

Final Draft of Legislation for Introduction for the 2022 Regular Session

Joint Subcommittee to Study Barrier Crimes and Criminal
History Records Checks

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Require Boards to Establish the Waiver Process in Regulations

- P. 15 in lines 371-375.
- Also requires the Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services to publish information about the agency's waiver process in an easily accessible format on a website maintained by the department (lines 382-384).

Add More Minimum Standards around the Waiver Process

- 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).

Appeals Process

- P. 16 in lines 397-401.
- Because the boards are now required to set out the waiver process in regulations, the appeals process in the Administrative Process Act applies and this is explicit in subsection H.
- If an individual applies for and does not receive a waiver, he may request an informal fact-finding proceeding. If he does not request such a proceeding, the initial rejection of the waiver becomes final after 30 days.
- If an individual remains aggrieved after the informal fact-finding proceeding, he may seek review of the case with a circuit court.

Phased Implementation of the Waiver Process

- P. 61 in lines 1616-1625.
- Upon enactment, the departments shall start begin accepting at least some or all waiver applications. 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 of this act before the waiver application process under each department shall be fully functioning.

Grandfather In Individuals Working Pursuant to a Current Exception, Waiver, or Screening Process

- Lines 1605-1615
- Provides that any individual with a barrier crime conviction serving in a position pursuant to a current exception, waiver, or screening process up until the first date of enactment on July 1, 2025, shall continue to be subject to such exception, waiver, or screening process and shall not be terminated upon enactment of this law or required to apply for a barrier crime conviction waiver so long as he serves in such position. In its regulations, the boards may 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 such application is pending.

Navigation System

- P. 61-62 in lines 1626-1634
- Directs the Secretaries of Education, Health and Human Resources, and Labor to report recommendations on the development of a navigation system for assisting applicants in navigating the waiver processes across each department no later than July 1, 2024.

Removal or Elimination of Certain Crimes

- P. 11-12, 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.

Unlawful Dissemination by Business Screening Services

- P. 16, lines 402-406
- Provides that any business screening service that unlawfully disseminates information relating to barrier crimes is subject to the same penalty provisions in 19.2-392.16

Unlawful Discrimination by Qualified Entity

- P. 16, 407-411
- 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.

FOIAbility of Waiver Application

- P. 16, lines 412-420
- Provides that 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.

Delayed Effective Date

- P. 60, lines 1600-1604
- 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.

Department of State Police

- P. 62, lines 1635-1637
- This enactment 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.