

Criminal Records – Employment Barrier Crimes

Introduction:

State law (§§ 32.1-126.01 and 32.1-162.9:1 of the Code of Virginia) requires that each nursing home, home care organization and hospice obtain a criminal record background check on new hires within 30 days of employment. The law requires that these background checks be obtained using the Central Criminal Records Exchange from the Virginia State Police. The law further requires that no employee be permitted to work in a position that involves direct contact with a patient until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed. Direct supervision means that the supervising employee is physically present, within an immediate distance.

Certain felony and misdemeanor convictions are a bar to employment in a nursing home, home care organization and hospice.

Criminal convictions, verified through a criminal record check which bar employment:

Generally, criminal convictions for offenses involving abuse or neglect disqualify an applicant from employment. The following list further specifies these offenses but should not be considered comprehensive. See § [32.1-126.01](#) and § [32.1-162.9:1](#) of the Code of Virginia for a complete list of offenses which bar employment.

- Felony violation of a protective order (§ [16.1-253.2](#))
- Murder or manslaughter (§ [18.2-30](#) et seq.)
- Malicious wounding by mob (§ [18.2-41](#))
- Abduction (subsection A or B of § [18.2-47](#))
- Abduction for immoral purposes (§ [18.2-48](#))
- Assaults and bodily wounding (§ [18.2-51](#) et. seq.)
- Robbery (§ [18.2-58](#))
- Carjacking (§ [18.2-58.1](#))
- Extortion by threat (§ [18.2-59](#))
- Threats of death or bodily injury (§ [18.2-60](#))
- Felony stalking (§ [18.2-60.3](#))
- Felony violation of a protective order (§ [18.2-60.4](#))
- Sexual assault (§ [18.2-61](#) et. seq.)
- Arson (§ [18.2-77](#) et. seq.)
- Drive by shooting (§ [18.2-286.1](#))
- Use of a machine gun in a crime of violence (§ [18.2-289](#))
- Aggressive use of a machine gun (§ [18.2-290](#))
- Use of a sawed off shotgun in a crime of violence (§ [18.2-300](#))

- Pandering (§ [18.2-355](#))
- Crimes against nature involving children (§ [18.2-361](#))
- Incest (§ [18.2-366](#))
- Taking indecent liberties with children (§ [18.2-370](#) or § [18.2-370.1](#))
- Abuse and neglect of children (§ [18.2-371.1](#))
- Failure to secure medical attention for an injured child (§ [18.2-314](#))
- Obscenity offenses (§ [18.2-374.1](#))
- Possession of child pornography (§ [18.2-374.1:1](#))
- Electronic facilitation of pornography (§ [18.2-374.3](#))
- Abuse and neglect of incapacitated adults (§ [18.2-369](#))
- Employing or permitting a minor to assist in an act constituting an offense (§ [18.2-372](#) et seq.)
- Delivery of drugs to prisoners (§ [18.2-474.1](#))
- Escape from jail (§ [18.2-477](#))
- Felonies by prisoners (§ [53.1-303](#))

Barrier Crimes - Crimes added as of July 01 2017:

1. § 18.2-42. Assault of battery by mob
2. § 18.2-46.2. Criminal street gang participation
3. §18.2-46.3. Recruitment for criminal street gang
4. § 18.2-46.3:1. Criminal street gang crimes, third or subsequent conviction
5. §18.2-46.3:3. Criminal street gang crimes in gang-free zone
6. § 18.2-46.5. Committing, etc., acts of terrorism
7. §18.2-46.6. Possession, etc., of weapon of terrorism or hoax device
8. §18.2-46.7. Act of bioterrorism
9. §18.2-49. Threatening, attempting, or assisting in abduction
10. §18.2-50.3. Enticing another into a dwelling house with intent to commit certain felonies
11. §18.2-60.1. Threatening the Governor or his immediate family
12. §18.2-279. Discharging firearm within or at occupied building or dwelling house
13. §18.2-280. Willfully discharging firearm in public place or on school property
14. §18.2-281. Setting a spring gun or other deadly weapon
15. §18.2-282. Brandishing a firearm on school property
16. §18.2-282.1. Brandishing a machete or other bladed weapon on school property
17. §18.2-287.2. Wearing body armor while committing drug crimes or crimes of violence
18. §18.2-308.4. Possession of firearm while in possession of controlled substances
19. §18.2-346. Solicitation of a minor
20. §18.2-356. Procuring
21. §18.2-357. Receiving money from earnings of prostitute
22. §18.2-357.1. Commercial sex trafficking
23. §18.2-370.2. Sex offenders loitering near school
24. §18.2-370.3. Sex offenders residing near school
25. §18.2-370.4. Sex offenders working at school
26. 18.2-370.5. Sex offenders on school property
27. §18.2-370.6. Penetration of mouth of child with lascivious intent
28. §18.2-374.4. Display of child pornography or grooming video to a child unlawful
29. §18.2-386.1. Unlawful filming
30. §18.2-386.2. Revenge porn

31. §18.2-405. Participating in riot with firearm or weapon
32. §18.2-406. Unlawful assembly with firearm or weapon
33. §18.2-408. Incitement to riot
34. §18.2-413. Failure to disperse riot after declaration of insurrection
35. §18.2-414. Injury to person or buildings during riot
36. §18.2-423. Cross burning
37. §18.2-423.01. Burning object with intent to intimidate
38. §18.2-423.1. Display of swastika
39. §18.2-423.2. Display of noose
40. §18.2-433.2. Paramilitary activity
41. §18.2-472.1. Providing false information or failing to register or reregister on the Sex Offender Registry
42. § 18.2-477.1. Escaping from DJJ facility
43. §18.2-477.2. Felonies by juvenile in DJJ facility
44. 18.2-478. Escaping from jail, pre-conviction
45. 18.2-480. Escaping from jail by setting fire
46. §18.2-481. Treason
47. 18.2-484. Advocacy of violent revolution
48. §18.2-485. Inciting race war
- §49. 37.2-917. Escaping from SVP facility

Convictions that would NOT bar an applicant from employment:

Under state law, convictions for offenses unrelated to abuse or neglect would not disqualify an applicant for employment.

Even if the applicant has been convicted of a barrier crime it may not always prevent employment. An applicant who has one misdemeanor conviction specified above may be hired if:

- (i) The criminal offense did NOT involve abuse or neglect; AND
- (ii) Five years have lapsed since the conviction occurred.

Other convictions may disqualify an applicant on the basis of a facility's established hiring, personnel or other policies.

NOTE: This guideline should not be taken as definitive. For further clarification regarding barrier crimes and criminal offenses, refer to Title 18.2 (Crimes and Offenses Generally) of the Code of Virginia or seek a legal opinion.