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HOUSE BILL NO. 2117

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia, relating to substance abuse counselors; barrier crimes; exception.

Patrons—Hudson, Kory and Shin

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any applicant who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints 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.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have 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) if 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.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) or (iv) 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 Department 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. The Department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C 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 Department 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 Department decides to pay the cost.

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an 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 state facility or Department shall not be disseminated except as provided in this section.

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59 F. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or
60 Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any
61 investigation of child abuse or neglect undertaken on them.

62 G. The Board may adopt regulations to comply with the provisions of this section. Copies of any
63 information received by the state facility or Department pursuant to this section shall be available to the
64 Department and to the applicable state facility but shall not be disseminated further, except as permitted
65 by state or federal law. The cost of obtaining the criminal history record and the central registry
66 information shall be borne by the applicant, unless the Department or state facility decides to pay the
67 cost.

68 **§ 37.2-416. Background checks required.**

69 A. As used in this section:

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

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

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

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

100 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
101 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
102 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
103 application date for employment or (b) if such person continues on probation or parole or has failed to
104 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §
105 19.2-392.02;

106 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
107 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
108 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
109 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
110 years prior to the application date to be a sponsored residential service provider or (b) if such applicant
111 continues on probation or parole or has failed to pay required court costs for such offense set forth in
112 clause (iv) of the definition of barrier crime in § 19.2-392.02;

113 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
114 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause
115 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause
116 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a
117 shared living arrangement or (b) if such person continues on probation or parole or has failed to pay
118 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
119 § 19.2-392.02; or

120 4. Allow any person under contract with the provider to serve in a direct care position 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) if 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 or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) or (iv) 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 or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider 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, (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care position on behalf of the provider or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider 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

182 in the home in which sponsored residential services are provided has been convicted of not more than
183 one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the
184 laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person
185 committed the offense while employed in a direct care position.

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

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

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

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

206 K. Any person employed by a temporary agency that has entered into a contract with the provider
207 and who will serve in a direct care position on behalf of the provider licensed pursuant to this article
208 shall undergo a background check that shall include:

209 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
210 § 19.2-389; and

211 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
212 child abuse and neglect.

213 Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article
214 shall permit any person employed by a temporary agency that has entered into a contract with the
215 provider to provide direct care services on behalf of the provider if that person has been convicted of (i)
216 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
217 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
218 years prior to the application date for employment or (b) if such person continues on probation or parole
219 or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of
220 barrier crime in § 19.2-392.02.

221 **§ 37.2-506. Background checks required.**

222 A. As used in this section:

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

226 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
227 or adult mental health treatment position to another such position within the same community services
228 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
229 another office or program of the same community services board if the person employed prior to July 1,
230 1999, had no convictions in the five years prior to the application date for employment. "Hire for
231 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
232 position to any mental health or developmental services direct care position within the same community
233 services board or (b) new employment in any mental health or developmental services direct care
234 position in another office or program of the same community services board for which the person has
235 previously worked in an adult substance abuse treatment position.

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

241 B. Every community services board shall require (i) any applicant who accepts employment in any
242 direct care position with the community services board, (ii) any applicant for approval as a sponsored
243 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, (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under contract to serve in a direct care position on behalf of the community services board 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, permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permit any person under contract to serve in a direct care position on behalf of the community services board 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) if 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 or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any 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 misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) or (iv) 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 or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board 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

305 provide to the screening contractor a statement from his most recent probation or parole officer, if any,
306 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in
307 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless
308 the board decides to pay the cost.

309 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
310 compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter
311 into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care
312 position on behalf of the community services board or permit any person employed by a temporary
313 agency that has entered into a contract with the community services board to provide direct care services
314 on behalf of the community services board persons who have been convicted of not more than one
315 misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of
316 another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the
317 offense while employed in a direct care position. A community services board may also approve a
318 person as a sponsored residential service provider if (a) any adult living in the home of an applicant or
319 (b) any person employed by the applicant to provide services in the home in which sponsored residential
320 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or
321 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
322 elapsed following the conviction, unless the person committed the offense while employed in a direct
323 care position.

324 G. Community services boards also shall require, as a condition of employment, approval as a
325 sponsored residential service provider, permission to enter into a shared living arrangement with a
326 person receiving medical assistance services pursuant to a waiver, or permission for any person under
327 contract to serve in a direct care position on behalf of the community services board, written consent
328 and personal information necessary to obtain a search of the registry of founded complaints of child
329 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

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

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

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

344 K. Any person employed by a temporary agency that has entered into a contract with a community
345 services board and who will serve in a direct care position on behalf of the community services board
346 shall undergo a background check that shall include:

347 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
348 § 19.2-389; and

349 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
350 child abuse and neglect.

351 Except as otherwise provided in subsection C, D, or F, no community services board shall permit
352 any person employed by a temporary agency that has entered into a contract with the community
353 services board to provide direct care services on behalf of the community services board if that person
354 has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime
355 in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in
356 § 19.2-392.02 (a) in the five years prior to the application date for employment, the application date to
357 be a sponsored residential service provider, or entering into a shared living arrangement or (b) if such
358 person continues on probation or parole or has failed to pay required court costs for such offense set
359 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.