



## **Advocacy Initiative – Barrier Crimes**

### **Background**

- A **barrier crime** is a criminal conviction that disqualifies convicted individuals from employment with Virginia’s Department of Behavioral Health and Developmental Services (DBHDS).
- Conceptually, barrier crimes are enacted to protect the public from individuals who may represent a threat; but they also act as a barrier to employment for many individuals in recovery.
- Virginia has designated 176 Criminal Offenses (both felonies and misdemeanors) as barrier crimes. (See attached).
  - Some barrier crimes are serious offenses including armed robbery and child sex offenses.
  - Other designated barrier crimes are less serious, such as recklessly driving a boat, hazing, and many drug related offenses.
- Individuals who have been convicted of a barrier crime may request that Virginia waive the barrier to employment, but screening and waiver are only allowed for 26 of the 176 barrier crimes.
  - Screening can only occur after individuals pay fines, restitution, and fees for their certifications with no guarantee that they will be granted an opportunity to work in peer-recovery spaces.
- In many instances, barrier crimes bar qualified professionals who are in recovery from giving back to their community in human services fields of employment.
- Fewer barrier crimes and a more comprehensive and robust screening process have several benefits:
  - Provides more opportunity for these individuals in recovery to become contributing, responsible, tax paying citizens.
  - Employment provides additional recovery capital to individuals in recovery and lessens the likelihood of relapse and recidivistic incarceration.
  - Helps fills a workforce shortage of individuals with lived experience as Peer Support Specialists, “*invaluable* in the provision of services and essential to the growth of peer services.” (DBHDS presentation to the 2021 General Assembly Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks).

### **VAAP is calling for:**

- A thorough review to reduce the number of crimes designated as barrier crimes.
- An increase in the number of barrier crimes that are subject to screening and waiver.

## Classifications of Barrier Crimes

### Class 1 felony

- § 18.2-31. Aggravated murder defined;

### punishment. Class 2 felony

- § 18.2-32. First and second degree murder defined; punishment.
- § 18.2-32.2. Killing a fetus; penalty.
- § 18.2-33. Felony homicide defined; punishment.
- § 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty. *Subsection A only.*
- § 18.2-46.6. Possession, manufacture, distribution, etc. of weapon of terrorism or hoaxdevice prohibited; penalty. *Subsection A only.*
- § 18.2-48. Abduction with intent to extort money or for immoral purpose.
- § 18.2-51.2. Aggravated malicious wounding; penalty.
- § 18.2-58. Robbery; penalties. *Subsection B(1) only.*
- § 18.2-289. Use of machine gun for crime of violence.
- § 18.2-300. Possession or use of "sawed-off" shotgun or rifle. *Subsection A only.*
- § 18.2-481. Treason defined; how proved and punished.
- § 18.2-93. Entering bank, armed, with intent to commit

### larceny. Class 3 felony

- § 18.2-41. Shooting, stabbing, etc., with intent to maim, kill, etc., by mob.
- § 18.2-46.3:1. Third or subsequent conviction of criminal street gang crimes.
- § 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty. *Subsections B and D only.*
- § 18.2-46.6. Possession, manufacture, distribution, etc. of weapon of terrorism or hoaxdevice prohibited; penalty. *Subsection B only.*
- § 18.2-46.7. Act of bioterrorism against agricultural crops or animals; penalty.
- § 18.2-51. Shooting, stabbing, etc., with intent to maim, kill, etc.
  - *Class 5 felony if act done unlawfully but not maliciously.*
- § 18.2-54.1. Attempts to poison.
- § 18.2-54.2. Adulteration of food, drink, drugs, cosmetics, etc.; penalty.
- § 18.2-58. Robbery; penalties. *Subsection B(2) only.*
- § 18.2-79. Burning or destroying meeting house, etc.
  - *If building is not occupied, Class 4 felony.*
- § 18.2-80. Burning or destroying any other building or structure.

- *If building is unoccupied and building is valued at \$1,000 or more, Class 4 felony.*
- *If building unoccupied and valued at less than \$1,000, Class 1 misdemeanor.*
- § 18.2-355. Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking. *Subdivision (4) only.*
- § 18.2-357.1. Commercial sex trafficking; penalties. *Subsection C only.*
- § 18.2-361. Crimes against nature; penalty.
- § 18.2-89. Burglary; how punished.
  - *Class 2 felony if armed with deadly weapon.*
- § 18.2-90. Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson; penalty.
  - *Class 2 felony if armed with deadly weapon.*
- § 18.2-91. Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony.
  - *Class 2 felony if armed with deadly weapon.*
- § 18.2-251.3. Possession and distribution of gamma-butyrolactone; 1, 4-butanediol; enhanced penalty.

#### Class 4 felony

- § 18.2-46.2. Prohibited criminal street gang participation; penalty.
  - *If member is 18 years of age or older and has reason to know criminal street gang also includes a juvenile member.*
- § 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty. *Subsection C only.*
- § 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated. *Subsection B only.*
- § 18.2-51.5. Maiming, etc., of another resulting from operating a watercraft while intoxicated; penalty. *Subsection B only.*
- § 18.2-52.1. Possession of infectious biological substances or radiological agents; penalties. *Subsection B only.*
- § 18.2-63. Carnal knowledge of child between thirteen and fifteen years of age.
  - *Class 6 felony if accused is a minor and consenting child is 3 years or more the accused's junior.*
- § 18.2-67.5. Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery. *Attempted rape, forcible sodomy, or object sexual penetration only.*
- § 18.2-77. Burning or destroying dwelling house, etc.
- § 18.2-81. Burning or destroying personal property, standing grain, etc.
  - *If valued at less than \$1,000, Class 1 misdemeanor.*
- § 18.2-82. Burning building or structure while in such building or structure with intent to commit felony.
- § 18.2-279. Discharging firearms or missiles within or at building or dwelling house; penalty.
  - *Various enhancements in the case of intentional or unintentional*

*homicideresulting from actions.*

- § 18.2-280. Willfully discharging firearms in public places. *Subsections B & C.*
- § 18.2-287.2. Wearing of body armor while committing a crime; penalty.
- § 18.2-290. Use of machine gun for aggressive purpose.
- § 18.2-300. Possession or use of "sawed-off" shotgun or rifle. *Subsection B only.*
- § 18.2-355. Taking, detaining, etc., person for prostitution, etc., or consenting thereto;human trafficking.
- § 18.2-356. Receiving money for procuring person; penalties.
  - *Class 3 felony if person violates section with a person under 18 years of age.*
- § 18.2-357. Receiving money from earnings of male or female prostitute; penalties.
  - *Class 3 felony if person violates section with a person under 18 years of age.*
- § 18.2-357.1. Commercial sex trafficking; penalties. *Subsection B only.*
- § 18.2-370. Taking indecent liberties with children; penalties. *Subsections C & D(ii) only.*
- § 18.2-371.1. Abuse and neglect of children; penalty; abandoned infant. *Subsection Aonly.*
- § 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation ofchild pornography; penalty. *Subsection D only.*
- § 18.2-480. Escape, etc., by setting fire to jail.
- § 18.2-485. Conspiring to incite one race to insurrection against another

race.Class 5 felony

- § 18.2-35. How voluntary manslaughter punished.
- § 18.2-36. How involuntary manslaughter punished.
- § 18.2-36.1. Certain conduct punishable as involuntary manslaughter.
- § 18.2-36.2. Involuntary manslaughter; operating a watercraft while under the influence;penalties.
- § 18.2-46.2. Prohibited criminal street gang participation; penalty.
- § 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone;penalties.
- § 18.2-47. Abduction and kidnapping defined; punishment. *Subsections A & B only.*
- § 18.2-49. Threatening, attempting, or assisting in such abduction; penalty.
- § 18.2-52.1. Possession of infectious biological substances or radiologicalagents; penalties. *Subsection A only.*
- § 18.2-55. Bodily injuries caused by prisoners, state juvenile probationers and state andlocal adult probationers or adult parolees.
- § 18.2-58. Robbery; penalties. *Subsection B(3) only.*
- § 18.2-59. Extortion of money, property or pecuniary benefit.
- § 18.2-60. Threats of death or bodily injury to a person or member of his family; threatsof death or bodily injury to persons on school property; threats of death or bodily injuryto health care providers; penalty. *Subsections A(1) & A(3) if 18 years of age or older.*
- § 18.2-83. Threats to bomb or damage buildings or means of transportation; falseinformation as to danger to such buildings, etc.; punishment; venue.

- *If person under 15 years of age, Class 1 misdemeanor.*
- § 18.2-84. Causing, inciting, etc., commission of act proscribed by § 18.2-83.
- § 18.2-85. Manufacture, possession, use, etc., of fire bombs or explosive materials or devices; penalties.
  - *Class 6 felony if a person constructs/sends/uses, etc. a hoax explosive with intent to cause another person to believe it is a bomb or explosive.*
- § 18.2-286.1. Shooting from vehicles so as to endanger persons; penalty.
- § 18.2-357.1. Commercial sex trafficking; penalties. *Subsection A only.*
- § 18.2-370. Taking indecent liberties with children; penalties. *Subsections A, B, & D(i) only.*
- § 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.
  - *Enhanced term of imprisonment if child depicted is less than 15 years of age.*
- § 18.2-405. What constitutes a riot; punishment.
- § 18.2-406. What constitutes an unlawful assembly; punishment.
- § 18.2-408. Conspiracy; incitement, etc., to riot.
- § 18.2-413. Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection.
- § 18.2-433.2. Paramilitary activity prohibited; penalty.
- § 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons.
  - *Class 3 felony if person delivers or attempts to deliver firearms, ammunitions, or explosives.*
- § 18.2-94. Possession of burglarious tools, etc.
- § 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.
  - *Class 4 felony if given to an inmate of a local correctional facility.*
- § 18.2-258.02. Maintaining a fortified drug house; penalty.
- § 18.2-250. Possession of controlled substances

unlawful. Class 6 felony

- § 16.1-253.2. Violation of provisions of protective orders; penalty.
- § 18.2-46.3. Recruitment of persons for criminal street gang; penalty.
- § 18.2-46.6. Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited; penalty. *Subsection C only.*
- § 18.2-50.3. Enticing, etc., another into a dwelling house with intent to commit certain felonies; penalty.
- § 18.2-51.3. Prohibition against reckless endangerment of others by throwing objects from places higher than one story; penalty.
- § 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated. *Subsection A only.*
- § 18.2-51.5. Maiming, etc., of another resulting from operating a watercraft while intoxicated; penalty. *Subsection A only.*

- § 18.2-51.6. Strangulation of another; penalty.
- § 18.2-52. Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire.
- § 18.2-57. Assault and battery; penalty. *Subsections B & C only.*
- § 18.2-53. Shooting, etc., in committing or attempting a felony.
- § 18.2-56.1. Reckless handling of firearms; reckless handling while hunting. *Subsection B only.*
- § 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty.
  - *Firearm or stun weapon only.*
- § 18.2-57.2. Assault and battery against a family or household member; penalty. *Subsection B only.*
- § 18.2-58. Robbery; penalties. *Subsection B(4) only.*
- § 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. *Subsection A(2) only.*
- § 18.2-60.1. Threatening the Governor or his immediate family.
- § 18.2-60.3. Stalking; penalty. *Subsection B.*
- § 18.2-60.4. Violation of protective orders; penalty.
- § 18.2-64.1. Carnal knowledge of certain minors.
- § 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender; penalty.
- § 18.2-67.4:1. Infected sexual battery; penalty.
- § 18.2-67.5. Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery. *Attempted aggravated sexual battery only.*
- § 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense.
- § 18.2-86. Setting fire to woods, fences, grass, etc.
- § 18.2-280. Willfully discharging firearms in public places. *Subsection A only.*
- § 18.2-281. Setting spring gun or other deadly weapon.
- § 18.2-282. Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance; penalty.
- § 18.2-282.1. Brandishing a machete or other bladed weapon with intent to intimidate; penalty.
- § 18.2-308.4. Possession of firearms while in possession of certain substances.
- § 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties.
  - *Class 6 felony if soliciting from a minor who is 16 years of age or older; Class 5 felony if younger than 16 years of age.*
- § 18.2-348. Aiding prostitution or illicit sexual intercourse, etc.; penalty.
- § 18.2-349. Using vehicles to promote prostitution or unlawful sexual intercourse; penalty.
- § 18.2-370.1. Taking indecent liberties with children by person in custodial or supervisory relationship; penalties.

- *Class 5 felony if second or subsequent offense subject to requirements enumerated in subsection B.*
- § 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.
- § 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty.
- § 18.2-370.4. Sex offenses prohibiting working on school property; penalty.
- § 18.2-370.5. Offenses prohibiting entry onto school or other property; penalty.
- § 18.2-371.1. Abuse and neglect of children; penalty; abandoned infant.  
*Subsection B only.*
- § 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty.
  - *Class 5 felony for second or subsequent offense.*
- § 18.2-374.4. Display of child pornography or grooming video or materials to a child unlawful; penalty.
- § 18.2-414. Injury to property or persons by persons unlawfully or riotously assembled.
- § 18.2-423. Burning cross on property of another or public place with intent to intimidate; penalty; prima facie evidence of intent.
- § 18.2-423.01. Burning object on property of another or a highway or other public place with intent to intimidate; penalty.
- § 18.2-423.1. Placing swastika on certain property with intent to intimidate; penalty; prima facie evidence of intent.
- § 18.2-423.2. Displaying noose on property of another or a highway or other public place with intent to intimidate; penalty.
- § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.
  - *Class 5 felony if second or subsequent offense.*
- § 18.2-477. Prisoner escaping from jail; how punished.
- § 18.2-477.1. Escapes from juvenile facility; penalty.
  - *Class 1 misdemeanor if occurs other than by force or violence.*
- § 18.2-477.2. Punishment for certain offenses committed within a secure juvenile facility or detention home.
  - *Class 5 felony if violation of subdivision 6 of § 53.1-203.*
- § 18.2-478. Escape from jail or custody by force or violence without setting fire to jail.
- § 18.2-484. Advocacy of change in government by force, violence or other unlawful means.
- § 37.2-917. Escape of persons committed; penalty.
- § 53.1-203. Felonies by prisoners; penalties.
  - *Class 5 felony if violation of subdivision 6.*
- § 18.2-92. Breaking and entering dwelling house with intent to commit other misdemeanor.
  - *Class 2 felony if armed with deadly weapon.*
- § 4.1-1101. Home cultivation of marijuana for personal use; penalties. *Subsection B(3) only.*
  - *Subsection B(4) felony not classified.*

- § 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.
- § 18.2-258. Certain premises deemed common nuisance; penalty.
- § 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.
- § 18.2-258.2. Assisting individuals in unlawfully procuring prescription drugs;

penalty. Class 1 misdemeanor

- § 18.2-42. Assault or battery by mob.
- § 18.2-56.2. Allowing access to firearms by children; penalty.
- § 18.2-57. Assault and battery; penalty. *Subsections A, D, E only.*
- § 18.2-55.1. Hazing of youth gang members unlawful; criminal liability.
- § 18.2-56. Hazing unlawful; civil and criminal liability; duty of school, etc., officials; penalty.
- § 18.2-56.1. Reckless handling of firearms; reckless handling while hunting. *Subsections A & D only.*
- § 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty.
  - *Chemical irritant weapon or impact weapon only.*
- § 18.2-57.2. Assault and battery against a family or household member; penalty. *Subsection A only.*
- § 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. *Subsections A(3) if less than 18 years of age & B only.*
- § 18.2-67.4. Sexual battery.
- § 18.2-67.4:2. Sexual abuse of a child under 15 years of age; penalty.
- § 18.2-67.5. Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery. *Attempted sexual battery only.*
- § 18.2-87. Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized.
- § 18.2-314. Failing to secure medical attention for injured child.
- § 18.2-366. Sexual intercourse by persons forbidden to marry; incest; penalties.
  - *Enhanced penalties for sexual intercourse with various family members.*
- § 18.2-369. Abuse and neglect of incapacitated adults; penalty.
  - *Class 6 felony if second or subsequent offense.*
  - *Class 4 felony if results in serious bodily injury or disease.*
  - *Class 3 felony if results in death.*
- § 18.2-370.6. Penetration of mouth of child with lascivious intent; penalty.
- § 18.2-386.1. Unlawful creation of image of another; penalty.
  - *Class 6 felony if violation involves a nonconsenting person under 18 years of age.*
  - *Class 6 felony for second or subsequent offense within a 10 year period.*
- § 18.2-386.2. Unlawful dissemination or sale of images of another; penalty.
- § 18.2-479. Escape without force or violence or setting fire to jail.
  - *Class 6 felony if confined for conviction of a felony.*



Class 2 misdemeanor

- § 18.2-57.01. Pointing laser at law-enforcement officer unlawful; penalty.
- § 18.2-87.1. Setting off chemical bombs capable of producing smoke in certain public buildings.

Class 4 misdemeanor

- § 18.2-88. Carelessly damaging property by

fire. Felonies: not classified

- § 18.2-32.1. Murder of a pregnant woman; penalty.
- § 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel; penalty; lesser-included offense.
- § 18.2-53.1. Use or display of firearm in committing felony.
- § 18.2-58.1. Carjacking; penalty.
- § 18.2-61. Rape.
- § 18.2-67.1. Forcible sodomy.
- § 18.2-67.2. Object sexual penetration; penalty.
- § 18.2-67.3. Aggravated sexual battery; penalty.
- 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.
- § 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.
- 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as to age.
- § 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited; penalties.
- § 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.
- § 18.2-248.02. Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine prohibited; penalties
- § 18.2-248.03. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine; penalty.
- § 18.2-248.5. Illegal stimulants and steroids; penalty.
- § 18.2-251.2. Possession and distribution of flunitrazepam; enhanced.
- § 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.