

MELISSA BROWN V. NELSON SMITH

U.S. District Court for the Eastern District of Virginia,
September 2025

BACKGROUND

Melissa Brown, a certified substance-use counselor, sued the Commonwealth of Virginia, claiming that the state's "barrier crime" statute (Va. Code § 37.2-416.1) violated her constitutional right to equal protection.

The law permanently bars anyone with certain past convictions, known as barrier crimes, from working in "direct care" roles at state-licensed behavioral-health or addiction-treatment facilities.

There are 174 barrier crimes listed in the law. For 23 of them, individuals who meet certain criteria can apply for an exception to the lifetime bar through a state screening process that evaluates rehabilitation.

For the remaining 151 crimes, including robbery, there is no opportunity for review -- it's a lifetime ban.

Two other groups are exempt from the bar to employment entirely:

Grandfathered Employees already working in direct care positions prior to 1999.

Currently Employed Offenders who commit a barrier crime while already in a direct-care role.

Brown argued that this system treated her unfairly -- she was completely barred from direct care positions for life, while others with similar offenses or even new convictions could work in those positions.

BROWN'S STORY

In the early 2000s, Brown pled guilty to robbery and credit-card fraud and served several years in prison.

Since release, she has rebuilt her life--earning a bachelor's degree, becoming certified as a substance-abuse counselor, and working successfully in recovery programs.

She had been employed in a direct-care role up to 2016 when a new employer discovered her old record and removed her under the barrier law.

Brown now works in an administrative position at a licensed facility and volunteers at an

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unlicensed program where the law does not apply.

THE COURT'S DECISION

The court agreed with Brown, ruling that Virginia's barrier-crimes statute, as applied to her case, violated the Equal Protection Clause of the Fourteenth Amendment. The court found no rational reason why Brown should be permanently excluded when others with comparable convictions are allowed individualized screening.

The Court also determined that Brown was treated differently from *Currently Employed Offenders* who commit barrier crimes but could be allowed to keep working; and *Grandfathered Employees* whose offenses occurred before the law was passed.

The court found no rational basis for that difference.

ARBITRARY DISTINCTIONS

The law allows screenings for some serious felonies (like burglary) but permanently bans others (like robbery) with no clear reason--especially when unarmed robbery may pose no greater risk. The Court determined these distinctions were arbitrary.

The Court also expressed concerns that the lifetime ban ignored Brown's 20-year record of stability, rehabilitation, education, and professional service. The court said that rehabilitation and time elapsed should be considered.

The Court also felt lifetime bans for direct care positions were irrational considering a DBHDS report decrying the Commonwealth's inability to fill these critically important positions in large part because of the barrier crimes prohibitions.

OUTCOME

The court ordered the Department of Behavioral Health and Developmental Services (DBHDS) to give Brown an individualized screening to assess her qualifications.

The ruling did not overturn the entire barrier-crimes legal structure in Virginia, but it requires the Commonwealth to apply the law more fairly in similar cases.

Smith has appealed this decision to the 4th Circuit Court of Appeals.

WHY THIS MATTERS (VAAP PERSPECTIVE)

This decision is a major win for people in recovery who are rebuilding their lives and want to work in the helping professions.

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It confirms that blanket bans without case-by-case review can violate Constitutional protections.

It opens the door for rehabilitated individuals to rejoin the behavioral-health workforce as responsible and employed citizens strengthening recovery outcomes, reducing police and health care resources devoted to this population, and increasing Virginia's tax coffers.

It highlights the need for modernizing the barrier-crimes system to reflect fairness, rehabilitation, and workforce needs.

POTENTIAL NEXT STEPS AND REFORMS FOR VIRGINIA

Comprehensive Review: Virginia's Joint Legislative and Audit Review Commission (JLARC) conduct a full review of the barrier-crimes statute.

Clear Guidelines: DBHDS should issue clear screening regulations to comply with the court's ruling in ***Brown v. Smith.***

Eliminate Lifetime Barriers: Eliminate lifetime barriers to employment. Make all "barrier crimes" screen-able.

Shorten Waiting Periods: Make all crimes screen-able 4 years after conviction.

Remove Hurdles: Remove unnecessary hurdles preventing screening, such as completion of probation and payment of all fines and penalties.

Focus on Serious Crimes: Focus on serious crimes only: remove misdemeanor offenses from the barrier list entirely.

Screening Protocol: DBHDS should establish a standard protocol for screening.