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# Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks

November 8, 2021, at 2:00 p.m.

The Capitol, Senate Room 3

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

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The Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks (the Joint Subcommittee) met with Senator John S. Edwards, chair, presiding.<sup>1</sup> The meeting began with introductions and opening remarks followed by a presentation and discussion. Materials presented at the meeting are accessible through the [\*Joint Subcommittee's webpage\*](#).

### **Presentation: Updates to the Draft of Barrier Crimes Legislation**

*Anna Moir, Attorney, Division of Legislative Services*

*Sabrina Miller-Bryson, Attorney, Division of Legislative Services*

Ms. Moir and Ms. Miller-Bryson went over the changes made to the draft barrier crimes legislation since the last meeting of the Joint Subcommittee on October 6, 2021. Based on the feedback from the members of the Joint Subcommittee and relevant stakeholders, the draft presented reflected the following changes:

- Removes misdemeanor assault and battery from the list of barrier crimes as set out in § 19.2-392.02 of the Code of Virginia;
- Requires that the Boards of Behavioral Health and Developmental Services, Education, Health, and Social Services establish the waiver process in each of their respective department's regulations and adds a subsequent appeals process;
- Adds minimum standards to the waiver process, including that waivers shall not be transferrable across the Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services;
- Provides remedies for unlawful dissemination of barrier crimes information by business screening services and unlawful discrimination by qualified entities;
- Exempts a barrier crime waiver application, except for a cover sheet and the status of the waiver, from the Virginia Freedom of Information Act;
- Provides a delayed effective date of July 1, 2025, except for the provisions relating to foster and adoptive parents;

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<sup>1</sup> **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, Rebekah Allen, Gena Boyle Berger, Kristi Kelly, Alison G. Land

**Members Absent:** Delegate Michael P. Mullin

- Provides job protection for employees who have been convicted of a barrier crime who are currently employed pursuant to one of the barrier crimes exceptions currently set out in the Code of Virginia;
- Allows for a phased implementation of the waiver process so as not to overwhelm the Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services; and
- Directs the Department of State Police to implement any necessary updates to its Criminal History and Rap Back Information System to ensure an individual's criminal history reflects when a barrier crime waiver has been granted.

### **Public Comment and Formal Recommendation**

The members of the Joint Subcommittee heard public comment, then further discussed the draft legislation. As a result of the discussion, the members adopted the following three amendments in concept by voice vote:

- To add that an individual whose waiver application or appeal has been denied may reapply for a waiver upon a showing of a material change in circumstances;
- To add language that provides individuals currently employed with the Department of Behavioral Health and Developmental Services, Education, Health, or Social Services and subject to a current exception for a barrier crime conviction with the same protection against unlawful discrimination due to a barrier crime conviction; and
- To amend the delayed effective date to align with the effective date as provided in SB 1339 (Surovell, 2021 Special Session I).

The members also voted to include with the draft legislation a budget recommendation to the Governor. Delegate Marcia S. "Cia" Price then moved and Delegate Lamont Bagby seconded that the Joint Subcommittee recommend that the draft legislation be introduced during the 2022 Session of the General Assembly. The Joint Subcommittee voted unanimously in favor of the motion, and the meeting was concluded.

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

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