

# Background Checks: Ensuring the Safety of Children in Child Care

January 2017



**Issue in Brief:** Virginia is out of compliance with federal law, which requires all licensed, regulated, and registered child care providers to have a fingerprint background check. If Virginia does not comply by September of 2017, the state's federal child care funding will be reduced by \$5 million for each year it is out of compliance.

## Child Care Aware of Virginia's Recommendation:

- ✓ Conform Virginia law to federal requirements (require a fingerprint background check for all licensed, regulated and registered child care providers against state and federal records) plus a check of the state sex offender registry and child abuse registry.

## Children in Child Care in Virginia

Throughout Virginia, there are more than 402,000 children under age 6 whose parents are working.<sup>1</sup> The reality today is that parents depend on child care in order to go to work.

## Background Check Reality

Safety starts with a background check for child care providers to ensure that children are not in the care of someone with a violent history.

A comprehensive background check (*a fingerprint check of state and federal records, a check of the state child abuse registry, and a check of the state sex offender registry*) can screen out those who should not be in the business of caring for unrelated children. The FBI recommends it as the most effective way to conduct a background check screening.



National polling shows that most parents think

that a comprehensive background check is conducted. In Virginia, some child care providers are required to have a fingerprint-based background check and some are not.

For those who want to circumvent the system, a name check is an invitation. An individual can use an alias or change the way they spell their name (i.e., spell Elizabeth with an "s" rather than a "z," etc.). Because an individual only has one set of fingerprints, it is much more difficult to circumvent the system.

## How many states require a fingerprint check rather than a name-based check for child care providers?

Number of States Requiring Background Checks for Child Care Centers and Family Child Care Homes		
Type of Check	Child Care Centers	Family Child Care Homes
Fingerprints against Federal Records	45	45
Child Abuse Registry	46	42
Sex Offender Registry	35	35

Child Care and Development Fund Final Rule, Federal Register, September 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

## 2014 New Federal Child Care Law

On November 19, 2014, the President signed into law (PL 113-186) bipartisan legislation passed by Congress to strengthen child care laws, which requires non-relative child care providers who are licensed, regulated or registered to have a fingerprint-based background check. States must have a policy and procedures in place by September 30, 2017. Failure to comply with the law triggers a penalty which means a 5 percent reduction in federal funds for each year in which a state is not in compliance.

## What does Virginia law require?

In 2015, the General Assembly approved legislation to require fingerprint-based background checks for all child care providers in licensed care or who are unlicensed but care for low-income children whose families receive a subsidy. This means that there are several categories of providers who are not subject to a fingerprint check: those working in religious license-exempt care, voluntary registered providers, and those who are part of a child care home system.

The concern is two-fold:

- Parents will be confused about which providers have had an effective background check or not and the safety of children could be at risk; and
- Virginia could be subject to a reduction in federal child care funding since the state law is not in compliance with the federal law.

## Military Children – On-Base vs. Off-Base

There are more than 45,000 children under age 6 whose parents are active duty military; 6,055 children under age 6 whose parents are in the Guard or Reserve. If these parents are lucky enough to find on-base care, the military requires a background check using fingerprints. But, if they use off-base care, the background check is only as good as the state requires. The Air Force and the Navy currently require a fingerprint check for all child care providers – on base and off-base serving Air Force and Navy families.

## Studies Show Gaps that Leave Children At Risk

While most people who want to become child care providers do so because they love working

with and caring for children, that's not always the case. Studies have shown that there are individuals who may not share these goals or who might be a higher risk for children's safety.

A 2011 Government Accountability Office (GAO) report found 24 cases where registered sex offenders were working in child care programs. At least seven of those cases involved offenders who previously targeted children and in three of the cases, such individuals used their positions to re-offend.<sup>2</sup>

In North Carolina, out of 28,162 fingerprint screenings for child care providers in 2015-2016, 500 were screened out based on criminal offenses.

## Why Parents Need Help to Ensure the Safety of Children

Parents can use commercial databases to perform background checks. However, a 2006 Department of Justice report found, *"Not all agencies within individual states make their records available to commercial databases, nor does the FBI make its federal or state criminal records available to commercial services. In addition, the information in commercial databases may only be updated periodically."*<sup>3</sup>

Therefore, the reality is even the most well-financed parent is limited by a commercial company search.

## Child Care Aware of Virginia recommends:

- ✓ Closing the background check loophole and requiring a comprehensive background check for all licensed, regulated or registered care as the federal law requires.

Child Care Aware of Virginia 302 Turner Road, Suite D, Richmond, VA 23225  
Phone: 804-285-0846 <http://va.childcareaware.org/>

<sup>1</sup> U.S. Census Bureau. Table B23008. Age of Own Children Under 18 Years in Families and Subfamilies by Living Arrangements by Employment Status of Parents Universe, 2015 ACS 1 Year Estimates. [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_1YR\\_B23008&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_B23008&prodType=table)

<sup>2</sup> U.S. Government Accountability Office (GAO). (2011). Child Care: Overview of relevant employment laws and cases of sex offenders at child care facilities. <http://www.gao.gov/products/GAO-11-757>

<sup>3</sup> U.S. Department of Justice, Office of Attorney General. (2006). The Attorney General's report on criminal history background checks. [http://www.justice.gov/olp/ag\\_bgchecks\\_report.pdf](http://www.justice.gov/olp/ag_bgchecks_report.pdf)