently screen national fingerprint-based criminal history record checks for small employee groups, they are not equipped to screen criminal

history records for all child care providers in the Commonwealth. Currently, the Department's Office of Background Investigations (OBI) screens criminal history records (state and federal) for employees and volunteers in children's residential facilities and for foster and adoptive parents. The OBI processes approximately 15,000 national fingerprint-based criminal history record checks annually. The current fee for a national fingerprint-based criminal history record check for employees is \$50 (\$13 to Virginia State Police, \$24 to FBI and \$13 to OBI as a screening fee). The fee for volunteers is \$36 (\$8 to state police, \$18 to FBI and \$10 to OBI as a screening fee).

For employees and volunteers of children's residential facilities and foster and adoptive parent applicants, fingerprints are usually taken by local law enforcement or another trained official, and the hard copy fingerprint card is mailed to the OBI. Once the OBI receives a fingerprint card, the card is electronically scanned and transmitted to the Virginia State Police, who conduct a state criminal record search and transmit the fingerprints to the FBI for a national criminal history record search. Results of the criminal history record search are sent to the OBI. If the individual has no criminal record, the notification is made via email followed by a letter and the entire process takes about one week to complete. If there is a criminal record, the Virginia State Police mail the state and federal criminal record to the OBI for screening. The OBI screens the criminal records against the corresponding barrier crime list to determine if there is a barrier crime conviction and conducts research on missing disposition information. Once screening is complete, the determination letter is emailed and a hard copy is mailed to the employing agency, with a copy of the Virginia criminal record (Public law 92-544 prohibits exchange of federal criminal history information with private entities). If an individual has a criminal record, the process can take fourteen days or longer depending on when the record is received from the Virginia State Police and the time it takes to complete all research.

It should be noted that there are multiple private companies that conduct 'background checks' for various purposes. In order to receive a comprehensive national criminal history record check, the individual's fingerprints must be submitted to the Virginia State Police, who then transmit the fingerprints to the FBI for the criminal record search. Private background check companies do not conduct a search of the national FBI criminal history records; instead they 'data mine' through internet search engines to scan public court record sites posted online for conviction information on the individual. The federal CCDF proposed rule requires a comprehensive background check to include a national fingerprint-based criminal history record check of FBI criminal history records, which is the most accurate and complete national criminal history check available.

Fingerprint Companies

Many states that require national fingerprint-based criminal history record checks for child care providers use a private fingerprint company to take fingerprints. The Department conducted limited research to better understand this option and found the following:

- Applicants sign up online or via telephone to make an appointment to have their fingerprints taken.
- Payment is made either online or in person when the fingerprints are taken.
- Fingerprint stations are set up statewide for applicants to have their fingerprints taken.

- Fingerprint stations are within a certain distance of child care providers as requested by the contractor, typically within 25 to 50 miles.
- The availability of the appointments is also determined by the contractor, for example; whether the station is open one day a week or six days a week, time schedule of when fingerprints are taken, etc.
- If a request is made for at least 25 fingerprints at one location, fingerprint companies can send technicians and equipment out to take the fingerprints at a preselected location. This option is often used in a new facility, when many fingerprint checks are required at one time.

Fingerprint stations can operate under a partner model or storefront model. The partner model involves the fingerprint company partnering with an existing company (UPS or Fed Ex partners are common in other states).

- Fingerprint equipment is housed at the partner site.
- The fingerprint company conducts background checks on the partner employees to include national fingerprint-based criminal history record checks, credit checks, reference checks, drug tests, etc.
- The site is examined to determine if it is suitable for confidentiality, available space for waiting applicants, and information security issues.

In the storefront model, the fingerprint company establishes locations statewide to include renting space, hiring employees, obtaining equipment, etc.

Once the applicant arrives to have their fingerprints taken, the applicant must show identification, usually from a list of allowable documents (driver's license, passport, etc).

Contractors can request special options for added costs such as:

- Requiring a photo to be taken of the applicant to reduce fraud
- Using a device that authenticates government issued identification documents
- Requiring a signature pad to capture the applicant's signature.

The applicant's fingerprints are taken electronically, and transmitted to the corresponding law enforcement agency that facilitates the criminal record search.

A fingerprint company can process the fees associated with obtaining the criminal record and fees for screening the results. The fingerprint company charges the applicant a total fee that incorporates the fingerprint fee, fee for Virginia State Police, fee for FBI, and the fee charged by the screening agency. The fingerprint company pays the agencies involved based on the number of fingerprints processed each month. This could potentially reduce administrative costs for the state agencies involved as fingerprints are sent electronically from the fingerprint company and fees collected are dispersed by the fingerprint company.

Results of the fingerprint-based criminal history record check cannot be sent to the fingerprint company, as they are not a government agency. The company arranges to have the fingerprints taken, collects all required fees, and transmits the fingerprints electronically to the state police. Once the state police have the FBI results, the results are screened by state police or

a government screening agency in accordance with state law, and the employing agency is notified if the applicant is eligible to be hired as a child care employee or to volunteer.

Fingerprint companies can store fingerprints as long as a contractor requires them to be stored. Storage of fingerprints can reduce costs for applicants, as future fingerprint fees may be lower if new fingerprints are not required to be taken. In most states, agency sharing of results information is not permitted if an employee changes facilities, although some states allow for a new search to be conducted based on the stored fingerprints within a defined number of years. For example, if employee Mary Smith switches day care employment within three years, her fingerprints are still on file with the fingerprint company. New fingerprints would not be required in order for a national fingerprint-based criminal history record search for Mary Smith's new employer to be processed.

The cost for a fingerprint company to take an applicant's fingerprints varies based on the requirements of each state. Issues such as partner versus storefront model, fingerprint station distance from applicants, frequency of availability of fingerprint stations, and whether a photo or signature is required impact the total cost per set of fingerprints. Research conducted on various states that use fingerprint vendors reveal a range of \$10 per set of fingerprints to \$25 per set of fingerprints. As a comparison, most fingerprints for children's programs in Virginia are currently taken manually (not transmitted electronically) by local law enforcement, for a charge of \$10. These costs do not include fees for state police, FBI, or screening agencies.

Using a fingerprint company could save time due to fingerprints being processed electronically, and not needing to mail and scan hardcopy fingerprint cards. Taking fingerprints via electronic means is quicker, more reliable, and more secure. This could also potentially save equipment costs to state agencies, as the fingerprint companies supply the required equipment used at fingerprint stations. Electronic transmission of fingerprints could reduce the total time needed to obtain fingerprint-based criminal history record results as mail time would be eliminated.

Administrative costs to the Commonwealth could also potentially be reduced, as the fingerprint company would take on the collection of all fees and payment of all invoices and the majority of hard copy fingerprint cards would not have to be scanned to the Virginia State Police. There may be an upfront cost to the state to configure the information system to receive information from the fingerprint company electronically. This reconfiguration would prevent the screening agency from having to pay staff to data enter information from the fingerprint company.

If the Commonwealth wanted to pursue using a fingerprint company, the parameters of the request for proposal would need to be determined. Many government entities currently require national fingerprint-based criminal history record checks, including, but not limited to, private and public schools, Virginia Lottery, the Department of Criminal Justice Services, and the Department of Behavioral Health and Developmental Services. Expanding the number of potential fingerprint applicants could allow for lower cost per fingerprints. There would need to be identifiers with each scanned set of fingerprints to identify which public agency is screening the criminal record results and the employer who is to be notified of the results of the screening.

If a fingerprint company is to be used, a smaller parameter could be established with the agreement being only with the Department and the fingerprint company to process fingerprints for Department providers only.

One fingerprint company indicated it could set up a partner model fingerprint station system for child care providers in Virginia in about 90 days. At least one fingerprint company is currently operating in Virginia for real estate agents, with fingerprints taken at the site of the real estate exam.

Portability of Fingerprint-based National Criminal History Record Checks

Portability of criminal history record results is a controversial issue. Portability allows a child care employee to change employers and not submit a new criminal record check to the new employer if the employee has proof that an acceptable criminal history record was received within a pre-determined time period. The benefits of portability are it reduces costs for providers because fewer criminal backgrounds may have to be requested by the provider and staff with a portable criminal history record could begin without any delay due to waiting for the return of a criminal history record. The downfall to allowing portability is the safety of children can be compromised. A criminal history record is only good for the time it is received and backward, not forward. A criminal record indicates what happened in the past. An individual may commit and be convicted of a barrier crime at any time after the criminal history record is received. Conviction data may be delayed and not show up on the criminal history record until a later time. Requiring a new criminal history record check each time an employee changes employment is a safeguard to ensure that someone with a barrier crime conviction is not allowed access to children. The Department and the Virginia State Police do not support portability.

Currently in Virginia, laws requiring national fingerprint criminal histories for staff of children's residential facilities (§ 63.2-1726 of the Code) and for foster/adoptive parents (§ 63.2-901.1 of the Code) do not allow for portability. The regulation *Background Check for Child Welfare Agencies* allows portability between facilities (other than a children's residential facility) for a name-based criminal history record check if the individual has a copy of their own record, but only for 90 days (22VAC40-191-D 6). The individual can take their own background to a new facility; however, the facility cannot share background information with other facilities. If a national fingerprint-based criminal history record was obtained, the screening results would be sent directly to the facility and not to the individual. New background record checks are required each time an individual changes employers, or if the program's license, registration, approval of a family day home in a family day system, or eligibility for Subsidy changes. Virginia's laws regarding dissemination of criminal record information prohibit sharing of this information between child day programs.

States have very different requirements regarding portability of criminal record check information between child care facilities. It is difficult to compare other states with Virginia, as dissemination statutes often differ, the rules regarding the availability of criminal records vary, and background check laws are complex. One state issues a background check clearance card that is valid for three years. Child care providers in that state must report arrests and convictions to their licensing authority. The licensing authority can then determine if the background check

clearance card should be invalidated. Another state allows portability of national background criminal record checks for up to two years, as long as a name check (state check) has been completed within the past two years. A third state allows portability of national background check criminal record checks for up to three years, as long as a name check (state check) is completed by the new employer. A fourth state allows portability of national fingerprint-based criminal history record background criminal record checks for one year.

'Rap back' technology allows a participating entity to be notified of an arrest or a conviction that would disqualify an individual from employment in that agency. For example, if the employee and employer were registered in the 'rap back' database and the employee was convicted of a barrier crime, the employer would be notified of this conviction and be required to prohibit employment of that individual who now has a barrier crime conviction. Section 52.46 of the Code authorizes the Virginia State Police to establish this 'rap back' applicant fingerprint database, but because funding is unavailable, this system has not been broadly implemented in Virginia. The notification of new convictions of child care employees registered in this database would make the option of a portable criminal history record check more favorable, as there would be a way to identify individuals who are convicted of barrier crimes after their criminal history check is conducted.

While a few states have authorized limited portability of criminal history record checks, Virginia does not yet have the technology via 'rap back' to update criminal records unless a new criminal history record check is done. While portable background checks potentially reduce costs for child care providers, the safety of children in care can be compromised if there is no method to ensure that an individual has not been convicted of any barrier crime after the criminal history record check.

Estimate of the Number of National Fingerprint-based Criminal History Record Checks Required Annually

The number of programs likely to be impacted by a national fingerprint-based criminal history record requirement is known. However, there is no way to know how many criminal history record checks would need to be conducted each year because the Department does not track the number of employees working in child day programs. Department staff utilized several methods to estimate the number of child care staff who would need fingerprint checks each year. There are 5,764 licensed and regulated programs operating in the Commonwealth (FY14 data). There are an additional 1,362 unlicensed and unregulated programs that receive Subsidy funds.

The Virginia State Police currently processes criminal record checks based on name for each child care employee and estimate that 60,000-80,000 checks are conducted each year. This is a rough estimate, because many individuals do not correctly identify their employment category on the criminal history record request form and the Virginia State Police are unable to provide a more specific count.

The Department completed an analysis of licensed and regulated programs, looking at the age ranges of children served and the program's capacity (how many children the program can serve). Licensing regulations determine how many employees are required in a classroom based

on the number and age of children in care. Programs were sorted by the type of program, ages of children served, and capacity and then the average number of staff for these kinds of programs was estimated, based on classroom ratio requirements. A multiplier of two was used to account for non-classroom staff in a program that may need background checks (cooks, administrative staff, drivers, etc), part-time staff, and volunteers, and to account for the multiple staff that are needed in each classroom if a program is open 10-12 hours each day. For example, it was estimated that a child day center with an average capacity of 112 children, serving all ages (infant to school age) would need at least 12 classroom staff to meet ratio requirements. Using the multiplier of two, it was estimated that this center has at least 24 staff that would need national fingerprint-based criminal history record checks. Additionally, a 28.5 percent annual turnover rate was used in the estimate (Bassok, Fitzpatrick, Loeb, and Paglayan, 2013; Committee on Early Childhood Care and Education Workforce, 2012; Whitebook and Sakai, 2003). Using this analysis, 85,718 child care staff would require national fingerprint-based criminal history records.

Utilizing expertise from the Department's Office of Research and Division of Finance, it was determined that the most reliable method to estimate the number of criminal records needed each year is the consultant analysis method, using ratios and capacity. This method estimates the number of fingerprint record checks needed based on minimum staffing requirements and maximum capacity of programs. For the purposes of determining the budget, the number was rounded off to 85,000 staff.

Budget

Preliminary budgets estimating expenses and revenue projections can be found in Appendix C and Appendix D. These projections are general and based on current fees charged for the processing and screening of national fingerprint criminal history record checks for employees of children's residential facilities and for foster/adoptive parents. Assumptions used are detailed below each budget projection. The first projection is based on costs if the state does not use a fingerprint company (Appendix C). The second projection is based on costs if the state uses a fingerprint company (Appendix D). The Virginia State Police costs described in each budget projection are basic costs, as detailed cost information was unavailable to the Department. It is anticipated that if the state uses a fingerprint company and the assumptions stated in Appendix D hold true, the Department's OBI fee for screening records (currently \$13) may be reduced.

The fees described in fee revenue on each budget projection do not reflect the cost to have fingerprints taken. Currently, this fee is approximately \$10, with most fingerprints taken by local law enforcement. If a fingerprint company is used, this fee would be based upon the agreement between the state and the fingerprint company and would likely cost between \$10 and \$25 with the charge increasing toward \$25 with the increase of contract requirements.

In the current process, the individual being fingerprinted, or the agency with which the individual is associated, pays the cost to have fingerprints taken, the Virginia State Police and FBI fees, and the OBI fee. The increased cost to conduct a national fingerprint criminal history is a concern for providers of child care.

The Department and the Virginia State Police would need budget allocations to cover upfront costs for personnel, cubicle space, information system updates, and equipment in the first year of implementation. These allocations would be needed prior to taking in fee revenue.

Statutory Changes Needed

If national fingerprint-based criminal history record checks are implemented in the Commonwealth, a separate section in the Code will need to be added with the below suggested requirements. This new section must be approved by the United States Attorney General in order to obtain access to FBI criminal record information.

Suggested Requirements:

- **Require the following individuals in child day programs to obtain a national fingerprint-based criminal history record check:**
 1. **Employees;**
 2. **Applicants;**
 3. **Agents who will be involved in the day-to-day operations of the program or alone with children;**
 4. **Volunteers who will be alone with children; and**
 5. **Any other adult living in a family day home.**

- **The requirement to obtain a national fingerprint-based criminal history record check applies to the following child day programs: licensed child day centers, regulated child day centers (religious exempt child day center, certified preschools), exempt child day centers that are eligible Subsidy vendors, licensed family day homes, regulated family day homes (family day homes approved by a licensed family day system, voluntary registered family day homes), and unregulated family day homes that are eligible Subsidy vendors.**

- **The national fingerprint-based criminal history record check must be done prior to employment or volunteering in the child day program. For applicants, agents involved in the day-to-day operations of the program or alone with children, and adults living in the family day home, the national fingerprint-based criminal history record check must be conducted upon application for licensure or registration of the program, or prior to entering into a Subsidy contract for unlicensed/unregulated Subsidy vendors.**

- **If an individual required to obtain a national fingerprint-based criminal history record check remains employed by the same facility, the individual shall obtain a new national fingerprint-based criminal history record check every 36 months.**

- **Individuals required to obtain a national fingerprint-based criminal history record check shall be screened by a state agency against the barrier crime list in § 63.2-1719 of the Code, using exemptions in §§ 63.2-1720 and 63.2-1721 of the Code. The state agency shall respond to the child day program with which the individual is affiliated as to whether the individual is eligible for employment in a child day program.**

- The new section should not restrict who takes the fingerprints, to allow for different options, including the use of a fingerprint company to take fingerprints or a facility to roll its own fingerprints.
- The new section should prohibit dissemination of national fingerprint-based criminal history record results, except as allowed by state or federal law.
- Background check requirements to obtain a search for central registry (§§ 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code) information should either be moved to the new section outlining national fingerprint-based criminal history record requirements, or retained in existing Code sections.
- Background check requirements to obtain a statement or affirmation disclosing any criminal convictions or pending criminal charges within or outside the Commonwealth (§§ 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code) should either be moved to the new section outlining national fingerprint-based criminal history record requirements, or retained in existing Code sections.
- Revisions would be required in §§63.2-1717, and 63.2-1720 through 63.2-1725 of the Code. These sections of the Code address licensing and subsidy requirements.
- The new section should include language that the individual is entitled to obtain a copy of any background check report and to challenge the accuracy of any such report and obtain a resolution before a final determination is made of the individual's eligibility to work or volunteer in a child day program.

Regulatory Changes Needed

The following regulations would need to be reviewed and amended to reflect a national fingerprint-based criminal history record requirement for child day program employees, volunteers, applicants, agents, and household members in a family day home:

- *Background Checks for Child Welfare Agencies*, 22VAC40-191
- *Standards for Licensed Child Day Centers*, 22VAC40-185
- *Standards for Licensed Family Day Homes*, 22VAC40-111
- *Minimum Standards for Family Day-Care Systems*, 22VAC40-120
- *Voluntary Registration of Family Day Homes - Requirements for Providers*, 22VAC40-180
- *Child Care Program*, 22VAC40-661

Recommendations

1. All licensed and regulated child day programs should be required to obtain a state and national fingerprint-based criminal record check for employees, volunteers who will be alone with

children, applicants, agents involved in the day-to-day operations or who will be alone with children, and adult household members in family day homes. This requirement would convey to all child care programs that receive payment through Subsidy, even if these programs are not licensed or regulated. All children in licensed and regulated programs and children in programs that accept Subsidy reimbursement should be protected by this requirement.

2. The Department's OBI should screen fingerprint check results using the barrier crime list in § 63.2-1719 of the Code and notify child day programs of the individual's eligibility for employment or volunteering. The Virginia State Police has stated it cannot screen the results of the fingerprint checks for all child care providers, as they are not primarily a screening agency.

3. A fingerprint vendor that can take fingerprints and electronically transmit the fingerprints to the Virginia State Police should be considered by the Commonwealth because of the potential administrative savings and the reduced turn-around time in receiving criminal history record results. To further reduce costs, the Commonwealth should consider extending the use of a fingerprint vendor to the following entities for whom national fingerprint-based criminal history record checks are currently required: public and private schools, Department of Behavioral Health and Developmental Services, Virginia Lottery, children's residential facilities, foster and adoptive families, and Department of Criminal Justice Services. If a fingerprint company is used, the Commonwealth should consider limiting the options used by the fingerprint company (photo, signature pad, distance and availability of fingerprint stations) to reduce the fingerprint fee, while still ensuring availability of fingerprint stations across the Commonwealth.

4. The workgroup does not recommend portable criminal history record checks at this time because the technology is not available to notify agencies when there is a new arrest or new conviction of an employee or volunteer. Once this 'rap back' technology is readily available in Virginia, the work group would like to see the issue of portable criminal history record checks considered for individuals required to be fingerprinted. Portability at this time reduces safety for children in care.

5. The requirement for repeat criminal record checks every three years should be continued. The repeat criminal record check should be a national fingerprint-based criminal history record check.

6. An effective date for implementation should be at least two years from the date the law is signed to allow sufficient time for state-wide implementation. New information systems and equipment will need to be in place, decisions will need to be made and implemented regarding the use of a fingerprint company, and changes will need to be made in the Virginia State Police and OBI to accommodate the processing of child care provider fingerprint criminal history record checks. All new individuals hired, volunteering, licensed, registered, approved as a Subsidy provider, or approved after this date must have a national fingerprint-based criminal history check. This would include new employees, new volunteers who will be alone with children, new applicants, new agents involved in the day-to-day operations of the program or who will be alone with children, and new adult household members residing in a family day home.

7. Implementation of national fingerprint-based criminal history record checks should be phased in over a three year-period for current employees. Current employees and volunteers should be required to obtain a fingerprint-based record check at the three year expiration of their existing name background check. Current applicants, agents involved in the day to day operations of the program or that will be alone with children, and adult household members residing in family day homes should obtain a national fingerprint-based criminal history record check upon renewal of the license, registration, approval for Subsidy participation, and/or approval.

8. Efforts should be made to limit the cost of national fingerprint-based criminal history record checks to individuals and child care providers. Fingerprint record checks are costly to implement and continue, but are necessary to provide increased protection to children and to meet potential federal requirements. If the proposed federal CCDF requirement for national fingerprint-based criminal record checks becomes final, Virginia will not be eligible for \$108,717,766 in federal funds if national fingerprint-based criminal history record checks are not required for child care providers.

9. Efforts should be made to ensure the fingerprint checks are conducted in an efficient manner with a reasonable turnaround time, as child care providers need to know screening results as soon as possible in order to make hiring decisions and obtain licensing and regulatory approvals.

10. Once decisions have been made regarding the parameters of the requirements for national fingerprint-based criminal history record checks, further research is needed prior to fully implementing this requirement. This research should include determining specific information system requirements and upgrades needed, parameters for the use of a fingerprint company if this option is used, analysis of the final federal rule for Child Care and Development Funds, and other issues as needed.

11. Existing barrier crimes should be reviewed to ensure that the barrier crimes are appropriate as lifetime prohibitions for employment in child day programs and to ensure consistency between programs.

12. Further research is recommended on background check requirements for child day programs in the Code of Virginia. Background check requirements are redundant and duplicative in several different sections of the Code and for ease of understanding, it is recommended that requirements be consolidated and combined as applicable.

References

Bassok, Daphna, Maria Fitzpatrick, Susanna Loeb, and Agustina S. Paglayan. 2013. "The early childhood care and education workforce from 1990 through 2010: Changing dynamics and persistent concerns." *Working Paper*.

Committee on Early Childhood Care and Education Workforce: a. 2012. *The Early Childhood Care and Education Workforce: Challenges and Opportunities: A Workshop Report*. National Academies Press.

Whitebook, Marcy, and Laura Sakai. 2003. "Turnover Begets Turnover: An Examination of Job and Occupational Instability Among Child Care Center Staff." *Early Childhood Research Quarterly* 18 (3): 4.

Appendix A

Workgroup Mandate

VIRGINIA ACTS OF ASSEMBLY – 2014 SESSION

CHAPTER 128

An Act to require the Department of Social Services to convene a work group to develop a plan for implementation of national fingerprint-based background checks for child care providers.

[H 412]

Approved March 5, 2014

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Department of Social Services shall convene a work group to review current state and federal laws and regulations governing criminal history background checks for all child care providers in the Commonwealth and to develop a plan for implementation of national fingerprint-based criminal history background checks for all child care providers in the Commonwealth, including recommendations for statutory and regulatory changes and budget actions necessary to implement the plan. Such work group shall include representatives of the Department of State Police, child day programs licensed by the Department of Social Services, unlicensed child day programs, and other stakeholders. The Department shall report its findings to the Governor and the General Assembly by November 1, 2014.*

Appendix B

Workgroup Members

Eddy Aliff, Virginia Assembly of Independent Baptists
Henk de Jager, YMCA
Debra DeLoose, Virginia Association for Early Childhood Education
Blair Denson, Virginia Partnership for Out of School Time
Liz Dowdy, Concerned Citizens for Child Care
Delegate Eileen Filler-Corn, Virginia House of Delegates
Emily Griffey, Voices for Virginia's Children
Kim Hulcher, Virginia Chapter of the National Child Care Association
Elly Lafkin, Parent
Mary Sue Rainey, Marine Corp Community Services
Sharon Veatch, Child Care Aware of Virginia
Josie Webster, Virginia Council for Private Education
Elizabeth Wittusen, Child Nutrition, Inc.
Captain Thomas Turner, Virginia State Police
Lieutenant Tricia W. Powers, Virginia State Police

Virginia Department of Social Services' staff from the following divisions provided assistance and support to the workgroup: Division of Licensing Programs, Commissioner's Office, Division of Finance, Office of Research and Planning, Division of Child Care and Early Childhood Development, and Division of Information Systems.

Appendix C

BACKGROUND CHECKS ON CHILDCARE PROVIDERS
Costs without using a fingerprint company

Preliminary Cost Estimate:

REVENUES:

Fee Revenue (85,000 requests @ \$50)

Due to State Police

Due to FBI

Total Net Revenue

LESS: EXPENSES

Salaries & Benefits

Non Personnel Operating Costs

One Time Costs (i.e. cubicle)

Additional Office space

Additional Postage Costs

Equipment Costs

Information Systems Upgrade Costs

Annual Maintenance Agreement for Equipment

Subtotal Expenses

Surplus / (Deficit)

	VA Dept. of Social Services Costs Year 1	VA State Police Costs Year 1	Total Costs Year 1	VA Dept. of Social Services Costs Year 2	VA State Police Costs Year 2	Total Costs Year 2
Fee Revenue (85,000 requests @ \$50)	4,250,000	3,145,000		4,250,000	3,145,000	
Due to State Police	(3,145,000)	0		(3,145,000)	0	
Due to FBI	0	(2,040,000)		0	(2,040,000)	
Total Net Revenue	1,105,000	1,105,000	2,210,000	1,105,000	1,105,000	2,210,000
LESS: EXPENSES						
Salaries & Benefits	844,309	647,695	1,492,004	844,309	647,695	1,492,004
Non Personnel Operating Costs	135,915	23,411	159,326	135,915	23,411	159,326
One Time Costs (i.e. cubicle)	87,771	16,000	103,771	0	0	0
Additional Office space	150,000	0	150,000	150,000	0	150,000
Additional Postage Costs	41,650	6,248	47,898	41,650	6,248	47,898
Equipment Costs	17,080	48,000	65,080	0	0	0
Information Systems Upgrade Costs	48,557	0	48,557	0	0	0
Annual Maintenance Agreement for Equipment	3,852	408	4,260	3,852	408	4,260
Subtotal Expenses	1,329,134	741,762	2,070,895	1,175,726	677,762	1,853,488
Surplus / (Deficit)	(224,134)	363,239	139,105	(70,726)	427,239	356,513

Assumptions:

-85,000 estimated background checks required.

- Fee structure remains the same. \$50 fee from customer, \$13 retained by VDSS, \$13 retained by VSP, and \$24 passed thru to the FBI.
- All fingerprint scanning and screenings will be done by OBI.
- Each additional employee can process approximately 5,000 requests per year.
- VDSS=15 Admin Assist Sr., and 2 Criminal Records Supervisors. VSP=8 Fingerprint Techs, 2 program support techs.
- VDSS will mail out 100% of requests at the current postage rate of \$0.49 each. VSP will only mail requests with the existence of a record which is currently 15% of all incoming requests.
- VDSS - Estimated activity will require 4 additional scanners, at a cost of \$4,270 each. Estimated annual maintenance on those scanners are \$963 each. VSP - Estimates \$408 annually.
- System Costs - Only systems costs are Background Information System (BIS) modifications estimated at \$48,557.
- The cost of additional office space to accommodate additional people has been estimated.

Appendix D

BACKGROUND CHECKS ON CHILDCARE PROVIDERS
Costs using a fingerprint company

Preliminary Cost Estimate:

	VA Dept. of Social Services Costs Year 1	VA State Police Costs Year 1	Total Costs Year 1	VA Dept. of Social Services Costs Year 2	VA State Police Costs Year 2	Total Costs Year 2
REVENUES:						
Fee Revenue (85,000 requests @ \$50)	4,250,000	3,145,000		4,250,000	3,145,000	
Due to State Police	(3,145,000)	0		(3,145,000)	0	
Due to FBI	0	(2,040,000)		0	(2,040,000)	
Total Net Revenue	1,105,000	1,105,000	2,210,000	1,105,000	1,105,000	2,210,000
LESS: EXPENSES						
Salaries & Benefits	494,623	647,695	1,142,318	494,623	647,695	1,142,318
Non Personnel Operating Costs	79,950	23,411	103,361	79,950	23,411	103,361
One Time Costs (i.e. cubicle)	51,630	16,000	67,630	0	0	0
Additional Office space	88,500	0	88,500	88,500	0	88,500
Additional Postage Costs	41,650	6,248	47,898	41,650	6,248	47,898
Estimated Cost of Fingerprinting Contract	0	0	0	0	0	0
Equipment Costs	8,540	48,000	56,540	0	0	0
Information Systems Upgrade Costs	95,725	0	95,725	0	0	0
Annual Maintenance Agreement for Equipment	1,926	408	2,334	1,926	408	2,334
Subtotal Expenses	862,544	741,762	1,604,306	706,649	677,762	1,384,411
Surplus / (Deficit)	242,456	363,239	605,694	398,351	427,239	825,590

Assumptions:

- Retained fees will remain unchanged from current fees. \$50 fee from customer, \$13 retained by VDSS, \$13 retained by VSP, and \$24 passed thru to the FBI.
- Although all scans will process through OBI, an estimated 25% of total requests will be scanned by the OBI team.
- Assuming a no-cost contract where the vendor will be paid thru the customer fee.
- Each additional person can process 8,500 requests per year.
- VDSS=9 Admin Assist Sr., and 1 Criminal Records Supervisor. VSP=8 Fingerprint Techs, 2 program support techs.
- VDSS will mail out 100% of requests at the current postage rate of \$0.49 each. VSP will only mail requests with the existence of a record which is currently 15% of all incoming requests.
- VDSS - Estimated activity will require 2 additional scanners, at a cost of \$4,270 each. Estimated annual maintenance on those scanners are \$963 each. VSP - Estimates \$408 annually.
- System Costs - Only systems costs are Background Information System (BIS) modifications estimated at \$95,725. (Additional upgrades required to receive downloaded info from fingerprint company).
- The cost of additional office space to accommodate additional people has been estimated.

