



## Fixing the Child Care Background Check System: Promoting Efficiency and Safety

January 2023

**Issue in Brief:** Virginia child care programs are facing an unprecedented staffing shortage. In addition, the hiring process is often delayed due to a **slow state background check process that exceeds what federal law requires**. Programs can't fill child care vacancies in a timely manner, exacerbating the staffing crisis, and making it difficult for families to secure needed child care.

### Child Care Aware of Virginia's Recommendation:

- ✓ Enable prospective staff to work in a supervised manner as long as the FBI or VSP fingerprint check has cleared (as allowed under federal law).

#### Child Care Provider Background Checks

Federal child care law requires states to have a comprehensive fingerprint-based background check for all licensed, regulated, and registered child care providers against FBI and state criminal history records. Separate name-based checks are also required of state child abuse registries and sex offender registries.

The General Assembly passed legislation to comply with these requirements. However, the manner in which state statute complied far exceeds the federal law.

Under the federal law and related regulations, the U.S. Department of Health and Human Services recognized that the series of required background checks could result in significant delays in the hiring of staff, which would impact the ability of parents to obtain child care. Therefore, federal regulations allow states to allow new hires to begin work as long as they clear one fingerprint check and begin work under the direct supervision of an individual who has cleared all required background checks.



The federal regulations refer to this as "provisional employment."

Under current Virginia law, staff cannot work (supervised or not) in a child care program unless all required background checks have been completed. **This process can take weeks to months to complete.** This has led to programs with waiting lists for children due to staff vacancies. Some programs have stopped caring for infants and toddlers because more staff are required to work with these age groups.

We understand the intent to ensure child safety, but as long as the state or FBI fingerprint check has cleared, and as long as such individuals are supervised while working with children, we feel that children are sufficiently protected.

**The reality is that parents are struggling to find child care. The child care shortage is at an all-time high. Parents can't return to work without child care, or worse, they may be leaving their children in unregulated or unsupervised settings in order to work without proper child care options.** The delay in the clearance process has led to qualified individuals taking jobs outside of child care. Because of today's economy, job seekers cannot afford to wait months before accepting employment. They have many other choices.



# Fixing the Child Care Background Check System: Promoting Efficiency and Safety

January 2023

At the same time, parents are stuck on waiting lists as many programs can't operate at their full capacity. Supervised employment of provisionally hired staff would ensure that otherwise qualified individuals can work under supervision, programs can operate at full capacity, and parents can go back to work.

Provisional employment for child care is a critical need in Virginia in 2023.

In 2021 in Virginia,

- 381,572 children under age 6 had working parents
- 518,096 children age 6-12 had working parents

Source: U.S. Census Bureau, 2021 American Community Survey, 1 Year Estimates

## Background Check Portability

Public schools regularly use substitute teachers. Child care centers also want the ability to share subs (e.g., have a substitute pool of background-checked and trained individuals who can work in multiple centers). But, current Virginia law ties individual background checks to individual child care programs, which means that the screening results can't be shared to create a substitute pool.

States such as Florida, Georgia, Indiana, Louisiana, Michigan, Ohio, Oregon, Tennessee, Utah, Vermont, and Washington have developed background check processes to allow portability necessary for child care substitute pools. Particularly, as we face the ongoing child care staffing and economic challenges of the past few years, there is greater need for Virginia to create an approval process for screened substitute pools.



## Child Care Aware of Virginia Recommends:

- ✓ Provisional hire legislation to enable child care staff to work in a supervised manner as long as the State or FBI fingerprint check has cleared (as allowed under federal law), and
- ✓ Flexibility to enable background check cleared and trained substitutes to work in child care programs

To view our full 2023  
Policy Agenda, scan or  
click here:

