



Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks

August 16, 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 webpage*](#).

Presentation: Drafting Barrier Crimes Laws in the Code of Virginia

Anna Moir, Attorney, Division of Legislative Services

Overview of Barrier Crimes Provisions Currently in the Code of Virginia

Ms. Moir gave an overview of § 19.2-392.02, which provides the comprehensive list of barrier crimes. She explained that this "home base" section of the Code sets out the list of barrier crimes in subsection A as follows:

- (i) Crimes against a person, property crimes, crimes involving health and safety, or crimes involving morals and decency, peace and order, and administration of justice;
- (ii) Specific property crimes;
- (iii) Specific drug crimes;
- (iv) Felony violations of possession of controlled substances;
- (v) Offenses that result in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry; and
- (vi) Any other felony not included in the above clauses unless five years have elapsed from the date of conviction.

She then explained how the Department of Health (VDH), Department of Behavioral Health and Developmental Services (DBHDS), Department of Social Services (DSS), and Department of Education (DOE) interact with these barrier crimes provisions. Specifically, Ms. Moir reviewed with the Joint Subcommittee (i) which individuals are subject to barrier crimes; (ii) what offenses constitute a barrier crime; and (iii) what, if any, exceptions there are within each agency's respective title of the Code. The specific Code sections and impacted entities can be found in the meeting materials on the Joint Subcommittee's webpage.

¹ **Members Present:** Senator John S. Edwards (chair), Delegate Marcia S. Price (vice-chair), Senator Scott A. Surovell, Delegate Lamont Bagby, Delegate Ibraheem S. Samirah, James Abrenio, Rebecca Allen, Gena Boyle Berger, Kristi Kelly, Alison G. Land

Members Absent: Delegate Michael P. Mullin

Drafting Options

Based on discussions from previous meetings of the Joint Subcommittee, three drafting options were presented. The first drafting option is to amend § 19.2-392.02 to eliminate some or all misdemeanor crimes from the barrier crimes list and include agency-specific waiver processes for felony offenses. The second drafting option is to keep the current list of barrier crimes intact and allow agency-specific waiver processes for all or most of the enumerated crimes. Options one and two could also include eliminating references to Virginia barrier crimes and including only references to the applicable federal rules in the Code sections that govern foster and adoptive care.

The third drafting option is to consolidate all barrier crimes provisions into one section. Ms. Moir noted that although this option was discussed during the previous meeting of the Joint Subcommittee, a better option would be to amend an existing section or create an entirely new section that sets out a single list of barrier crimes, agency-specific requirements, exclusions of certain crimes, and waiver processes in each individual title that governs each agency.

Since the three options presented were a non-exhaustive list of what could be done, Ms. Moir also provided the members with a few additional line items, including creating a tiered system based on crime severity.

Discussion and Directions to Staff

After hearing public comment, the members of the Joint Subcommittee discussed the various drafting options presented. They agreed that, at the very least, some misdemeanors could be eliminated from the barrier crimes list. Additionally, there was a general consensus that a waiver process specific to the individual agencies would probably be the best way to move forward.

Staff was directed to first get feedback from VDH, DBHDS, DSS, and DOE about which crimes should be removed from the barrier crimes list, as well as what they would want a waiver process to entail. Staff will prepare a draft for the next meeting, keeping in mind any subsequent feedback. No date and time were set for the next meeting.

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

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