

DBHDS Barrier Crimes Information Packet

For Peer Recovery Specialist Training Applicants

Last updated June 2021

1. Steps for Requesting a Background Check

To request an FBI Identity History Summary (background check), follow the link below.

<https://www.fbi.gov/services/cjis/identity-history-summary-checks>

Option 1: To make a request electronically, follow the link below.

<https://www.edo.cjis.gov/#/>

Enter your email address to get started. You will be emailed a link and PIN to start the process.

Step 1: Complete the Applicant Information Form.

Step 2: Select your preferences for how you wish to receive your results.

Step 3: Submit your fingerprints. See website for instructions on obtaining and sending fingerprints.

<https://www.edo.cjis.gov/#/>

Step 4: Submit payment (credit card, PayPal or Amazon accounts)

Step 5: Review and confirm your request.

Step 6: Check request status.

Step 7: Receive your results.

Other options. You can send a request through the mail or by using an FBI-Authorized Channeler. See website for instructions. <https://www.fbi.gov/services/cjis/identity-history-summary-checks>

2. Barrier Crimes List

BARRIER CRIMES LIST FOR DBHDS DIRECT CONSUMER CARE PROVIDERS
EFFECTIVE JULY 1, 2017
§ 37.2 – 416 with barrier crimes listed in § 19.2-392.02

OFFENSES Or Substantially Similar Offense Under the Laws of Another Jurisdiction	CODE SECTION
Any Felony Violation	
Violation of a Protective Order	16.1-253.2
Any Violation	
Murder, Capital	18.2-31
Murder, First and Second Degree	18.2-32
Murder of a Pregnant Woman	18.2-32.1
Killing a Fetus	18.2-32.2
Felony Homicide	18.2-33
Voluntary Manslaughter	18.2-35
Involuntary Manslaughter	18.2-36
Involuntary Manslaughter; Driving a Vehicle While Under the Influence	18.2-36.1
Involuntary Manslaughter; Operating a Watercraft While Under the Influence	18.2-36.2
Malicious Wounding by Mob	18.2-41
Assault or battery by Mob	18.2-42
Any Felony Violation	
Prohibited criminal street gang participation	18.2-46.2
Recruitment of persons for criminal street gang	18.2-46.3
Third or subsequent conviction of criminal street gang crimes	18.2-46.3:1
Enhanced punishment for gang activity taking place in a gang-free zone	18.2-46.3:3
Any Violation	
Committing, conspiring and aiding and abetting acts of terrorism prohibited	18.2-46.5
Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited	18.2-46.6
Act of bioterrorism against agricultural crops or animals	18.2-46.7
Abduction (Kidnapping)	Subsection A or B of 18.2-47
Abduction for Immoral Purpose	18.2-48
Threatening, attempting or assisting in such abduction	18.2-49
Enticing, etc, another into a dwelling house with intent to commit certain felonies	18.2-50.3
Shooting, Stabbing, etc., with Intent to Maim, Kill, etc.	18.2-51
Malicious Bodily Injury to Law-Enforcement Officers, Firefighters, Search and Rescue Personnel, or Emergency Medical Service Providers	18.2-51.1
Aggravated Malicious Wounding	18.2-51.2
Reckless Endangerment of Others by Throwing Objects from Places Higher than One Story	18.2-51.3
Maiming, etc., of Another Resulting from Driving While Intoxicated	18.2-51.4
Maiming, etc., of Another Resulting from Operating a Watercraft While Intoxicated	18.2-51.5

OFFENSES Or Substantially Similar Offense Under the Laws of Another Jurisdiction	CODE SECTION
Strangulation of Another	18.2-51.6
Malicious Bodily Injury by Means of Any Caustic Substance or Agent or Use of Any Explosive or Fire	18.2-52
Possession of Infectious Biological Substances or Radiological Agents	18.2-52.1
Shooting, etc., in Committing or Attempting a Felony	18.2-53
Use or Display of Firearm in Committing Felony	18.2-53.1
Attempts to Poison	18.2-54.1
Adulteration of Food, Drink, Drugs, Cosmetics, etc	18.2-54.2
Bodily Injuries Caused by Prisoners, State Juvenile Probationers, and State and Local Adult Probationers or Adult Parolees	18.2-55
Hazing of Youth Gang Members	18.2-55.1
Hazing of Student at Any School, College, or University	18.2-56
Reckless Handling of Firearms; Reckless Handling While Hunting	Any violation Subsection A or A1 of 18.2-56.1
Allowing Access to Firearms by Children	18.2-56.2
Assault and Battery* (Exception: DBHDS' Licensed Private Provider may hire for compensated employment persons who have been convicted of not more than 1 misdemeanor offense under § 18.2-57, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment services in a direct consumer care position.)	18.2-57
Pointing Laser at Law-Enforcement Officer	18.2-57.01
Disarming a Law-Enforcement or Correctional Officer	18.2-57.02
Assault and Battery Against a Family or Household Member* (Exception: DBHDS' Licensed Private Provider may hire for compensated employment persons who have been convicted of not more than 1 misdemeanor offense under § 18.2-57, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment services in a direct consumer care position.)	18.2-57.2
Robbery	18.2-58
Carjacking	18.2-58.1
Extortion by threat	18.2-59
Threats of Death or Bodily Injury	18.2-60
Threatening the Governor or his immediate family	18.2-60.1.
Any Felony Violation	
Stalking	18.2-60.3
Violation of a Protective Order	18.2-60.4; 16.1-253.2
Any Violation	
Rape	18.2-61
Carnal Knowledge of Child between 13 and 15 Years of Age	18.2-63
Carnal Knowledge of Certain Minors	18.2-64.1
Carnal Knowledge of an Inmate, Parolee, Probationer, Detainee, or Pretrial or Post Trial Offender	18.2-64.2

OFFENSES Or Substantially Similar Offense Under the Laws of Another Jurisdiction	CODE SECTION
Forcible Sodomy	18.2-67.1
Object Sexual Penetration	18.2-67.2
Aggravated Sexual Battery	18.2-67.3
Sexual Battery	18.2-67.4
Infected Sexual Battery	18.2-67.4:1
Sexual Abuse of a Child under 15 Years of Age	18.2-67.4:2
Attempted Aggravated Sexual Battery	18.2-67.5
Attempted Forcible Sodomy	18.2-67.5
Attempted Object Sexual Penetration	18.2-67.5
Attempted Rape	18.2-67.5
Attempted Sexual Battery	18.2-67.5
Sexual Assault – Repeat offender (felony conviction after prior misdemeanor convictions of sexual battery in violation of § 18.2 – 67.4, attempted sexual battery in violation of § 18.2 – 67.5.c, a violation of § 18.2 – 371 involving consensual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus with a child, indecent exposure of himself or procuring another to expose himself in violation of § 18.2 – 387, or a violation of § 18.2 – 130).	18.2-67.5.1
Sexual Assault – Repeat offender (maximum sentence for offense based on prior sexual assault convictions)	18.2-67.5.2
Sexual Assault – Repeat offender (life imprisonment for offense based on prior sexual assault convictions)	18.2-67.5.3
Burning or Destroying Dwelling House, etc.	18.2-77
Burning or Destroying Meeting House, etc.	18.2-79
Burning or Destroying any Other Building or Structure	18.2-80
Burning or Destroying Personal Property, Standing Grain, etc.	18.2-81
Burning Building or Structure While in such Building or Structure with Intent to Commit Felony	18.2-82
Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to Such Buildings, etc.	18.2-83
Causing, Inciting, etc. Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to such Buildings, etc.	18.2-84
Manufacture, Possession, Use, etc. of Fire Bombs or Explosive Materials or Devices	18.2-85
Setting Fire to Woods, Fences, Grass, etc.	18.2-86
Setting Woods, etc. on Fire Intentionally Whereby Another is Damaged or Jeopardized	18.2-87
Setting off Chemical Bombs Capable of Producing Smoke in Certain Public Buildings	18.2-87.1
Carelessly Damaging Property by Fire	18.2-88
Any Felony Violation	
Discharging Firearms or missiles within or at building or dwelling house	18.2-279
Willfully discharging firearms in public places	18.2-280
Setting spring gun or other deadly weapon	18.2-281
Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance	18.2-282

OFFENSES Or Substantially Similar Offense Under the Laws of Another Jurisdiction	CODE SECTION
Brandishing a machete or other bladed weapon with intent to intimidate	18.2-282.1
Shooting from vehicles so as to endanger persons	18.2-286.1
Wearing of body armor while committing a crime	18.2-287.2
Any Violation	
Use of machine gun for crime of violence	18.2-289
Use of machine gun for aggressive purpose	18.2-290
Possession or use of "sawed-off" shotgun or rifle.	18.2-300
Possession of firearms while in possession of certain substances	18.2-308.4
Failing to secure medical attention for injured child	18.2-314
Any Felony Violation	
Prostitution; commercial sexual conduct; commercial exploitation of a minor	18.2-346
Any Violation	
Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking	18.2-355
Receiving money for procuring person	18.2-356
Receiving money from earnings of male or female prostitutes	18.2-357
Commercial sex trafficking	18.2-357.1
Crimes against nature (only subsection B)	Any violation of subsection B of 18.2-361
Any Violation	
Adultery and fornication by persons forbidden to marry; incest	18.2-366
Abuse and Neglect of Incapacitated Adults	18.2-369
Taking Indecent Liberties with Children	18.2-370
Taking indecent liberties with child by person in custodial or supervisory relationship	18.2-370.1
Sex Offenses prohibiting proximity to children	18.2-370.2
Sex offenses prohibiting residing in proximity to children	18.2-370.3
Sex offenses prohibiting working on school property	18.2-370.4
Sex offenses prohibiting entry onto school or other property	18.2-370.5
Penetration of mouth of child with lascivious intent	18.2-370.6
Abuse and Neglect of Children	18.2-371.1
Employing or Permitting a Minor to Assist in - Production, publication, sale, possession, etc., of obscene items (Included because of 18.2-379)	18.2-374
Employing or Permitting a Minor to Assist in Production, publication, sale, financing, etc., of child pornography	18.2-374.1
Employing or Permitting a Minor to Assist in - Possession, reproduction, distribution, solicitation, and facilitation of child pornography	18.2-374.1:1
Employing or Permitting a Minor to Assist in - Use of communications systems to facilitate certain offenses involving children.	18.2-374.3
Employing or Permitting a Minor to Assist in - Display of child pornography or grooming video or materials to a child.	18.2-374.4
Employing or Permitting a Minor to Assist in - Obscene exhibitions and performances (included because of 18.2-379)	18.2-375
Employing or Permitting a Minor to Assist in - Advertising, etc., obscene items, exhibitions or performances (included because of 18.2-379)	18.2-376

OFFENSES Or Substantially Similar Offense Under the Laws of Another Jurisdiction	CODE SECTION
Employing or Permitting a Minor to Assist in - Coercing acceptance of obscene articles or publications (included because of 18.2-379)	18.2-378
Employing or Permitting a Minor to Assist in an Act Constituting an Offense Under Article 5 (18.2-372 et.seq.) of Chapter 8 of Title 18.2	18.2-379
Employing or Permitting a Minor to Assist in - Creation of Image of Another	18.2-386.1
Employing or Permitting a Minor to Assist in - Unlawful Dissemination or Sale of Images of Another	18.2-386.2
Employing or Permitting a Minor to Assist in - Indecent exposure (included because of 18.2-379)	18.2-387
Employing or Permitting a Minor to Assist in - Obscene sexual display	18.2-387.1
Any Felony Violation	
Rioting	18.2-405
Unlawful assembly	18.2-406
Any Violation	
Conspiracy; incitement to riot	18.2-408
Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection	18.2-413
Injury to property or persons by persons unlawfully or riotously assembled	18.2-414
Burning cross on property of another or public place with intent to intimidate	18.2-423
Burning object on property of another or a highway or other public place with intent to intimidate	18.2-423.01
Placing swastika on certain property with intent to intimidate	18.2-423.1
Displaying noose on property of another or a highway or other public place with intent to intimidate	18.2-423.2
Paramilitary activity prohibited	18.2-433.2
Providing false information or failing to provide registration information	18.2-472.1
Delivery of drugs to prisoners	18.2-474.1
Escape from Jail	18.2-477
Escapes from juvenile facility	18.2-477.1
Punishment for certain offenses committed within a secure juvenile facility or detention home.	18.2-477.2
Escape from jail or custody by force or violence without setting fire to jail	18.2-478
Escape, etc., by setting fire to jail	18.2-480
Treason	18.2-481
Advocacy of change in government by force, violence or other unlawful means	18.2-484
Conspiring to incite one race to insurrection against another race	18.2-485
Escape of persons committed to facility for sexually violent predators	37.2-917
Felonies by Prisoners	53.1-203
Any Violation	
Burglary	18.2-89
Entering Dwelling House, etc., with intent to commit murder, rape, robbery, or arson	18.2-90
Entering Dwelling House etc., with intent to commit larceny, assault and battery, or other felony	18.2-91
Breaking and entering dwelling house with intent to commit other misdemeanor	18.2-92

OFFENSES Or Substantially Similar Offense Under the Laws of Another Jurisdiction	CODE SECTION
Entering Bank, Armed, with Intent to Commit Larceny	18.2-93
Possession of Burglarious Tools, etc.	18.2-94
Any Felony Violation	
Manufacturing, Selling, Giving, Distributing, or Possessing with Intent to Manufacture, Sell, Give, or Distribute a Controlled Substance or an Imitation Controlled Substance	18.2-248
Transporting Controlled Substances into the Commonwealth	18.2-248.01
Allowing a Minor or Incapacitated Person to be Present during Manufacture or Attempted Manufacture or Attempted Manufacture of Methamphetamine	18.2-248.02
Manufacturing, Selling, Giving, Distributing, or Possessing with Intent to Manufacture, Sell, Give, or Distribute Methamphetamine	18.2-248.03
Sale, Gift, Distribution, or Possessing with Intent to Sell, Give, or Distribute Marijuana	18.2-248.1
Manufacturing, Selling, Giving, Distributing, or Possessing with Intent to Manufacture, Sell, Give, or Distribute Any Anabolic Steroid	18.2-248.5
Possession and Distribution of Flunitrazepam	18.2-251.2
Possession and Distribution of Gamma-Butyrolactone; 1, 4-Butanediol	18.2-251.3
Distribution of Certain Drugs to Persons under 18	18.2-255
Sale or Manufacture of Drugs on or Near Certain Properties	18.2-255.2
Certain Premises Deemed Common Nuisance	18.2-258
Maintaining a Fortified Drug House	18.2-258.02
Obtaining Drugs, Procuring Administration of Controlled Substances, etc., by Fraud, Deceit, or Forgery	18.2-258.1
Assisting Individuals in Unlawfully Procuring Prescription Drugs	18.2-258.2
Any Felony Violation	
Possession of Controlled Substances – In the 5 years Prior to Application Date	18.2-250

3. Screenable “Barrier” Crimes Listing Found in Va. Code §§ 37.2-416 (C) and 37.2-506 (C)

Screenable “Barrier” Crimes Listing Found in Va. Code §§ 37.2-416 (C) and 37.2-506 (C)

Code Section	Code Definition
§ 18.2 – 51.3	Reckless endangerment of others by throwing objects from places higher than one story (Felony)
§ 18.2 – 56	Hazing unlawful (Misdemeanor)
§ 18.2 – 56.1	Reckless handling of firearms; reckless handling while hunting (Misdemeanor)
§ 18.2 – 57 (subsection A)	Assault & Battery (Misdemeanor)
§ 18.2 – 57.2	Assault and battery against a family or household member (Misdemeanor)
§ 18.2 – 60	Threats of death or bodily injury to a person or member of his family; threats to commit serious bodily harm to persons on school property (Misdemeanor/Felony)
§ 18.2 – 89	Burglary (effective July 1, 2018)
§ 18.2 – 92	Breaking and entering dwelling house with intent to commit other misdemeanor (Felony)
§ 18.2 – 94	Possession of burglarious tools, etc. (Felony)
§ 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 (except an offense pursuant to subsections H1 and H2) (Felony)
§ 18.2 – 248.01	Transporting controlled substances into the Commonwealth (Felony)
§ 18.2 – 248.02	Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine prohibited (Felony)
§ 18.2 – 248.03	Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine (Felony)
§ 18.2 – 248.1	Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana (Felony)
§ 18.2 – 248.5	Illegal stimulants and steroids (Felony)
§ 18.2 – 250	Possession of controlled substances unlawful (Felony)
§ 18.2 – 250.1	Possession of marijuana unlawful (Felony)
§ 18.2 – 251.2	Possession and distribution of flunitrazepam (Felony)
§ 18.2 – 251.3	Possession and distribution of gamma-butyrolactone; 1, 4-butanediol (Felony)
§ 18.2 – 255	Distribution of certain drugs to persons under 18 prohibited (Felony)
§ 18.2 – 256	Conspiracy (Felony)
§ 18.2 – 257	Attempts (Felony)
§ 18.2 – 258	Certain premises deemed common nuisance (Felony)
§ 18.2 – 258.02	Maintaining a fortified drug house (Felony)
§ 18.2 – 258.1	Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery (Felony)
§ 18.2 – 258.2	Assisting individuals in unlawfully procuring prescription drugs (Felony)

4. Screenable Process for Selected “Barrier Crimes” in Va. Code §§ 37.2 – 416 (c) and 506 (c)

DBHDS Background Investigation's Unit

Screenable Process for Selected “Barrier Crimes” in Va. Code §§ 37.2 – 416 (c) and 506 (c)

“Screenable” barrier crimes are those set forth in **Va. Code §§ 37.2-416 (C) and 37.2-506 (C)**. There are 26 screenable barrier crimes. Individuals who have been convicted of one of these crimes only, may be screened to “assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions.” If the hiring provider and screening contractor determine the applicant is not a risk to people receiving services, the hiring provider may choose to employ the applicant.

- The individual is seeking employment at DBHDS’ Community Services Boards (CSBs) that are licensed as “adult substance abuse” or “adult mental health” treatment facilities;
- The “screenable barriers” are **any** violation of § 18.2-51.3; **a** misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; **any** violation of § 18.2-60, 18.2-92, or 18.2-94; **any** felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or **any** substantially similar offense under the laws of another jurisdiction (state);
- The individual’s criminal behavior **has to** have been substantially related to their substance abuse or mental illness; if not, they will not qualify and remain “not eligible”;
- The individual **shall have** completed all prison or jail terms;
- The individual **shall not be** under probation or parole supervision;
- The individual **shall have no** pending charges in any locality, **shall have paid** all fines, restitution, and court costs for any prior convictions, and **shall have been** free of parole or probation for at least **five** years **for all** convictions.

- In addition to any supplementary information the CSB or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction.
- The cost of this screening shall be paid by the applicant, unless the CSB decides to pay the cost.

Once the CSB determines that the individual meets the criteria and they have decided as a Board to offer this process, they will supply the list of screeners to the individual. It then becomes the CSB's responsibility to ensure the individual completes the screening and they receive their employer copy of the report.

5. Va Code Section § 37.2-416

§ 37.2-416. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall:

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential

service provider or (b) such applicant continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02; or

3. Permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living arrangement or (b) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse or adult mental health treatment facilities a person who was convicted of any violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or

probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a shared living arrangement persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

1999, c. 685, § 37.1-183.3; 2001, cc. 486, 506, 784; 2002, c. 712; 2003, c. 468; 2005, c. 716; 2008, cc. 383, 407; 2011, c. 657; 2012, cc. 476, 507; 2016, c. 574; 2017, cc. 458, 775, 809; 2018, c. 569; 2019, c. 89.

6. Va Code Section § 37.2-506

§ 37.2-506. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information

appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a shared living arrangement persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person

committed the offense while employed in a direct care position. A community services board may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

I. Notwithstanding any other provision of law, a community services board that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

J. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

1997, c. 743, § 37.1-197.2; 1998, cc. 130, 680, 882; 1999, c. 685; 2001, c. 784; 2002, c. 712; 2003, c. 468; 2005, c. 716; 2008, cc. 383, 407; 2011, c. 657; 2012, cc. 476, 507; 2016, c. 574; 2017, cc. 458, 775, 809; 2018, c. 569; 2019, c. 89.

7. Barrier Crimes Screening Tool

**Title: Criminal Background Screening and Assessment Process for
Persons with a History of Mental Health and/or Substance Use
Challenges**

The Screening Assessment can be initiated two ways:

1. **DBHDS Licensed Provider** identifies a prospective employee and initiates FBI and VSP (Virginia State Police) fingerprint based background check through the Fieldprint (vendor) process. Once DBHDS Background Investigations Unit (BIU) receives the results, they will notify the Provider if the prospective employee is eligible for screening. The Provider will meet with the prospective employee and complete the Applicant Screening Determination Checklist and forward completed checklist and any supporting documentation to DBHDS Background Investigations Unit (BIU) {PO Box 1797, 1220 Bank Street, Richmond, VA 23218-1797}. DBHDS BIU notifies **Provider** that prospective employee **may or may not** be eligible for Screening and Assessment.
2. **Community Services Board/Behavioral Health Authority (CSB/BHA)** identifies a prospective employee and initiates FBI and VSP background check. Background check identifies that prospective employee has a criminal conviction that **may or may not** be eligible for screening and assessment. CSB/BHA forwards FBI or VSP background results to DBHDS Background Investigations Unit (BIU) {PO Box 1797, 1220 Bank Street, Richmond, VA 23218-1797}. DBHDS BIU notifies **CSB/BHA** that prospective employee **may or may not** be eligible for Screening and Assessment.

DBHDS Backgrounds Investigations Unit (BIU) will make determination on eligibility for Screening and Assessment for all prospective employees of CSB/BHA and DBHDS Licensed Providers. If Applicant is eligible for Assessment and Screening, DBHDS BIU will notify the hiring agency.

Step I: Applicant Self-Assessment Screening Determination*

***CSB/BHA or DBHDS Licensed Provider may assist Applicant in any or all of Applicant Self-Assessment Screening Determination.**

- 1) Applicant/Hiring Agency receives DBHDS BIU indication of eligibility for Screening and Assessment.
- 2) Applicant reviews Other Conditions that must be met in order to qualify for screening.

To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and

shall have been free of parole or probation for at least five years for all convictions.
(37.2416) (**Attachment II** - Screening Process for Selected Barrier Crimes)

Step II: Screening Determination*

***CSB/BHA or DBHDS Licensed Provider may assist Applicant in any or all of Screening Determination.**

Applicant is required to provide the following to the hiring agency:

- 1) Statement to DBHDS Background Inspections Unit and the hiring agency regarding the date and nature of the criminal offense(s).
- 2) Statement on how the applicant's criminal behavior was substantially related to the use of substances or mental illness;
- 3) Current FBI Background Check (within 30 days);
- 4) The date that all prison or jail terms (including suspended sentences) were completed;
- 5) A statement or documentation from the applicant's most recent probation officer to verify completion of any probation supervision. If documentation is not available, a statement on probation office letterhead that documentation is not available;
- 6) Documentation that any restitution, fines and court costs have been satisfied;
- 7) Documentation that five (5) years have elapsed since the last conviction of a crime listed in part C of §37.2-416 and Chapter 5 §37.2-506 of the Code of Virginia;
- 8) Statement that no other criminal charges are pending;
- 9) Applicant Check List*

***Hiring Agency MUST sign off on Check List!**

Hiring agency forwards material to:

DBHDS
Background Investigations Unit
PO Box 1797
1220 Bank Street
Richmond, VA 23218-1797

Applicant is responsible for all costs related to obtaining criminal background check and cost associated with collection of documentation for legal authorities needed to support the assessment.

***CSB/BHA or DBHDS Licensed Provider may assist Applicant in any of Applicant Screening Determination.**

Step III: Notification to Applicant

DBHDS Background Investigations unit notifies Applicant about screening eligibility.

- 1) If Applicant is eligible for screening, a letter stating such, along with a list of available screeners, is sent out to Applicant and hiring agency.
- 2) Applicants that are not eligible for screening receive a letter stating such. If there are conditions in which the Applicant may be eligible for future screenings, these conditions will be included in the letter.

Step IV – Screener Assessment

The Applicant will select a screener from the DBHDS Approved Vendor Register and forward the following:

- 1) Copy of documents collected in Step I;
- 2) DBHDS Eligibility Letter from Step II;
- 3) Payment for screening services.

The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria as determined by DBHDS Background Investigations Unit whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. (37.2-416 and/or 37.2-506)

The assessment will include:

- 1) This evaluation will include, but not be limited to
 - a. A complete mental health/substance use history (if applicable).
 - Type of substance(s) used
 - Age of first use
 - Frequency and duration of drugs used
 - Date of last use
 - Cessation efforts
 - Mental health and substance use treatment history
 - Comprehensive family history as it relates to the client's pattern of substance use and mental health treatment.
 - b. Standard Mental Health (Status) Evaluation

- c. Treatment history for substance use disorders and mental illness
- 2) Recovery Status
- 3) The applicant will also submit to a breathalyzer and a urine drug screen performed at an occupational laboratory in the community. Chain of custody sampling, as well as retesting may be required.

SECTION V - VENDOR QUALIFICATIONS

Any Licensed Behavioral Healthcare provider is eligible to register with DBHDS as a screener/vendor.

SECTION VI - FEES

A. Cost of the evaluation is due at the time of service.

Applicant is responsible for all costs associated with urine drug screens and additional procedures needed to validate results.