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Subject: 2020 Legislative Implementation
To: <DSS_LICENSING@listserv.cov.virginia.gov>

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

DATE: June 26, 2020

TO: Certified Preschools

FROM: Tara Ragland, Director
Division of Licensing Programs

SUBJECT: 2020 Legislative Implementation

This memo will inform you of legislation that passed in the 2020 Virginia General Assembly session that affects certified preschools. The legislation will become effective July 1, 2020 unless otherwise noted.

Senate Bill 71

[SB 71](#) amends and reenacts § 18.2-308.1 of the Code of Virginia. This bill prohibits the possession of a firearm on the property of public, private, or religious preschools and licensed child day centers that are not operated at the residence of the provider or of any of the children. The provisions of the bill only apply during the regular operating hours of such child day center or preschool and do not apply to any person (i) whose residence is on the property of a child day center or a private or religious preschool and (ii) who possesses a firearm or other prohibited weapon while in his residence.

Senate Bill 393/House Bill 799

[SB 393](#) and [HB 799](#) add § 63.2-1705.1 to the Code of Virginia and require licensed child day programs and certain other programs that serve preschool-age children to develop and implement a plan to test potable water for lead from sources identified by the U.S. Environmental Protection Agency as high priority and send the results to the Commissioner of Social Services and the Department of Health's Office of Drinking Water. Remediation or the use of bottled water is required if lead is above 15 parts per billion. Information and updates regarding the requirements for testing, results, and remediation efforts, will be provided as the Virginia Department of Health proceeds with implementation. The Virginia Department of Social Services will provide additional resources and information to providers as it becomes available. Inspectors will not be

determining compliance with these new requirements until additional information has been provided.

Senate Bill 430

[SB 430](#) amends and reenacts § 20-124.6 of the Code of Virginia, relating to access to minor's child-care records by a parent. The bill requires that neither parent, regardless of whether such parent has custody, shall be denied access to the records of a child day center or family day home of that parent's minor child unless otherwise ordered by the court for good cause or prohibited by law.

House Bill 1012/Senate Bill 578

[HB 1012](#) requires the Board of Education to establish a statewide, unified public-private system for early childhood care and education in the Commonwealth to be administered by the Board of Education, the Superintendent of Public Instruction, and the Department of Education (DOE). The bill transfers the authority to license and regulate child day programs and other early child care agencies from the Board of Social Services and Department of Social Services (DSS) to the Board of Education and Department of Education. The bill maintains current licensure, background checks, and other requirements of such programs. Such provisions of the bill have a **delayed effective date of July 1, 2021.**

HB 1012 requires the Superintendent of Public Instruction to establish a plan for implementing the statewide, unified early childhood care and education system. It requires the Department of Social Services and the Department of Education to enter into a cooperative agreement to coordinate the transition.

The bill also requires the Board of Education to establish, no later than July 1, 2021, a uniform quality rating and improvement system designed to provide parents and families with information about the quality and availability of certain publicly funded early childhood care and education providers. The Board of Education must publish the initial quality ratings under the new system in the fall of 2023.

This bill is identical to Senate Bill 578. More information will be provided by DSS and DOE once a transition plan has been developed.

Please contact your licensing inspector if you have any questions.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

DATE: June 26, 2020

TO: Licensed Child Day Centers
Licensed Family Day Homes
Voluntarily Registered Family Day Homes
Licensed Family Day System
Religious Exempt Child Day Centers
Certified Preschools
Unlicensed Child Day Programs Receiving Child Care Subsidy

FROM: Tara Ragland, Director
Division of Licensing Programs

SUBJECT: 2020 Legislative Implementation

The purpose of this memo is to inform you of legislation that passed in the 2020 Virginia General Assembly session that affects criminal background checks for child care providers. This legislation becomes effective July 1, 2020.

Senate Bill 668

[SB 668](#) requires licensed child day centers, licensed family day homes, voluntarily registered family day homes, licensed family day systems, religious exempt child day centers, certified preschools, and child care subsidy providers funded by the Child Care and Development Block Grant (CCDBG) to obtain a copy of the results of a criminal history name search **and** sex offender registry check from any state in which the individual has resided in the preceding five years.

Please note this legislative action is in addition to the current background check requirement from the 2017 General Assembly session, [HB 1568](#), and [Chapter 191](#) Background Checks for Child Welfare Agencies. Background checks for child care providers will now include:

- A sworn statement or affirmation;
- A search of the child abuse and neglect registry in Virginia;
- A search of the child abuse and neglect registry in any other state a person has resided in the past five years;
- A fingerprint based national criminal history search; **and**

- A search of the criminal history name check **and** sex offender registry check from any other state a person has resided in the past five years ([SB 668](#) that goes into effect July 1, 2020).

Who does this apply to?

SB 668 requires **both** a criminal history name check and sex offender registry check in each state of residence for the past five years **prior** to approval or employment for the following:

- Applicant for licensure, registration, approval or initial filing of religious exemption;
- Agent of an applicant for a license or registration;
- Existing employees and volunteers, hired prior to July 1, 2020;
- An applicant for employment or volunteer; and
- Adult household members in a family day home or child day center.

This applies to licensed child day centers, licensed family day homes, family day systems, family day homes approved by a family day system, registered family day homes, religious exempt child day centers, and child care subsidy providers funded by the CCDBG.

Does this apply to employees, volunteers, and contractors hired prior to July 1, 2020?

Yes, all existing employees and volunteers, as well as adult household members who have lived in another state in the previous five years must complete a state criminal history name check and sex offender registry check from the other state, and the criminal history background check and sex offender registry check results must be received and provided to the child care provider by **December 31, 2020**.

How do I obtain this out of state background check?

To obtain an out of state criminal background check and sex offender registry check, go to the [Interstate Criminal Background Check Contact chart](#) from the VDSS website that lists the contact information for each state and territory of the United States. It is important to follow the instructions and requirements listed as each state has different processes on how to request a search. If you have questions, use the contact information in the column named “Interstate Criminal Background Check” for state criminal history check questions and “Interstate Sex Offender Registry Check” for sex offender registry check questions. The Office of Background Investigations (OBI) of Virginia will not be able to answer questions about the other state’s background check process.

How much does it cost?

Fees will vary, as each state has their own process and fee. The cost of the out of state background check is not paid by the Virginia Department of Social Services (VDSS), either the provider or the individual must cover any fees.

How much time is allowed to obtain the state criminal history background check and sex offender registry check from other states?

- *New individuals*: The law requiring these background checks goes into effect July 1, 2020. Providers must obtain this out of state background check before the individual

begins employment or volunteer service. New household members in a family day home must have this check completed within 30 days of becoming a household member. New applicants for licensure, registration, or subsidy must have these background checks as part of their application. New board officers or agents must have these background checks within 30 days of becoming a board officer.

In order to allow time for providers to obtain these background checks on new individuals who are hired or begin service July 1, 2020 or later, licensing inspectors will not cite violations of this new requirement until October 1, 2020.

- *Current individuals:* Existing employees, volunteers, applicants, agents, and household members have until December 31, 2020 to obtain these background checks if the individual has lived in another state in the past five years.

How often do these out of state background checks need to be repeated?

Background checks must be repeated every five years, but the out of state background check is only required to be repeated if the individual has lived in another state in the past five years. This would primarily apply to individuals who work in Virginia, but live in another state.

Who decides if there is a barrier crime on any record received from an out of state background check?

The child care provider is responsible for reviewing any record received from an out of state background check for barrier crime convictions. Any individual with a barrier crime conviction is prohibited from working, volunteering, or being an applicant, agent, or household member for a child day program.

Please check the [Child Care Barrier Crimes list](#) on the VDSS website. The barrier crime list has VA Code Sections. The specific code section will not be the same for other states. The provider must determine if any conviction from the other state is the same or similar to a Virginia barrier crime. If there are any questions, the provider should contact the licensing inspector.

Doesn't this duplicate the national FBI fingerprint background check that individuals also have to obtain?

While some of the convictions may appear on the FBI background check, not all convictions are required to be reported to the FBI and there are sometimes convictions from individual states that do not appear on the FBI record. Obtaining an out of state background check is a requirement of the Child Care Development Block Grant law, and now is also required in Virginia law.

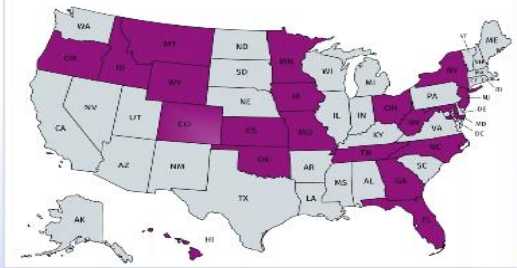
When is a criminal background check for each state of residence for the past five years **NOT** required?

If the state where the individual previously resided participates in the National Fingerprint File (NFF) program through the FBI, this additional state criminal background check is not required.

Below is a map of the NFF states as of June 2020. Please check the [Interstate Child Care Background Check Contact List](#) posted on the VDSS website for any updates to the NFF state listing.

NATIONAL FINGERPRINT FILE STATES

States participating in NFF	
Colorado	Florida
Georgia	Hawaii
Idaho	Iowa
Kansas	Maryland
Minnesota	Missouri
Montana	North Carolina
New Jersey	New York
Ohio	Oklahoma
Oregon	Tennessee
West Virginia	Wyoming



The FBI has direct access and automatically checks each NFF state's criminal history repositories as part of its search, in addition to the FBI database.

*Office of Child Care

Note: The NFF state criteria only applies to criminal history background checks. A sex offender registry check is still required in the other state, even if the state is a NFF state.

Scenarios-Out of State Criminal Background Checks

Here are two scenarios for current Virginia residents to explain the NFF state exceptions.

Scenario #1

Individual has lived in North Carolina (NFF state) and West Virginia (NFF state) within the last five years.

- A state criminal background check is **not required** for North Carolina and West Virginia because both states participate in the NFF program.
- A sex offender registry check is **required** for North Carolina and West Virginia.

Scenario #2

Individual has resided in Tennessee (NFF state), South Carolina (Non-NFF state), and Texas (Non-NFF state) in the last five years.

- A state criminal background check is **not required** for Tennessee because it is a NFF state.
- A state criminal background check is **required** for South Carolina and Texas because both states do not participate in the NFF program.
- A sex offender registry check is **required** for Tennessee, South Carolina, and Texas.

Please contact your licensing inspector if you have any questions.