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SENATE JOINT RESOLUTION NO. 106

Offered January 11, 2006

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Requesting the Secretary of Health and Human Resources to study the impact of barrier crimes laws on social service and health care employers, prospective employees, consumers, residents, patients, and clients. Report.

Patron—Devolites Davis

Referred to Committee on Rules

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 law 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 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 Secretary of Health and Human Resources be requested 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 Secretary shall, with regard to the barrier crimes laws: determine their effectiveness in protecting consumers, residents, patients, and clients; 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; and compare Virginia's barrier crimes laws with laws related to criminal convictions and employment in other states. The Secretary shall consider comments from affected entities and interested parties. These entities shall include the Virginia Association of Community Services Boards; the Substance Abuse and Addiction Recovery Alliance; the

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

63 All agencies of the Commonwealth shall provide assistance to the Secretary of Health and Human
64 Resources for this study, upon request.

65 The Secretary shall complete this study by November 30, 2006, and shall submit to the Governor
66 and the General Assembly an executive summary and a report of her findings and recommendations for
67 publication as a House or Senate document. The executive summary and report shall be submitted as
68 provided in the procedures of the Division of Legislative Automated Systems for the processing of
69 legislative documents and reports no later than the first day of the 2007 Regular Session of the General
70 Assembly and shall be posted on the General Assembly's website.