

BARRIER CRIMES FOR CHILD DAY PROGRAMS

- Including:**
- Licensed Child Day Centers
 - Religiously Exempt Child Day Centers
 - Certified Pre-Schools
 - Licensed Family Day Homes
 - Voluntarily Registered Family Day Homes
 - Licensed Family Day Systems
 - Licensed System-Approved Family Day Homes
 - The Following if Receiving Federal, State, or Local Child Care Funds:
 - Local Ordinance – approved family day homes
 - Programs of recreational activities offered by local governments
 - Unregulated family day homes (including in-home care)

Va Code Ann. §§ 19.2-392.02, 63.2-1717(E)(7); 63.2-1719; 63.2-1720.1; 63.2-1721.1; 63.2-1725

Child Day Programs cannot hire anyone who has:

- A conviction for an offense in the entire barrier crime definition in Code § 19.2-392.02. Convictions 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.
- A founded complaint of child abuse or neglect within or outside the Commonwealth.
- Any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of conviction.

The list of barrier crimes is broken into six clauses. All six clauses apply to Child Day Programs.

"Barrier crime" under Code § 19.2-392.02, Clause (i) includes:

Any FELONY violation of:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Violation of a Protective Order	16.1-253.2
Criminal Street Gang Participation	18.2-46.2
Criminal Street Gang - Recruitment of Persons for Criminal Street Gang	18.2-46.3
Criminal Street Gang - Third or subsequent conviction of criminal street gang crimes	18.2-46.3:1
Criminal Street Gang – Enhanced punishment for gang activity taking place in a gang-free zone	18.2-46.3:3
Stalking	18.2-60.3
Violation of a Protective Order	18.2-60.4
Discharging Firearms or Missiles Within or at Building or Dwelling House	18.2-279
Willfully Discharging Firearms in Public Places	18.2-280
Setting Spring Gun or Other Deadly Weapon	18.2-281
Pointing, holding, or brandishing firearm, air or gas operated weapon or object	18.2-282

similar in appearance	
Brandishing a machete or other bladed weapon with intent to intimidate	18.2-282.1
Shooting from vehicles so as to endanger persons	18.2-286.1
Wearing of body armor while committing a crime	18.2-287.2
Prostitution; commercial sexual conduct; commercial exploitation of a minor	18.2-346
Rioting	18.2-405
Unlawful assembly	18.2-406

Any violation of:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Murder or Manslaughter – Murder, Capital	18.2-31
Murder or Manslaughter – Murder, First or Second Degree	18.2-32
Murder or Manslaughter – Murder of a Pregnant Woman	18.2-32.1
Murder or Manslaughter – Killing a Fetus	18.2-32.2
Murder or Manslaughter – Felony Homicide	18.2-33
Murder or Manslaughter – Voluntary Manslaughter	18.2-35
Murder or Manslaughter – Involuntary Manslaughter	18.2-36
Murder or Manslaughter – Involuntary manslaughter; Driving a Vehicle While Under the Influence	18.2-36.1
Murder or Manslaughter – Involuntary Manslaughter; Operating a Water Craft While Under the Influence	18.2-36.2
Assaults and Bodily Wounding - Malicious Wounding by Mob	18.2-41
Assault or battery by mob	18.2-42
Terrorism - Committing, conspiring and aiding and abetting acts of terrorism	18.2-46.5
Terrorism - Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device	18.2-46.6
Terrorism -Act of bioterrorism against agricultural crops or animals	18.2-46.7
Abduction (Kidnapping)	18.2-47 A or 18.2-47 B
Abduction for Immoral Purpose	18.2-48
Abduction - Threatening, attempting or assisting in abduction	18.2-49
Enticing another into a dwelling house with intent to commit certain felonies	18.2-50.3
Assaults and Bodily Wounding - Shooting, Stabbing, etc., With Intent to Maim, Kill, etc	18.2-51
Assaults and Bodily Wounding - Malicious Bodily Injury to Law-Enforcement Officers, Firefighters, Search and Rescue Personnel, or Emergency Medical Services Providers	18.2-51.1
Assaults and Bodily Wounding - Aggravated Malicious Wounding	18.2-51.2
Assaults and Bodily Wounding - Reckless Endangerment of Others by Throwing Objects from Places Higher than One Story	18.2-51.3
Assaults and Bodily Wounding - Maiming, etc., of another resulting from driving while intoxicated	18.2-51.4
Assaults and Bodily Wounding - Maiming, etc., of another resulting from operating a watercraft while intoxicated	18.2-51.5

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Assaults and Bodily Wounding - Strangulation of another	18.2-51.6
Assaults and Bodily Wounding - Malicious Bodily Injury by Means of any Caustic Substance or Agent or Use of any Explosive or Fire	18.2-52
Assaults and Bodily Wounding - Possession of Infectious Biological Substances or Radiological Agents	18.2-52.1
Assaults and Bodily Wounding - Shooting, etc., in Committing or Attempting a Felony	18.2-53
Assaults and Bodily Wounding - Use or Display of Firearm in Committing Felony	18.2-53.1
Assaults and Bodily Wounding - Attempts to Poison	18.2-54.1
Assaults and Bodily Wounding - Adulteration of Food, Drink, Drugs, Cosmetics, etc	18.2-54.2
Assaults and Bodily Wounding - Bodily Injuries Caused by Prisoners, State Juvenile Probationers and State and Local Adult Probationers or Adult Parolees	18.2-55
Assaults and Bodily Wounding - Hazing of Youth Gang Members	18.2-55.1
Assaults and Bodily Wounding - Hazing of a Student at Any School, College, or University	18.2-56
Assaults and Bodily Wounding - Reckless Handling of Firearms; Reckless Handling While Hunting	18.2-56.1
Assaults and Bodily Wounding - Allowing access to firearms by children	18.2-56.2
Assault and Battery (Exception: A child day center may hire for compensated employment persons who have been convicted of not more than 1 misdemeanor offense under § 18.2-57, or a substantially similar offense under another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor. § 63.2-1720.1)	18.2-57
Assaults and Bodily Wounding - Pointing Laser at Law-Enforcement Officer	18.2-57.01
Assaults and Bodily Wounding - Disarming a Law-Enforcement or Correctional Officer	18.2-57.02
Assaults and Bodily Wounding - Assault and Battery Against a Family or Household Member	18.2-57.2
Robbery	18.2-58
Carjacking	18.2-58.1
Extortion by Threat	18.2-59
Threats of Death or Bodily Injury	18.2-60
Threatening the Governor or his immediate family	18.2-60.1
Sexual Assault - Rape	18.2-61
Sexual Assault - Carnal Knowledge of Child Between 13 and 15 Years of Age	18.2-63
Sexual Assault - Carnal Knowledge of Certain Minors	18.2-64.1
Sexual Assault - Carnal Knowledge of an Inmate, Parolee, Probationer, Detainee, or Pretrial or Post-Trial Offender	18.2-64.2
Sexual Assault –Forcible Sodomy	18.2-67.1
Sexual Assault –Object Sexual Penetration	18.2-67.2
Sexual Assault - Aggravated Sexual Battery	18.2-67.3
Sexual Assault –Sexual battery	18.2-67.4

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Sexual Assault –Infected Sexual Battery	18.2-67.4:1
Sexual Assault –Sexual abuse of a child under 15 years of age	18.2-67.4:2
Sexual Assault –Attempted Aggravated Sexual Battery	18.2-67.5
Sexual Assault – Attempted Forcible Sodomy	18.2-67.5
Sexual Assault – Attempted Object Sexual Penetration	18.2-67.5
Sexual Assault - Attempted Rape	18.2-67.5
Sexual Assault – Attempted Sexual Battery	18.2-67.5
Sexual Assault – Repeat offender (felony conviction after prior misdemeanor convictions of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5.C, a violation of § 18.2-371 involving consensual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus with a child, indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, or a violation of § 18.2-130)	18.2-67.5:1
Sexual Assault – Repeat offender (maximum sentence for offense based on prior sexual assault convictions)	18.2-67.5:2
Sexual Assault – Repeat offender (life imprisonment for offense based on prior sexual assault convictions)	18.2-67.5:3
Arson - Burning or Destroying Dwelling House, etc.	18.2-77
Arson -Burning or Destroying Meeting House, etc	18.2-79
Arson -Burning or Destroying Any Other Building or Structure	18.2-80
Arson -Burning or Destroying Personal Property, Standing Grain, etc.	18.2-81
Arson -Burning Building or Structure While in Such Building or Structure With Intent to Commit Felony	18.2-82
Arson -Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to Such Buildings, etc	18.2-83
Arson -Causing, Inciting, etc. Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to Such Buildings, etc	18.2-84
Arson -Manufacture, Possession, Use, etc., of Fire Bombs or Explosive Materials or Devices	18.2-85
Arson -Setting Fire to Woods, Fences, Grass, etc	18.2-86
Arson -Setting Woods, etc., on Fire Intentionally Whereby Another is Damaged or Jeopardized.	18.2-87
Arson -Setting Off Chemical Bombs Capable of Producing Smoke in Certain Public Buildings.	18.2-87.1
Arson -Carelessly Damaging Property by Fire	18.2-88
Use of Machine Gun for Crime of Violence	18.2-289
Aggressive Use of a Machine Gun	18.2-290
Possession or Use of Sawed-off Shotgun or Rifle	18.2-300
Possession of Firearms While in Possession of Certain Controlled Substances	18.2-308.4
Failing to Secure Medical Attention for Injured Child	18.2-314
Pandering	18.2-355
Receiving money for procuring person	18.2-356
Receiving money from earnings of prostitute	18.2-357
Commercial sex trafficking	18.2-357.1

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Crimes Against Nature Involving Children (involving family member)	18.2-361 B
Incest	18.2-366
Abuse and Neglect of Incapacitated Adults	18.2-369
Taking Indecent Liberties with Children	18.2-370
Taking Indecent Liberties with Child (by person in custodial or supervisory position to child)	18.2-370.1
Sex offenses prohibiting proximity to children	18.2-370.2
Sex offenses prohibiting residing in proximity to children	18.2-370.3
Sex offenses prohibiting working on school property	18.2-370.4
Sex offenses prohibiting entry onto school or other property	18.2-370.5
Penetration of mouth of child with lascivious intent	18.2-370.6
Abuse and Neglect of Children	18.2-371.1
Employing or Permitting a Minor to Assist in – Production, Publication, Sale, Possession, Etc., of Obscene Items (included because of 18.2-379)	18.2-374
Employing or Permitting a Minor to Assist in – Production, Publication, Sale, Financing Etc., of Child Pornography	18.2-374.1
Employing or Permitting a Minor to Assist in – Possession, Reproduction, Distribution, Solicitation, and Facilitation of Child Pornography	18.2-374.1:1
Employing or Permitting a Minor to Assist in – Use of Communications Systems to Facilitate Certain Offenses Involving Children	18.2-374.3
Employing or Permitting a Minor to Assist in – Display of Child Pornography or Grooming Video or Materials to a Child	18.2-374.4
Employing or Permitting a Minor to Assist in – Advertising, Etc., Obscene Items, Exhibitions, or Performances (included because of 18.2-379)	18.2-376
Employing or Permitting a Minor to Assist in – Obscene Exhibitions and Performances (included because of 18.2-379)	18.2-375
Employing or Permitting a Minor to Assist in – Coercing Acceptance of Obscene Articles or Publications (included because of 18.2-379)	18.2-378
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	18.2-379
Employing or Permitting a Minor to Assist in – Creation of an Image of Another	18.2-386.1
Employing or Permitting a Minor to Assist in – Unlawful Dissemination or Sale of Images of Another	18.2-386.2
Employing or Permitting a Minor to Assist in – Indecent Exposure (included because of 18.2-379)	18.2-387
Employing or Permitting a Minor to Assist in – Obscene Sexual Display (included because of 18.2-379)	18.2-387.1
Conspiracy or incitement to riot	18.2-408
Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection	18.2-413
Injury to property or persons by persons unlawfully or riotously assembled	18.2-414
Burning cross on property of another or public place with intent to intimidate	18.2-423
Burning object on property of another or a highway or other public place with intent to intimidate	18.2-423.01
Placing swastika on certain property with intent to intimidate	18.2-423.1

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Displaying noose on property of another or a highway or other public place with intent to intimidate	18.2-423.2
Unlawful Paramilitary Activity	18.2-433.2
Providing false information or failing to provide sex offender registration information	18.2-472.1
Delivery of Drugs to Prisoners	18.2-474.1
Escape from jail	18.2-477
Escapes from juvenile facility	18.2-477.1
Commission of felony while in juvenile facility or detention home	18.2-477.2
Escape from jail or custody by force or violence without setting fire to jail	18.2-478
Escape without force or violence or setting fire to jail	18.2-479
Escape by setting fire to jail	18.2-480
Treason	18.2-481
Advocacy of change in government by force, violence or other unlawful means. ["coup" or "coup d'etat"]	18.2-484
Conspiring to incite one race to insurrection against another race	18.2-485
Escape by persons committed to facility for sexually violent predators	37.2-917
Commission of felony while in jail	53.1-203

"Barrier crime" under Code § 19.2-392.02, Clause (ii) includes:

Type of Violation	OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Any	Burglary	18.2-89
Any	Burglary - Entering Dwelling House, etc., with Intent to Commit Murder, Rape, Robbery or Arson	18.2-90
Any	Burglary - Entering Dwelling House, etc., with Intent to Commit Larceny, Assault and Battery or Other Felony	18.2-91
Any	Burglary - Breaking and Entering Dwelling House with Intent to Commit Other Misdemeanor	18.2-92
Any	Burglary - Entering Bank, Armed, with Intent to Commit Larceny	18.2-93
Any	Burglary - Possession of Burglarious Tools, etc.	18.2-94

"Barrier crime" under Code § 19.2-392.02, Clause (iii) is:

Any FELONY violation of:

Type of Violation	OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Felony	Possession or Distribution of Drugs – Manufacturing, Selling, Giving, Distributing, or Possessing with Intent to Manufacture, Sell, Give, or Distribute a Controlled Substance or an Imitation	18.2-248

Type of Violation	OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
	Controlled Substance	
Felony	Possession or Distribution of Drugs – Transporting Controlled Substances into the Commonwealth	18.2-248.01
Felony	Possession or Distribution of Drugs – Allowing a Minor or Incapacitated Person to be Present During Manufacture or Attempted Manufacture of Methamphetamine	18.2-248.02
Felony	Possession or Distribution of Drugs – Manufacturing, Selling, Giving, Distributing, or Possessing with Intent to Manufacture, Sell, Give, or Distribute Methamphetamine	18.2-248.03
Felony	Possession or Distribution of Drugs – Sale, Gift, Distribution, or Possession with Intent to Sell, Give, or Distribute Marijuana	18.2-248.1
Felony	Possession or Distribution of Drugs – Manufacturing, Selling, Giving, Distributing, or Possessing with the Intent to Manufacture, Sell, Give, or Distribute Any Anabolic Steroid	18.2-248.5
Felony	Possession or Distribution of Drugs – Possession and Distribution of Flunitrazepam	18.2-251.2
Felony	Possession or Distribution of Drugs – Manufacturing, Selling, Giving, Distributing, or Possessing with the Intent to Distribute the Substances Gamma-Butyrolactone or 1, 4- Butanediol When Intended for Human Consumption	18.2-251.3
Felony	Possession or Distribution of Drugs – Distributing Certain Drugs to Persons under 18	18.2-255
Felony	Possession or Distribution of Drugs – Sale or Manufacture of Drugs On or Near Certain Properties	18.2-255.2
Felony	Possession or Distribution of Drugs – Certain Premises Deemed Common Nuisance	18.2-258
Felony	Possession or Distribution of Drugs – Maintaining a Fortified Drug House	18.2-258.02
Felony	Possession or Distribution of Drugs – Obtaining Drugs, Procuring Administration of Controlled Substances, Etc., by Fraud, Deceit, or Forgery	18.2-258.1
Felony	Possession or Distribution of Drugs – Assisting Individuals in Unlawfully Procuring Prescription Drugs	18.2-258.2

"Barrier crime" under Code § 19.2-392.02, Clause (iv) is:

Any FELONY violation of:

Type of Violation	OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Felony	Possession or Distribution of Drugs – Possession of Controlled Substances	18.2-250

"Barrier crime" under Code § 19.2-392.02, Clause (v) is:

- Any 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, including any 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; Offenses that require registration can be found at <http://sex-offender.vsp.virginia.gov/sor/statutes.html>.
- Any substantially similar offense under the laws of another jurisdiction; or
- Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;
2. Criminal homicide;
3. Murder;
4. A sexually violent offense;
5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; and
6. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

B. The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63 unless registration is required pursuant to subdivision E 1; § 18.2-64.1; former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any felony violation of § 18.2-346; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; subsection B or C of § 18.2-374.1:1; former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007; subsection B, C, or D of § 18.2-374.3; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5, or (iv) § 18.2-386.1.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

3. § 18.2-370.6.

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.

D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214, § 18.2-370.1, or § 18.2-374.1; or

2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361, § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications;

3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that the person had been at liberty between such convictions or adjudications; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.).

F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration...

"Barrier crime" under Code § 19.2-392.02, Clause (vi) is:

Any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.