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SENATE JOINT RESOLUTION NO. 106
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Rules
 on February 10, 2006)

(Patron Prior to Substitute—Senator Devolites Davis)

Directing the Joint Commission on Health Care to study the impact of barrier crimes laws on social service and health care employers, prospective employees, consumers, residents, patients, and clients. Report.

WHEREAS, many employers are required by law to do a criminal background check of any person who is to be hired for compensated employment; and

WHEREAS, these employers are providers of services to senior citizens, children, and people with mental disabilities; and

WHEREAS, these employers also are prohibited by law from hiring persons who have been convicted of certain crimes; and

WHEREAS, the laws related to criminal background checks and barrier crimes were designed to protect those who are least able to protect themselves; and

WHEREAS, the General Assembly has recognized that some people with addictions are convicted of crimes that are related to their addictions and, absent the addiction, these people would not have engaged in any criminal behavior; and

WHEREAS, the General Assembly has carved out some exceptions to the barrier crimes laws for people who were convicted of crimes related to their addiction so they can work in adult substance abuse treatment programs; and

WHEREAS, employers in service delivery agencies with barrier crimes laws often have difficulty finding qualified applicants and employees with the appropriate skills; and

WHEREAS, potential applicants who have been convicted of crimes know that they cannot be hired for certain positions and, therefore, do not even apply; and

WHEREAS, prior to passage of the barrier crimes laws, most of these employers were checking the state criminal convictions database and refusing to hire people who had certain criminal convictions in their history; and

WHEREAS, these barrier crimes laws allowed employers the necessary ability to receive results from the Central Criminal Records Exchange (CCRE) based on the understanding that federal law prohibited dissemination of specific criminal records to nongovernmental entities; and

WHEREAS, it now is clear that federal law does not prohibit access to the CCRE results by nongovernmental entities; and

WHEREAS, a bar to employment and the resultant report on the applicant's criminal background does not give the employer a complete picture of the applicant's criminal record and prevents the employer from screening based on convictions other than those that are a statutory bar; and

WHEREAS, the employer has a legal duty to protect its consumers, residents, patients, and clients from injury caused by employees the employer knew or should have known posed a risk of harm to others; and

WHEREAS, this civil liability provides great incentive for an employer not to hire a person with a criminal background, except in very unusual circumstances that demonstrate that, despite the criminal conviction, the prospective employee is not at all likely to re-offend; and

WHEREAS, it is not certain that the creation of barrier crimes provides more protection to children, the elderly, or people with mental disabilities than the employer's concerns with his legal duty to protect his consumers, residents, patients, and clients; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Commission on Health Care be directed to study the impact of barrier crimes laws on social service and health care employers, prospective employees, consumers, residents, patients, and clients.

In conducting the study, the Joint Commission on Health Care shall, with regard to the barrier crimes laws: (i) determine their effectiveness in protecting consumers, residents, patients, and clients; (ii) examine the difficulty experienced by employers in service delivery agencies in finding qualified applicants and employees, as well as the difficulty experienced by prospective employees in finding jobs; (iii) compare Virginia's barrier crimes laws with laws related to criminal convictions and employment in other states; and (iv) gather data on employment discrimination based on an individual's criminal conviction record from state agencies, institutions, boards, bureaus, commissions, councils, or any instrumentality of the Commonwealth. The Joint Commission on Health Care shall consider comments from affected entities, including representatives of long-term care providers and advocacy groups, and the Virginia Association of Community Services Boards; the Substance Abuse and

60 Addiction Recovery Alliance; the Consortium of Substance Abuse Organizations; the Virginia
61 Association of Drug and Alcohol Programs; the Virginia Association of Alcoholism and Drug Abuse
62 Counselors; the Department of Mental Health, Mental Retardation and Substance Abuse Services; the
63 Department for the Aging; and the Department of Rehabilitative Services.

64 All agencies of the Commonwealth shall provide assistance to the Joint Commission on Health Care
65 for this study, upon request.

66 The Joint Commission on Health Care shall complete its meetings for the first year by November 30,
67 2006, and for the second year by November 30, 2007, and the chairman shall submit to the Division of
68 Legislative Automated Systems an executive summary of its findings and recommendations no later than
69 the first day of the next Regular Session of the General Assembly for each year. Each executive
70 summary shall state whether the Joint Commission on Health Care intends to submit to the General
71 Assembly and the Governor a report of its findings and recommendations for publication as a House or
72 Senate document. The executive summaries and reports shall be submitted as provided in the procedures
73 of the Division of Legislative Automated Systems for the processing of legislative documents and
74 reports and shall be posted on the General Assembly's website.