



Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks

October 6, 2021, at 2:00 p.m.

Electronic Meeting

<https://studies.virginiageneralassembly.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*](#).

Presentation: First Draft of Legislation for Introduction for the 2022 Regular Session

Anna Moir, Attorney, Division of Legislative Services

Sabrina Miller-Bryson, Attorney, Division of Legislative Services

Ms. Miller-Bryson and Ms. Moir gave an overview of the first draft of legislation to reform the barrier crimes provisions in the Code of Virginia. The purpose of providing this first draft for the meeting was to gather feedback from the Joint Subcommittee members and members of the public to ensure that the draft is well vetted prior to the final meeting in November. The five main elements of the draft are:

- Creates a new subsection H in § 19.2-392.02 that directs the Department of Behavioral Health and Developmental Services, the Department of Education, the Department of Health, and the Department of Social Services to set out a waiver process whereby individuals may apply for employment despite convictions of barrier crimes;
- Creates a new subsection I in § 19.2-392.02 that provides a penalty for a business screening service or qualified entity that discharges or discriminates against an individual for any reasoning concerning solely the barrier crime conviction that was subject to a waiver;
- Eliminates some barrier crimes from the list in § 19.2-392.02;
- Adds references in Code sections in the respective titles of the agencies to the new provisions in § 19.2-392.02 for clarity and consistency; and
- For foster and adoptive parents, limits crimes that are barriers to compliance with federal law only.

Public Comment and Discussion

After hearing public comment, the members of the Joint Subcommittee discussed the draft and directed the attorneys to make the following changes in the updated draft for the final meeting:

¹ **Members Present:** Senator John S. Edwards (chair), Delegate Marcia S. Price (vice-chair), Senator Scott A. Surovell, Delegate Lamont Bagby, Delegate Michael P. Mullin, James Abrenio, Kristi Kelly, Commissioner Alison G. Land represented by Stacy Pendleton, Commissioner M. Norman Oliver represented by Rebekah Allen, Commissioner S. Duke Storen represented by Nikki Callahan
Members Absent: Delegate Ibraheem S. Samirah

- Amend the legislation to require the State Board of Behavioral Health and Developmental Services, the Board of Education, the State Board of Health, and the State Board of Social Services to establish their waiver processes in regulations;
- Amend subsection I of the legislation and determine a corresponding delayed effective date for the legislation;
- Reach out to stakeholders to get recommendations of crimes to eliminate from the list of barrier crimes;
- Look into Virginia Freedom of Information Act provisions to ensure that sensitive material on an individual's application is protected while also ensuring that the state agencies overseeing the waiver process can access information needed to make a determination for granting a waiver;
- Add more minimum standards around the waiver process, such as requiring each agency to provide criteria used to review an individual's waiver; and
- Other suggestions that will be explored and incorporated into the final draft.

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

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