



## **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 despite workplace shortages in Virginia’s addiction recovery facilities.

Virginia currently designates **174 criminal offenses**—both felonies and misdemeanors—as barrier crimes. Only 23 of those crimes are “screenable.”<sup>1</sup>

### **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**.

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<sup>1</sup> In 2024, Virginia amended its laws eliminating a screening requirement and to permit employment 4 years after conviction for persons convicted of misdemeanor assault (Va. Code 18.2-57); felony possession of drugs (Va. Code 18.2-250); felony prescription fraud (Va. Code 18.2-258.1); and felony possession with intent to sell, manufacture or distribute drugs (excluding marijuana) (Va. Code 18.2-248). Inexplicably, Virginia maintains a 5 year waiting period and a screening requirement for individuals convicted of the sale, gift, or distribution of marijuana or possession with intent to sell, give, or distribute marijuana (Va. Code 18.2-248.1). (See Va Code 37.2-416.1.)

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. Additionally, DBHDS has established no standard screening protocol.***

## **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, e.g. completion of probation and payment of all fines and penalties.
- **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.
- **Screening Protocols:** DBHDS has no standard screening protocol.
- **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.**<sup>2</sup>

*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.*

## Next Steps and Reforms for Virginia

**Comprehensive Review:** Virginia should direct JLARC to 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:** Virginia should 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:** Virginia should remove unnecessary hurdles preventing screening, such as completion of probation and payment of all fines and penalties.

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

**Screening Protocol:** Virginia should establish a standard protocol for screening.

## References:

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](#)

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<sup>2</sup> <https://law.justia.com/cases/federal/district-courts/virginia/vaedce/1:2024cv00477/551295/63/>