

**Procedures for Conducting Background Investigations  
Required by § 37.2-416, Code of Virginia on Employees of DBHDS'  
Licensed Private Providers  
Revised November 1, 2009**

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**I. ADDRESS/CONTACTS**

- A. Any questions concerning processing of new requests and/or payments should be addressed to Diane Anthony at (804) 786-5859, by fax at (804) 692-0060, or by e-mail [diane.anthony@dbhds.virginia.gov](mailto:diane.anthony@dbhds.virginia.gov).
- B. Any questions concerning the results (not eligible, non-classifiable, reprints, etc.) should be addressed to Malinda Roberts at (804) 786-6384, by fax at (804) 692-0060, or by e-mail [malinda.roberts@dbhds.virginia.gov](mailto:malinda.roberts@dbhds.virginia.gov).
- C. Any questions concerning the Licensed Private Providers Criminal Background Investigations program may be addressed to Stephanie Willinger (804) 786-5858, by fax at (804) 692-0060, or by e-mail [stephanie.willinger@dbhds.virginia.gov](mailto:stephanie.willinger@dbhds.virginia.gov).
- D. Correspondence should be addressed as follows: Department of Behavioral Health and Developmental Services (DBHDS), Background Investigations Unit (BIU), P.O. Box 1797, Richmond, VA 23218-1797.

**Correspondence should not be addressed or sent to the Treasurer of Virginia.**

- E. **Any questions concerning the Department of Social Services (DSS) Request for Search of the Central Registry and Release of Information Forms may be addressed to Kim Davis at (804) 726-7549 or e-mail [kim.davis@dss.virginia.gov](mailto:kim.davis@dss.virginia.gov) or Betty Whittaker at (804) 726-7567 or e-mail [betty.whitaker@dss.virginia.gov](mailto:betty.whitaker@dss.virginia.gov). Forms can be downloaded from the DSS website at [www.dss.state.va.us](http://www.dss.state.va.us).**

**II. PRIOR TO PERMITTING AN APPLICANT TO BEGIN DUTIES**

- A. Each provider is strongly encouraged to discuss with applicants the reason fingerprints are requested and review the list of “barrier” crimes against which the results of the Virginia State Police (VSP) and Federal Bureau of Investigations (FBI) fingerprint investigations will be evaluated. Provider should also review their own (provider’s) policy regarding use of an applicant deemed not eligible for employment based on a conviction for one of the “barrier” crimes listed under VA Code § 37.2- 314 & 416 (Attachment 2).
- B. The provider **must complete** the following prior to permitting an applicant to begin his/her duties: **(1)** Obtain the applicant’s affirmations (*Disclosure Statement – Attachment 3*) concerning whether he/she has ever been convicted of or is the subject of pending charges for any offense. **Note:** If the applicant is the subject of pending charges involving a “barrier” crime, the provider will instruct the applicant to inform them of the outcome. The law does not require that the affirmation be notarized. **(2)** Applicant must give authorization for DBHDS to release their criminal history and/or any information pertaining to the criminal history to the provider.

(*Authority for Release of Information – Attachment 4*). **(3)** Provider must complete all requested data (*Request for Criminal Records Investigations for Employees Affiliated with DBHDS' Licensed Providers – Attachment 5*) concerning each applicant's personal data.

- C. The provider should advise the applicant that their employment is contingent upon the results of their criminal history background investigation.
- D. **Federal law outlines procedures for the applicant** to be informed that he/she is entitled to (1) obtain a copy of their VSP/FBI criminal History background check report; and (2) challenge its accuracy and completeness.

**NOTE:** Reports to a provider from DBHDS' BIU can be modified only after the individual challenges his/her record, it is corrected by the court or law enforcement agency, and the correction reported by the court/agency to the VSP or FBI. The provider may submit a new background request to obtain an updated criminal history record (ref. section XI).

### III. PROCESSING FEES

- A. Before the fingerprint requests can be processed the *Statement of Authorization of Payment* (Form #002), as well as, the *DBHDS' Licensed Provider Contact and Information Sheet* (Form #001) must be completed and placed on file with DBHDS' BIU. However, these referenced forms (Form #001 & #002) only need to be submitted **once** unless the information previously submitted requires updating.
- B. The fee for processing an applicant is \$50 and should be made payable to the "Treasurer of Virginia". **No** fingerprint checks will be processed unless a signed *Statement of Authorization of Payment* and *DBHDS' Licensed Provider Contact and Information Sheet* is on file. The \$50 fee includes \$24 for the FBI check, \$13 for the Virginia State Police check, and a \$13 administrative fee.
- C. It is important to ensure that your check amount is correct (e.g. check matches number of requests submitted). If a check is received for an **incorrect amount**, the entire package will be returned to you. DBHDS does not have a system to "credit" your account. In the event that a request packet is returned to you, make sure the check date is less than 90 days old from the date the check was written. If the check date is over 90 days old, a newly dated check must be submitted.
- D. **If your request packet has to be returned for any reason, you may be charged an additional \$13 administrative fee.** Please refer to section IV for submitting complete packets.
- E. If a check is returned for non-sufficient funds (NSF), there will be a \$35 charge for the returned check **AND** repayment of the initial processing fee. All future payments must be in the form of a **money order** or **cashier's check**.

The provider will be notified of the returned check by phone and letter in which DBHDS' Licensing Director will be copied. The provider will be given 30 days to remit payment; however, if payment is not made within the 30 days, the Licensing Director will be notified and will determine the appropriate action as necessary.

#### IV. CRIMINAL BACKGROUND INVESTIGATION FORMS & ATTACHMENTS

- A. Upon receiving these procedures, the provider will need to make copies of the following forms and attachments:
1. **Form #001** – *DBHDS' Licensed Providers Contact & Information Sheet*
  2. **Form #002** – *Statement of Authorization of Payment*
  3. **Form #003** – *Criminal Background Investigation Request Checklist*
  4. **Attachment 3** – *Disclosure Statement*
  5. **Attachment 4** – *Authority for Release of Information*
  6. **Attachment 5** – *Request for Criminal Records Investigations for Employees Affiliated with DBHDS' Licensed Providers*
  7. **Attachment 8** – *Applicant's Rights*

Attachments and forms can also be downloaded from the DBHDS website at <http://www.dbhds.virginia.gov/OL-BackgroundInvestigation.htm>.

- B. *DBHDS' Licensed Providers Contact & Information Sheet (Form #001)* – Upon receiving a procedures packet, this form **must** be completed by new providers and submitted to DBHD's BIU in order for the organization's request packets to be processed. In accordance with DBHDS' Licensing Rules and Regulations (12 VAC 35-105-180, *Notification of Changes*) the provider **must** complete a new Form #001 if there is a change in a contact person, the address, telephone numbers and/or fax numbers.
- C. *Statement of Authorization of Payment (Form #002)* – Upon receiving a procedures packet, this form **must** be completed by new providers and submitted along with Form #001, to DBHD's BIU in order for the organization's request packets to be processed. Otherwise, this form is submitted **only** when there is a change in the individual who has authority to release funds for the organization.

**NOTE:** You only need to submit the ***Statement of Authorization of Payment and Providers Contact & Information Sheet*** **once** unless information previously submitted requires updating.

- D. *Criminal Background Investigation Request Checklist (Form #003)* – **One** form must be completed by the provider and included with the background request submission packet to BIU. This form helps to ensure that the packet is complete.  
**Note: Please do not submit a checklist with each individual request.**
- E. *Disclosure Statement (Attachment 3)* – This form must be reviewed and signed by each applicant and submitted to BIU, along with Attachment 5.
- F. *Authority for Release of Information (Attachment 4)* – Courts and/or law enforcement agencies may require a signed *Authority for Release of Information* before furnishing missing dispositions and/or clarifying information regarding an arrest to BIU. Therefore, this form is to be given to the applicant to read and sign. After which, it should be placed in the applicant's criminal history request file with the other forms and correspondence. Attachment 4 **should not** be sent to BIU, but retained for your records.

- G. *Request for Criminal Records Investigations for Employees Affiliated with DBHDS' Licensed Providers (Attachment 5)* – This form must be complete, including the application date for employment, the hire date and the provider data section. Both the application date for employment and hire date must be entered as month, day, and year (i.e. 10/1/04).
- H. *Applicant's Rights (Attachment 8)* –This form is to be given to the applicant to read and sign. After which, it should be placed in the applicant's criminal history request file with the other copies of correspondence and forms (i.e. Attachment 3, 4, & 5, etc.) and correspondence. Attachment 8 **should not** be sent to BIU, but retained for your records.

## V. BACKGROUND REQUEST PACKETS

- A. Within **fifteen (15)** business days, from the applicant's date of hire, their attachments (3 & 5) and fingerprint card **must** be completed and submitted to DBHDS' BIU. Provider should maintain evidence that documentation was submitted within required timeframe.
- B. Each request packet should include the following: (1) **Form #003** – *Criminal Background Investigation Request Checklist (1 checklist per request packet)*; (2) **Attachment 3** – *Disclosure Statement* and **Attachment 5** – *Request for Criminal Records Investigations for Employees Affiliated with DBHDS' Licensed Providers\**; (3) ONE completed fingerprint card, which should be paper clipped to the corresponding applicant's attachments; and (4) an organizational check or money order, for the correct processing fee (\$50 per applicant). **\*Attachments 3 & 5 should be stapled together, in order.**
- C. Please **do not** staple the forms to the fingerprint card.
- D. If your request packet does not contain the required information it will be considered incomplete, **it will be returned and you may be charged an additional \$13 administrative processing fee.** The criteria for an incomplete packet includes but is not limited to:
- folded, hole-punched, stapled fingerprint cards;
  - missing required data and/or signatures on either forms or fingerprint cards; and
  - incorrect and/or no processing fee.

If your packet is returned, a *Criminal Background Investigation Returned Packet Form* (Form #004) will be included indicating the reason for return. If the processing fee is correct, it will be held until the entire packet is corrected and returned to the BIU. A copy of Form #004 and the complete packet must be resubmitted to BIU within **fifteen (15)** business days from the date of receipt. For certified mail, BIU will refer to the "Date of Delivery" on the returned United States Postal Services' Certified Mail card.

## VI. POINT OF CONTACT

- A. Each provider should designate a contact person (1<sup>st</sup> Contact) and a back-up (2<sup>nd</sup> Contact); in case the primary contact is unavailable. All correspondence and questions from BIU will be directed to the 1<sup>st</sup> contact person.
- B. When there is a change in a contact person, the address, telephone numbers and/or fax numbers, the provider **must** notify BIU by phone, e-mail or fax. However, if BIU is contacted by phone or e-mail, Form #001 still must be completed and faxed to BIU for their records.

## VII. FINGERPRINT CARDS

- A. It is the provider's responsibility to inform the applicant why he/she is being fingerprinted and what crimes are screenable crimes that would prohibit their employment in a direct consumer care position. (refer to Attachment 2)
- B. Fingerprint cards should **never be folded, hole-punched, and/or stapled**. If cards are received in this condition, they will be returned and your packet will be considered incomplete.
- C. If applicants are fingerprinted by a law enforcement agency, fingerprint cards should not be left for processing by the law enforcement agency.
- D. Providers are encouraged to take the steps necessary to ensure the individual taking prints is qualified to do so. All prints must be taken in proper order and be legible, fully rolled and classifiable. All data called for is essential. When a fingerprint card contains any accidental or additional markings or overlapping fingerprints, the scanning equipment will attempt to read the markings as fingerprint minutiae. The State Police recommends that a new card be completed. Due to the scanning process reprints may not be done on the reverse side of the card. Smudged or other unacceptable prints cannot be processed and will be returned to the provider.
- E. Cards must be filled out completely and legibly (Attachment 7). The information should either be typewritten or printed, in block style to insure readability.
  - 1. To implement the request for a national and state criminal history background investigation, requests should be submitted on fingerprint cards issued by DBHDS' BIU.
  - 2. To ensure proper processing the provider **must enter** the provider name and address in the "employer and address" box and the **provider number** in the "OCA" box on **each** fingerprint card. The provider number is the first 3 to 4 - digits of your Licensing "organization" number. If this information is missing from the fingerprint cards they will be returned and your packet will be considered incomplete.
  - 3. The applicant's full name should be shown at the top of each card.
  - 4. If an applicant uses only an initial for a first or middle name, enter "IO" in that area.
  - 5. If an applicant does not have a middle name, enter "NMN" in that area.

6. It is important that all aliases are listed in the appropriate section on the fingerprint card. This includes maiden names, former married names, etc. If an applicant changes his or her name during the background investigation process, any subsequent fingerprint cards should show the name initially used at the top of the fingerprint card to avoid confusion between a name entered in the database and a name used for billing purposes. If the applicant has no aliases, N/A should be entered.
7. Enter the applicant's citizenship (i.e. U.S.) in the appropriate section. Citizenship entries must not be entered as yes or no.
8. It is imperative that the applicant's social security number, date of birth and place of birth are complete and legible on each fingerprint card. The place of birth is the State in which the applicant was born (if U.S.) or the country.
9. Other Descriptive Items – The FBI has furnished the following categories that **must be** utilized for each descriptive item:

RACE		CODE
American Indian or Alaskan Native		I
Asian or Pacific Islander		A
Black*		B
White*		W
*Hispanics should be entered with the race code most closely representing the individual		
EYE & HAIR COLOR	EYE CODE	HAIR CODE
Bald		BAL
Black	BLK	BLK
Blond or Strawberry		BLN
Blue	BLU	BLU
Brown	BRO	BRO
Green	GRN	GRN
Gray	GRY	GRY
Hazel	HAZ	
Maroon	MAR	
Multicolored	MUL	
Orange		ONG
Purple		PLE
Pink	PNK	PNK
Red		RED
Sandy		SDY
White		WHI
Unknown	XXX	XXX

10. If some physical condition makes it impossible to obtain perfect impressions, submit the best prints that can be obtained. If an amputation, deformity, etc., makes it impossible to print a finger, make a notation to that effect in the individual fingerprint block. The following may be utilized:

CONDITION	CODE
Amputation	<b>AMP</b>
Tip Amputation	<b>TIP AMP</b>
Deformity	<b>DEF</b>
Scar	<b>SCAR</b>
Fingers Missing	<b>MISSING AT BIRTH</b>

11. Both the applicant and the official taking fingerprints should sign and complete the remaining sections of the fingerprint card. If this information is missing from the fingerprint cards they will be returned and your packet will be considered incomplete.
12. If additional fingerprint cards are needed, please e-mail Malinda Roberts at [malinda.roberts@dbhds.virginia.gov](mailto:malinda.roberts@dbhds.virginia.gov) or Diane Anthony at [diane.anthony@dbhds.virginia.gov](mailto:diane.anthony@dbhds.virginia.gov) with the number requested (minimum fifty), your provider name and provider number. Also, you can complete Form #005 and fax it to (804) 692-0060.

## VIII. RE-FINGERPRINTING APPLICANTS

### A. Rejected Fingerprints – “Non-classifiable”

If fingerprints are unreadable they will be rejected by VSP and/or by the FBI as “non-classifiable”. Since this is a time-consuming process, the fingerprints should be reviewed at the time of fingerprinting to see if they appear readable.

All FBI and/or VSP resubmissions will need to be submitted with

- the original rejected fingerprint card;
- the individual’s attached email; and
- the new fingerprint card.

If any of the above listed items are not submitted, the packet will be considered incomplete and returned to the provider.

#### 1. Fingerprints rejected as “non-classifiable” by VSP.

Provider will receive memorandum, an itemized list and rejected card(s) with an attached email from BIU. At which time, the provider needs to have applicant(s) reprinted on one new fingerprint card by a different finger printer.

#### 2. Fingerprints rejected as “non-classifiable” by FBI.

Provider will receive memorandum, an itemized list, and rejected card(s) with an attached email from BIU. At which time, the provider needs to have applicant(s) reprinted on one new fingerprint card by a different finger printer.

3. Fingerprints rejected as “non-classifiable” by both VSP and FBI.

Provider will receive memorandum, an itemized list and rejected card(s) with an attached email from BIU. At which time, the provider needs to have applicant(s) reprinted on one new fingerprint card by a different finger printer.

- C. If it appears that any fingerprints are smudged or not clear, you may reprint on a “Printover Tab”, which replaces the smudged print. **Due to the scanning process reprints may not be done on the reverse side of the card.** If BIU receives any fingerprint cards that have been fingerprinted on the back of the card, it will be returned for a “correctly” printed fingerprint card.
- D. If the applicant's fingerprints have been rejected, he/she should be reprinted by a different person or agency. Local law enforcement agencies may be willing to help with fingerprinting training.
- E. Reprints must be submitted to BIU within **15** days from the date of the receipt of the return. If the reprints are not resubmitted within this time frame, the individual's file (request) will be closed. If the file is closed, a new request must be submitted along with another \$50 processing fee and new attachments 3 & 5. If the individual is no longer affiliated with your organization when you receive the non-classifiable fingerprint card, BIU **must** be notified to close the request.

## IX. DISCONTINUATION OF REPRINTS

Before requesting a discontinuation of either VSP and/or FBI reprints, each of the listed steps below must be followed.

- A. The provider **must** attempt three (3) times to obtain a “readable” fingerprint for both VSP and FBI.
- B. The provider must follow all procedures to obtain good prints from an individual, which includes having a different finger printer take the prints. Local authorities and the State Police have scanning equipment to take prints which may increase the quality for a resubmission.
- C. The provider must ensure that all names used by an individual are listed on the fingerprint cards in the Aliases (AKA) section. This is especially important with women who must list maiden names and/or former married names. The VSP automatically conducts name checks on individuals when it is determined their fingerprints are “non-classifiable”.
- D. The provider must maintain factual information concerning how many times the applicant's fingerprints have been submitted.
- E. After three attempts, the provider may then submit a “Private Provider Request to Discontinue Reprints” (Attachment 12, Part I) via email or fax to BIU, who will then confirm the information. At this time a FBI name search will be requested by BIU.
- F. Once the request is approved or disapproved and the FBI name check results have been received, the approved or disapproved Attachment 12, Part II will be sent to the provider for retention in the provider's file.



## X. SCREENING OF FINGERPRINT CHECK RESULTS

- A. Currently, both the VSP and the FBI fingerprint check results are simultaneously received. Therefore, the results that are received from VSP are compared to the results received from the FBI and the provider may receive a “not eligible” letter based on this comparison.
- B. In some instances, VSP results will be received without FBI results, because of possible missing dispositions. **Therefore, BIU will not screen the VSP results without the FBI results. Each provider must review these results at the time of receipt. However, the provider can make an employment decision based solely on the VSP results, without waiting for the FBI results.**
- C. DBHDS’ BIU will screen the results of the FBI fingerprint results, but is not responsible for making employment decisions for the provider. Based on the evaluation of the screening, the provider will be notified by letter containing one of the following statement regarding the applicant’s eligibility:
1. **“VSP & FBI Eligible”** means that the individual does not have a Virginia State Police record and has not been convicted of any “barrier” crime listed in § 37.2 - 314 & 416.
  2. **“FBI Eligible”** means that the individual has not been convicted of any “barrier” crime listed in § 37.2 - 314 & 416.
  3. **“Eligible by Deferment”** means that the individual has been charged with a “barrier crime” and placed in a deferred status for a certain length of time. Therefore, it is the provider’s responsibility to follow-up with the individual and/or courts.
  4. **“Eligible with Stipulations”** means that the individual met the criteria for employment pursuant to § 37.2 - 416 (B), (C) & (D) as indicated below.
    - (a) The applicant has been convicted of a “barrier crime” requiring compliance with screening provisions found in parts C & D of § 37.2-416. Provider must ensure compliance with these provisions and provide documentary notification of evidence of results to the BIU and/or Office of Licensure.
    - (b) The applicant has been convicted of “misdemeanor assault or domestic assault” found in part D of § 37.2-416 and after reviewing the accuracy of the “Disclosure Statement” they will be eligible for employment.
    - (c) After a comparison of the VSP and FBI records the applicant has been convicted of the “misdemeanor assault or domestic assault” found in part D of § 37.2-416 and after reviewing the accuracy of the “Disclosure Statement” they will be eligible for employment.
  5. **“Not Eligible”** means that the applicant has been convicted or is still on probation or parole for a crime listed in § 37.2 - 314 & 416. When a “not eligible” letter is received, it is for the provider’s use only. **Please do not provide a copy to the applicant. If the applicant has questions about his/her “ineligibility”, the provider is to contact Malinda Roberts.**

6. **“Adequate information is not available to determine whether the applicant is eligible for employment”** means that the applicant was charged with a barrier crime listed in § 37.2 - 314 & 416. However, BIU has researched through all available state and local record-keeping systems and has not been able to determine whether the applicant was convicted of the crime. Adequate information to make a determination is not available when:
- (a) The court has not reported the disposition to the State Police and/or FBI.
  - (b) The court has purged the record.
  - (c) DBHDS’ BIU is unable to comply with the court’s requirements for researching its records and releasing the disposition. Therefore, the applicant may or may not have been convicted of the crime.
  - (d) DBHDS’ BIU was unable to determine if a listed arrest/conviction is a screenable offense, because of lack of information shown on the arrest history and inability to obtain clarifying information from the courts and law enforcement agencies.

Thus, the provider needs to meet with the applicant to discuss the results and determine their employability. If the provider decides to hire the applicant or retain the employee, the provider **needs** to make a note to the file justifying their decision.

- D. Each provider must make their own employment decisions regarding the information received from the Virginia criminal history records check. DBHDS’ BIU has no authority to make the final employment decision. Therefore, the provider will receive from BIU one of the following:
- 1. A memorandum entitled **“Virginia State Police Fingerprint Results”** indicates there is no VSP record. This memo will have an itemized list attached of the applicant’s name and social security number. The applicant’s processed fingerprint card will also be returned along with the memo and listing.
  - 2. A memorandum entitled **“Virginia State Police Records”** indicates there is a VSP record. This memo will have an itemized list attached of the applicant’s name and social security number. The applicant’s processed fingerprint card and record will also be returned along with the memo and listing.
- E. Each provider is responsible for evaluation of the information obtained from the applicant (i.e. verbally and on the *Disclosure Statement*) and evaluating investigation results obtained from the Virginia State Police information record and DBHDS’ BIU. **The provider is responsible for determining whether the individual is fit for employment. Based upon its evaluation, the provider decides whether the individual will be hired or will continue to serve in a direct consumer care position.**
- F. Providers are permitted to let an individual see the results of the Virginia State Police fingerprint checks, but are **not permitted** by State (VA Code § 19.2-389) and Federal (US Code 28 U.S.C. 534 & Code of Federal Regulations 28 CFR 20) laws to furnish copies to anyone, including the applicant.

## **XI. APPLICANTS WHO WISH TO CHALLENGE BACKGROUND RESULTS**

### **A. Federal Bureau of Investigation**

1. The provider shall furnish to the applicant procedures for challenging the criminal history record (Attachment 10 (a)). By federal law, it is provided only for the purpose of challenging the record that was received from the FBI.
2. A sample letter that can be used to challenge the results of the FBI criminal history background investigation is enclosed in the procedures (Attachment 10 (b)). Providers may provide a copy of this form letter to applicants who wish to challenge the information contained in their record(s). If the applicant chooses to challenge his/her results, an original, signed copy of the letter must be mailed "certified" to the FBI.
3. After a challenge request is received, the FBI contacts the agency that originally furnished the arrest or conviction data, requesting that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI will make any changes necessary in accordance with the information supplied by that agency.
4. The applicant will not receive any correspondence from the FBI (such as an acknowledgment of the challenge request) until the challenge request has been resolved.
5. BIU cannot modify a report to a provider based on information provided by an applicant. A report can be modified only after the applicant challenges his/her record, the court corrects it, and the court reports the correction to the FBI. The provider may then request that BIU obtain an accurate record from the FBI.
6. If the applicant has been permitted to provide services pending receipt of the FBI information, the provider may suspend the applicant or deny the applicant unsupervised access to individuals with disabilities until a final determination is made concerning the applicant's fitness to have responsibility for the safety and well-being of individuals with disabilities.

### **B. Virginia State Police**

1. In instances where it comes to an individual's attention that his/her name or other descriptive information is a matter of record in the Central Criminal Records Exchange (CCRE) and he/she is not the person of the record, then the individual may initiate a challenge of a record. An individual should report this information to a local sheriff, police or Virginia State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record.
2. The individual to be fingerprinted must show two forms of personal identification (one of which should contain a photo). The official taking the fingerprints must document on official letterhead that he/she has reviewed the individual's personal identification, obtained the fingerprints and are reasonably assured that the individual is who they represent to be.
3. This letter and the fingerprints are to be mailed to the following address:

Manager  
Central Criminal Records Exchange  
Department of Virginia State Police  
P.O. Box 27472  
Richmond, Virginia 23261-7472

4. Within five workdays, the individual who initiated the challenge will receive written confirmation of the fingerprint search results; whether he/she is or is not the person of the record and record modification(s) taken, if applicable.
5. It is the policy of the CCRE to correct or otherwise modify a criminal record after receiving notification from the contributor of the record of the change to be initiated. Upon receipt of information that a record is in error, CCRE staff will initiate an audit of the record and coordinate corrections or modifications directly with the contributing agency. The time to complete this process varies depending on how expeditiously CCRE is officially advised by the contributor that a change to a record is appropriate.
6. CCRE will not accept corrections or changes to a criminal record from sources other than from the Criminal Justice agency (contributor) that submitted the record.
7. Reports to a provider from the BIU can be modified only after the individual challenges his record, it is corrected by the court or law enforcement agency, and the correction reported by the court/agency to the State Police or FBI. The provider should then submit a request for a new background investigation to the BIU in order to obtain an accurate record.
8. If the individual has been permitted to provide services pending receipt of the Virginia State Police and FBI information, the provider may suspend the individual or deny the individual unsupervised access to individuals with disabilities while a final determination is made concerning the individual's fitness to have responsibility for the safety and well-being of individuals with disabilities.

## **XII. SAFEGUARDING AND DISPOSING OF CRIMINAL HISTORY RECORDS**

State (VA Code § 19.2-389) and Federal (US Code 28 U.S.C. 534 & Code of Federal Regulations 28 CFR 20) laws prohibit secondary dissemination of criminal history records. Providers are permitted to let an individual see the results of the State Police but are not permitted to furnish copies to anyone. Providers must safeguard both the records and their content. Records shall be destroyed by shredding or incineration after they have served the purpose for which they were obtained. They shall not be maintained in personnel files. Information is obtained from the Virginia State Police and FBI for the specific purpose of determining fitness for employment in a direct consumer care position. After the provider has evaluated criminal history information and determined whether the applicant is fit for employment:

1. Providers shall record any charges/convictions appearing on the Virginia record on the Applicant Arrest/Conviction Data Sheet (Attachment 11). Also, you should compare the Virginia record with the individual's disclosure form to ensure that they disclosed all pending charges and convictions. Upon recording the pertinent information, the provider shall shred or incinerate the Virginia record.
2. To document that they have complied with the requirements of state and federal laws, the provider shall retain the following in a separate confidential file: (a) applicant's "Eligibility" letter; (b) memoranda received from BIU regarding the VSP results; (c) all other correspondence received from BIU (i.e., FBI and/or VSP non-classifiable memoranda, Form #004, etc.) (d) copies of all attachments 3, 4, 5 & 8; (e) attachment 11 (if applicable); and (f) completed attachment 12 (if applicable).

3. No investigative results should be disposed of by providers until responses have been received from both the Virginia State Police and the FBI. This will enable providers to have all pertinent information available to make an employment decision.

### **XIII. USE OF CRIMINAL HISTORY RECORDS**

- A. A criminal history record report is only valid at the time it is requested. When an individual terminates employment at one entity and begins work at a new entity, the criminal history record data received by the prior entity **shall not** be disseminated to the new entity.
- B. **Guidance:** Providers are encouraged to have a policy/procedure requiring current employees to notify their supervisor if they are arrested/charged for any crime and/or traffic violation within a specific time period of the event. Prompt notification allows the provider to make a decision regarding the individual's continued employment depending on the nature of the charge/conviction and whether it is relevant to the individual's position with the organization.
- C. DBHDS has no legal authority to make determinations or render legal advice regarding whether a particular applicant or category of applicants for employment must submit to criminal history record checks. **ANY PROVIDER WHO WOULD LIKE LEGAL ADVICE ON THIS ISSUE SHOULD CONSULT WITH AN ATTORNEY.**

### **XIV. SERVICE PROVIDERS AFFILIATED WITH CHILDREN'S RESIDENTIAL FACILITIES**

- A. Operators of children's residential facilities MUST continue to process requests for criminal background investigations through the Department of Social Services, Office of Background Investigations (OBI). DSS' OBI will provide background checks as required by both VA Code § 37.2-416 and § 63.2-1726, for licensed private providers that operate residential facilities for juveniles.
- B. DBHDS' BIU will process requests for criminal background investigations only on DBHDS' licensed providers covered under VA Code § 37.2-416. Providers that operate multiple programs CANNOT request DBHDS' BIU to process requests on individuals who work for other programs not licensed by DBHDS.

### **XV. SERVICE PROVIDERS AFFILIATED WITH ADULT SUBSTANCE ABUSE and MENTAL HEALTH TREATMENT FACILITIES**

- A. Providers that are licensed by DBHDS at Adult Substance Abuse Treatment Facilities or Adult Mental Health Treatment Facilities that wish to hire individuals for compensated employment must follow the provisions in the VA Code § 37.2-416 (C) & (D), if applicable.
- B. DBHDS' BIU will notify the provider when an applicant meets the exceptions identified in the law.