



Position Statement: Barrier Crimes

A *barrier crime* is a criminal conviction that disqualifies individuals from employment in direct care positions with Virginia's Department of Behavioral Health and Developmental Services (DBHDS) and certain other entities, including:

- Licensed private providers under DBHDS
- Licensed state facilities
- Community Services Boards (CSBs)

Barrier crime laws are intended to protect the public from individuals whose employment may pose a risk. Individuals convicted of a barrier crime are not eligible to work in direct care positions unless they pass a background check and qualify for and pass an individual screening which is available in only limited circumstances. Even so, Virginia's system is complex, often produces unintended consequences, and has become a significant barrier to employment for many otherwise highly qualified individuals in recovery.

Virginia currently designates **174 criminal offenses**—both felonies and misdemeanors—as barrier crimes. Only 23 of those crimes are “screenable.”

Examples of Barrier Crimes

- Serious offenses such as armed robbery and child sex offenses.
- Less serious offenses, such as reckless handling of firearms while hunting.
- Many drug-related offenses.

Background Checks and Screening

Individuals hired to work in a direct-care or supervisory position by DBHDS, a licensed state facility, or a CSB must undergo a **fingerprint-based criminal background check**.

If a barrier crime conviction appears, additional evaluation and final screening are required before employment can be finalized. Screening is only available for 23 of the 174 barrier crimes. The remaining 151 barrier crimes act as a lifetime ban to individuals regardless of time, employment, education, demonstrated rehabilitation, or otherwise.

Note: The background and screening process is only initiated once a conditional job offer has been made.

Problem Areas

- **Limited Screening Eligibility:** Too few of the 176 barrier crimes are eligible for screening.
- **Excessive Requirements:** Criteria for screening eligibility are unnecessarily burdensome.
- **Mandatory Waiting Periods:** Applicants must complete lengthy waiting periods before even becoming eligible for screening.
- **Financial and Legal Obligations:**
 - Screening can only occur after all fines, restitution, and costs (related or unrelated to barrier crime convictions) are fully paid.
 - Applicants must also complete lengthy probation or parole periods—including unsupervised probation—before waiting periods can even begin.
 - Even minor offenses during probation can reset the waiting period.
- **Training Gaps:** PEER certification and other training programs do not adequately educate prospective providers about barrier crime complexities and hurdles.

Important Considerations

Barrier crimes often prevent **qualified professionals in recovery** from giving back to their communities through employment in human services.

Reducing the number of barrier crimes and simplifying the screening process would:

- Create more opportunities for individuals in recovery to become contributing, responsible, tax-paying citizens.
- Strengthen recovery outcomes by providing employment—an important component of *recovery capital*—and reducing the likelihood of relapse or re-incarceration.
- Help address the critical **workforce shortage** of individuals with lived experience, including **Peer Support Specialists**, who are invaluable in providing services and advancing peer programs.

Current Developments

Recent litigation successfully challenged the constitutionality of Virginia’s barrier crime scheme, arguing that it violated the **Equal Protection Clause of the 14th Amendment to the U.S. Constitution**.¹

In FY 2023, nearly 300 individuals who had received job offers from private providers were eliminated from employment consideration due solely to lengthy probation or unpaid fines, restitution, or penalties.

References:

¹ <https://law.justia.com/cases/federal/district-courts/virginia/vaedce/1:2024cv00477/551295/63/>

1. VA Code §§ 37.2-314, 416, 416.1, 506, 506.1
2. DBHDS Presentation to the 2021 General Assembly Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks
3. [NIH Studies on Recovery Capital and Recidivism](#)