



Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks

June 14, 2021, at 10:00 a.m.

Electronic Meeting

<https://studies.viriniageneralassembly.gov/studies/546>

The Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks (the Joint Subcommittee) met electronically with Senator John S. Edwards, chair, presiding.¹ The meeting began with introductions and opening remarks followed by presentations and discussion. Materials presented at the meeting are accessible through the [Joint Subcommittee's website](#).

Each of the presenters was tasked with providing answers and information for the following:

1. What should and should not be a barrier crime?
2. Whether there should be a time limit following conviction when a crime is no longer a barrier crime, and, if so, what such time limit should be;
3. Whether there should be an exception, waiver, or appeals process, and, if so, what such process should be;
4. Demographic data on individuals for whom a criminal history record check is completed and for whom a criminal conviction is a barrier to employment, licensure, etc.;
5. Recidivism rates of barrier crimes;
6. Information on what has been done in other states regarding barrier crimes and criminal history record checks; and
7. Whether there should be tiered levels of barrier crimes and, if so, how to include such tiered levels in the Code of Virginia.

Presentation: Department of Social Services

Gena Boyle Berger, Chief Deputy Commissioner, Department of Social Services

Ms. Berger explained that because the Department of Social Services (DSS) has to comply with both federal and state law, it is uniquely situated to assess how barrier crimes affect placing children with foster or adoptive parents. She emphasized that Virginia's list of barrier crimes is far more restrictive than its federal counterpart, primarily because it includes misdemeanors while the federal list includes only felonies. The practical impact of Virginia's list is that many children who need foster or adoptive placement are not able to be placed with willing and able relatives and fictive kin, which, when possible, is generally a more desirable placement option.

¹ Members Present: Senator John S. Edwards (chair), Delegate Marcia S. Price (vice-chair), Delegate Lamont Bagby, Delegate Michael P. Mullin, James Abrenio, Kristi Kelly, Alison G. Land, M. Norman Oliver, Gena Boyle Berger, designee of Commissioner of Department of Social Services
Members Absent: Senator Scott A. Surovell, Delegate Ibraheem S. Samirah

Ms. Berger added that while Virginia law does allow for some exceptions, federal law allows for waiver authority for employment at child care centers and for relatives or fictive kin to become foster parents. She suggested that the Code of Virginia should be expanded to include this same waiver authority.

Presentation: Department of Behavioral Health and Developmental Services

Stacy Pendleton, Chief Human Resources Officer, Department of Behavioral Health and Developmental Services

Ms. Pendleton pointed out that, unlike DSS, the Department of Behavioral Health and Developmental Services (DBHDS) is beholden only to state law. Ms. Pendleton explained that restrictions related to drug-related crimes and misdemeanors are the most impactful for DBHDS employees and clients, especially considering that people with lived mental health or substance abuse challenges are uniquely qualified to counsel those experiencing the same challenges. Currently, the Code of Virginia allows for employment with DBHDS after a certain time period for specific crimes has elapsed, but there is a very limited internal screening process for certain crimes related to substance abuse or mental health. Importantly, Ms. Pendleton noted, the largest barrier to employment with DBHDS is misdemeanor assault and battery (not of a family member), especially in the case of those with more than one conviction for the crime. The second biggest barrier to employment with DBHDS is distribution of a controlled substance. More data related to specific crimes can be found on the DBHDS slides included in the meeting materials.

Presentation: Department of Health

Rebekah Allen, Senior Policy Analyst, Department of Health

Ms. Allen noted that, unlike DSS and DBHDS, drug-related offenses are not a bar to licensure for employment at medical care facilities. Currently, the only time limit on barrier crimes for employment as it relates to the Virginia Department of Health (VDH) is after five years have elapsed following conviction of a single misdemeanor not involving abuse or neglect. She added that VDH has no discretion in waivers or exceptions, so an individual is either barred or not. Ms. Allen noted that other states set time limits by category or severity of the crime but also include some flexibility to waive some or all of these time limits. She added that the lack of discretion in Virginia results in providers being unable to meet workforce demands, especially in rural areas. Ms. Allen suggested three options for creating tiers of barrier crimes, as highlighted in a 2012 Centers for Medicare and Medicaid Services report:

- Option #1: a three-tier system based on the severity of the crime, with time limits on each tier, and a variance/waiver process at any time with consideration of rehabilitation factors;
- Option #2: general categories of disqualifying convictions, with minimum time limits for each category, and a variance/waiver process after the minimum time has elapsed with consideration of rehabilitation factors; or
- Option #3: a consolidated option combining the general categories of disqualifying convictions with a variance/waiver process at any time.

Public Comment and Discussion

The Joint Subcommittee members heard public comment and had a short discussion regarding next steps. They agreed that, to the extent possible, the barrier crimes requirements, exceptions, waivers, and appeals processes should be consolidated into one section of the Code of Virginia to



avoid confusion. Senator Edwards also noted that another avenue to explore is for the DSS provisions to only include the federal list of barrier crimes.

Next Meeting

A date for the next meeting was not set.

For more information, see the [*Joint Subcommittee's website*](#) or contact the Division of Legislative Services staff:

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