

Updated Draft 11/5/21

Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks

Add Department of Health to Dissemination Exceptions

This change has been implemented to allow VDH to receive criminal history records checks for the purposes of the barrier crimes waiver process (P. 9 in lines 216-219).

Remove Certain Crimes, including Misdemeanor Assault & Battery

This change has been implemented (P. 11-12 in lines 271-293).

Subsection (A)(i) has also been reorganized into "any violation of" crimes, then "any felony violation of" crimes (P. 11-12 in lines 271-293).

- Crimes eliminated completely:
 - § 18.2-88. Carelessly damaging property by fire. (Class 4 misdemeanor)
 - § 18.2-57.01. Pointing laser at law-enforcement officer unlawful; penalty. (Class 2 misdemeanor)
 - § 18.2-87.1. Setting off chemical bombs capable of producing smoke in certain public buildings. (Class 2 misdemeanor)
 - § 18.2-56. Hazing unlawful; civil and criminal liability; duty of school, etc., officials; penalty. (Class 1 misdemeanor)
- Changed to felony-only (eliminated the misdemeanor offense):
 - § 18.2-56.1. Reckless handling of firearms; reckless handling while hunting.
 - § 18.2-57. Assault and battery; penalty.
 - § 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty.
 - § 18.2-60. Threats of death or bodily injury to a person or member of his family; threats of death or bodily injury to persons on school property; threats of death or bodily injury to health care providers; penalty.

Require Boards to Establish the Waiver Process in Regulations

This change has been implemented (P. 15 in lines 371-375).

Add More Minimum Standards around the Waiver Process

As discussed in the last meeting, please find the following changes implemented in subsection H. in § 19.2-392.02:

- Waivers shall not be transferable across agencies, but shall have a positive impact when another agency is reviewing an application for a waiver (P. 15 in lines 390-392).
- An agency must state the basis for denying an application for a waiver in writing (P. 15 in lines 394-396).
- Criteria used to review waivers must be set out in regulations (P. 15 in line 381).

Requirement to Notify the Department of State Police

Directs departments to notify VSP when a waiver has been granted. (P. 15 in lines 384-387).

Appeals Process

Because the boards are now required to set out the waiver process in regulations, the appeals process in the Administrative Process Act applies and we made this explicit in subsection H. (P. 16 in lines 397-401).

Unlawful Dissemination by Business Screening Services

As discussed in the last meeting, any business screening service that unlawfully disseminates information relating to barrier crimes is subject to the same penalty provisions in § 19.2-392.16(G) (P. 16 in lines 402-406).

Unlawful Discrimination by Qualified Entity

Added a new subsection J which creates a penalty for a qualified entity to discriminate or otherwise discharge an individual who has been granted a waiver for any reason concerning only the conviction that was the subject of that waiver (P. 16 in lines 407-411).

FOIAbility of Waiver Application

As discussed in our last meeting, any waiver application, regardless of whether or not the waiver is granted, will be exempt from VFOIA except for an application cover sheet and the status of the waiver or application. This exemption is further referenced in each Code section that discusses the waiver process in each respective department title (P. 16 in lines 412-420).

Delayed Effective Date

The second enactment clause directs the departments to promulgate regulations to implement the waiver process by July 1, 2025, with the exception of the provisions relating to foster and adoptive parents. We have been informed by State Police that they should be able to incorporate the barrier crimes waiver information into their criminal history background check during the same upgrades they will be implementing as required by the expungement and records sealing bill (SB 1339, Surovell, 2021 Special Session I), so this effective date is in line with the later of the two effective dates included in that legislation. (P. 60 in lines 1600-1604)

Ensure that Individuals with Barrier Crime Convictions Currently Working Pursuant to an Exception, Waiver, or Screening Process do not Lose Their Jobs

Because we are eliminating current exceptions as such information is required to be set out in each agency's waiver process, to ensure that those currently working pursuant to an exception, waiver, or screening process up until the date of enactment do not lose their jobs, we are grandfathering in those individuals as long as they continue to work in their current position. If they choose to leave the job and apply for another job subject to the waiver process, they will have to apply for a waiver. Due to some feedback, we also added an option for the boards, as part of their regulations, to require that an individual subject to such waiver, exception, or screening process shall have one year after July 1, 2025, to file an application for a new waiver pursuant to the regulations set out by each board and that such individual shall not be terminated for lacking such waiver while his waiver application is pending. (P. 61 in lines 1605-1615)

Phased Implementation of the Waiver Process so as to Not Overwhelm Agencies with Applications upon Enactment

Because the agencies will have a few years to develop this process and will have a better idea of how many applications they will receive based on the regulations that they establish, we decided to make this (i) agency-specific and (ii) permissive. The language requires the departments, upon enactment of this act on July 1, 2025, to begin accepting at least some or all applications for waivers pursuant to the regulations set out by the boards. However, if necessary, to prevent overwhelming department resources for receiving applications and to ensure that applications are answered in a timely manner, in its regulations each board *may* set out a phased implementation of such regulations that shall not exceed a period of two years after the date of enactment before the waiver application process under each department shall be fully functioning. (P. 61 in lines 1616-1625).

Navigation System

Delegate Price discussed this as a potential system that could be created to help individuals navigate the waiver process across agencies. Due to bias and liability concerns, the agencies likely cannot oversee this navigator-style program, so it would be best to place it centrally in a single agency that already has workforce subject matter expertise. Because the waiver processes have not yet been developed and will be developed over a period of years, this is an issue that we directed the Secretaries of Education, Health and Human Resources, and Labor to explore so that they can do so in tandem with the boards as they develop regulations. We directed the Secretaries to report recommendations on the potential development of this navigation system one year prior to enactment so that if the Secretaries recommend that such office be created, it could hopefully be created by or around the time that the waiver process will become effective. (P. 61-62 in lines 1626-1634).

Department of State Police

This clause directs VSP to implement any updates to their Criminal History and Rap Back Information System necessary so an individual's criminal history also reflects when a barrier crime waiver has been granted (P. 62 in lines 1635-1637).