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## HOUSE BILL NO. 920

Offered January 13, 2016

Prefiled January 12, 2016

A *BILL to amend and reenact §§ 63.2-1719 and 63.2-1726 of the Code of Virginia, relating to barrier crimes.*

\_\_\_\_\_  
Patron—Mason

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Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 63.2-1719 and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:  
§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, 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 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction ~~and~~; (ii) a conviction of any offense set forth in § 9.1-902 or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any other state; and (iii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

**§ 63.2-1726. Background check required; children's residential facilities.**

A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to

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HB920

59 July 1, 2007, to submit to fingerprinting and to provide personal descriptive information, to be  
60 forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the  
61 Federal Bureau of Investigation for the purpose of obtaining criminal history record information  
62 regarding such applicant. The children's residential facility shall inform the applicant that he is entitled  
63 to obtain a copy of any background check report and to challenge the accuracy and completeness of any  
64 such report and obtain a prompt resolution before a final determination is made of the applicant's  
65 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the  
66 children's residential facility with a written statement or affirmation disclosing whether he has ever been  
67 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth.  
68 The results of the criminal history background check must be received prior to permitting an applicant  
69 to work with children.

70 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
71 record exists, shall forward it to the state agency which operates or regulates the children's residential  
72 facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's  
73 record lacking disposition data, conduct research in whatever state and local recordkeeping systems are  
74 available in order to obtain complete data. The state agency shall report to the children's facility whether  
75 the applicant is eligible to have responsibility for the safety and well-being of children. Except as  
76 otherwise provided in subsection B, no children's residential facility regulated or operated by the  
77 Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social  
78 Services shall hire for compensated employment or allow to volunteer or provide contractual services  
79 persons who have been (a) convicted of or are the subject of pending charges for the following crimes:  
80 a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in  
81 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in  
82 § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set  
83 out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of  
84 Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set  
85 out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; a  
86 felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7  
87 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter  
88 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony  
89 violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of  
90 Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as  
91 set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off  
92 shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in  
93 § 18.2-355; crimes against nature involving children as set out in § 18.2-361; taking indecent liberties  
94 with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in  
95 § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314;  
96 obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in  
97 § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in §  
98 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a  
99 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of  
100 Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape  
101 from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent  
102 offense in another state; (b) convicted of any felony violation relating to possession of drugs as set out  
103 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, *or an equivalent offense in another state*, in  
104 the five years prior to the application date for employment, to be a volunteer, or to provide contractual  
105 services; ~~or~~ (c) convicted of any felony violation relating to possession of drugs as set out in Article 1  
106 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay  
107 required court costs; *or (d) convicted of any offense set forth in § 9.1-902 or have been the subject of a*  
108 *finding of not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of*  
109 *Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the*  
110 *Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any*  
111 *other state*. The provisions of this section also shall apply to residential programs established pursuant to  
112 § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that  
113 alleges the juvenile is delinquent or in need of services or supervision, and to local secure detention  
114 facilities provided, however, that the provisions of this section related to local secure detention facilities  
115 shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at  
116 such local secure detention facility, volunteers at such local secure detention facility on a regular basis  
117 and will be alone with a juvenile in the performance of his duties, or provides contractual services  
118 directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a  
119 juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local  
120 agency that regulates or operates the local secure detention facility shall process the criminal history

121 record information regarding such applicant in accordance with this subsection and subsection B.

122 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for  
123 compensated employment or for volunteer or contractual service purposes persons who have been  
124 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have  
125 elapsed following the conviction, unless the person committed such offense in the scope of his  
126 employment, volunteer, or contractual services.

127 If the applicant is denied employment or the opportunity to volunteer or provide services at a  
128 children's residential facility because of information appearing on his criminal history record, and the  
129 applicant disputes the information upon which the denial was based, upon written request of the  
130 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history  
131 record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties  
132 that do not involve contact with children pending receipt of the report, the children's residential facility  
133 is not precluded from suspending the applicant from his position pending a final determination of the  
134 applicant's eligibility to have responsibility for the safety and well-being of children. The information  
135 provided to the children's residential facility shall not be disseminated except as provided in this section.

136 C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the  
137 children's residential facility to obtain a copy of information from the central registry maintained  
138 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The  
139 applicant shall provide the children's residential facility with a written statement or affirmation disclosing  
140 whether he has ever been the subject of a founded case of child abuse or neglect within or outside the  
141 Commonwealth. The children's residential facility shall receive the results of the central registry search  
142 prior to permitting an applicant to work alone with children. Children's residential facilities regulated or  
143 operated by the Departments of Education; Behavioral Health and Developmental Services; Military  
144 Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide  
145 contractual services, persons who have a founded case of child abuse or neglect. Every residential  
146 facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be  
147 authorized to obtain a copy of the information from the central registry.

148 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and  
149 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with  
150 the provisions of this section. Copies of any information received by a children's residential facility  
151 pursuant to this section shall be available to the agency that regulates or operates such facility but shall  
152 not be disseminated further. The cost of obtaining the criminal history record and the central registry  
153 information shall be borne by the employee or volunteer unless the children's residential facility, at its  
154 option, decides to pay the cost.