

## BARRIER CRIMES

### for Child Placing Agencies, Licensed Independent Foster Homes, and Foster and Adoptive Home Approved by Child Placing Agencies

**VA Code Ann. §§ 19.2-392.02; 63.2-901.1; 63.2-1719; 63.2-1720; 63.2-1721**

Child-placing agencies and licensed independent foster homes cannot hire or approve a foster and adoptive parent who has:

- A conviction of any barrier crime as defined in § 19.2-392.02. Convictions include prior adult 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

The list of barrier crimes is broken into six clauses. All six clauses apply to Child Placing Agencies, Foster and Adoptive Homes approved by Child Placing Agencies, and Licensed Independent Foster Homes.

**“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
Aiding prostitution or illicit sexual intercourse, etc.	18.2-348
Brandishing a machete or other bladed weapon with intent to intimidate	18.2-282.1
Criminal Street Gang - Recruitment of persons for criminal street gang	18.2-46.3
Criminal Street Gang – Enhanced punishment for gang activity taking place in a gang-free zone	18.2-46.3:3
Criminal Street Gang - Third or subsequent conviction of criminal street gang crimes	18.2-46.3:1
Criminal Street Gang Participation	18.2-46.2
Discharging firearms or missiles within or at building or dwelling house	18.2-279
Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance	18.2-282
Prostitution; commercial sexual conduct; commercial exploitation of a minor	18.2-346.01
Rioting	18.2-405
Setting spring gun or other deadly weapon	18.2-281
Shooting from vehicles so as to endanger persons	18.2-286.1
Stalking	18.2-60.3
Unlawful assembly	18.2-406
Using vehicles to promote prostitution or unlawful sexual intercourse	18.2-349
Violation of a Protective Order	16.1-253.2
Violation of a Protective Order	18.2-60.4
Wearing of body armor while committing a crime	18.2-287.2
Willfully discharging firearms in public places	18.2-280

**Any violation of:**

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Abduction - Threatening, attempting or assisting in such abduction	18.2-49
Abduction (Kidnapping)	18.2-47.A or 18.2-47.B
Abduction with Intent to Extort Money or for Immoral Purposes	18.2-48
Abuse and Neglect of Children	18.2-371.1
Abuse and Neglect of Incapacitated Adults	18.2-369
Advocacy of change in government by force, violence or other unlawful means [“coup” or “coup d’etat”]	18.2-484
Aggressive Use of a Machine Gun	18.2-290
<b>Arson</b>	
Arson – Burning Building or Structure While in Such Building or Structure with Intent to Commit Felony	18.2-82
Arson – Burning or Destroying Any Other Building or Structure (Exception: A child-placing agency may approve as a kinship foster parent an applicant convicted of any misdemeanor offense under § 18.2-80, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child. § 63.2-901.1)	18.2-80
Arson – Burning or Destroying Dwelling House, Etc.	18.2-77
Arson – Burning or Destroying Meeting House, Etc.	18.2-79
Arson – Burning or Destroying Personal Property, Standing Grain, Etc. (Exception: A child-placing agency may approve as a kinship foster parent an applicant convicted of any misdemeanor offense under § 18.2-81, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child. § 63.2-901.1)	18.2-81
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 Off Chemical Bombs Capable of Producing Smoke in Certain Public Buildings (Exception: A child-placing agency may approve as a kinship foster parent an applicant convicted of any misdemeanor offense under § 18.2-87.1, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child. § 63.2-901.1)	18.2-87.1

<b>OFFENSE</b> <b>Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
Arson – Setting Woods, Etc., on Fire Intentionally Whereby Another is Damaged or Jeopardized (Exception: A child-placing agency may approve as a kinship foster parent an applicant convicted of any misdemeanor offense under § 18.2-87, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child. § 63.2-901.1)	18.2-87
Arson – Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to Such Buildings, Etc. (Exception: A child-placing agency may approve as a kinship foster parent an applicant convicted of any misdemeanor offense under § 18.2-83, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child. § 63.2-901.1)	18.2-83
Arson- Carelessly Damaging Property by Fire (Exception: A child-placing agency may approve as a kinship foster parent an applicant convicted of any misdemeanor offense under § 18.2-88, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child. § 63.2-901.1)	18.2-88
Assault or Battery by Mob	18.2-42
<b>Assaults and Bodily Wounding</b>	
Assaults and Bodily Wounding – Adulteration of Food, Drink, Drugs, Cosmetics, Etc.	18.2-54.2
Assaults and Bodily Wounding – Aggravated Malicious Wounding	18.2-51.2
Assaults and Bodily Wounding – Allowing Access to Firearms by Children	18.2-56.2
Assaults and Bodily Wounding – Assault and Battery (Exception: A child-placing agency may approve as a foster or adoptive parent an applicant convicted of not more than one misdemeanor under § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following the conviction. §§ 63.2-901.1; 63.2-1721)	18.2-57
Assaults and Bodily Wounding – Assault and Battery Against a Family or Household Member	18.2-57.2
Assaults and Bodily Wounding – Attempts to Poison	18.2-54.1
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 – Disarming a Law-Enforcement or Correctional Officer	18.2-57.02
Assaults and Bodily Wounding – Hazing a Youth Gang Members	18.2-55.1
Assaults and Bodily Wounding – Hazing of a Student at Any School, College, or University	18.2-56

<b>OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
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
Assaults and Bodily Wounding – Shooting, Stabbing, Etc. with Intent to Maim, Kill, Etc. by Mob	18.2-41
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 – Malicious Bodily Injury to Law-Enforcement Officers, Firefighters, Search and Rescue Personnel, or Emergency Medical Service Providers	18.2-51.1
Assaults and Bodily Wounding – Pointing Laser at Law-Enforcement Officer	18.2-57.01
Assaults and Bodily Wounding – Possession of Infectious Biological Substances or Radiological Agents	18.2-52.1
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 – Reckless Handling of Firearms; Reckless Handling While Hunting	18.2-56.1
Assaults and Bodily Wounding – Shooting, Etc. in Committing or Attempting a Felony	18.2-53
Assaults and Bodily Wounding – Shooting, Stabbing, Etc. With Intent to Maim, Kill, Etc.	18.2-51
Assaults and Bodily Wounding – Strangulation of Another	18.2-51.6
Assaults and Bodily Wounding – Use or Display of Firearm in Committing a Felony	18.2-53.1
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
Carjacking	18.2-58.1
Commercial sex trafficking	18.2-357.1
Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection	18.2-413
Commission of felony by Prisoners	53.1-203
Commission of felony while in juvenile facility or detention home	18.2-477.2
Conspiracy or incitement to riot	18.2-408
Conspiring to incite one race to insurrection against another race	18.2-485
Crimes Against Nature Involving Children (involving family member)	18.2-361.B
Delivery of Drugs, Firearms, Explosives, etc. to Prisoners or Committed Persons	18.2-474.1
Displaying noose on property of another or a highway or other public place with intent to intimidate	18.2-423.2
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 – Coercing Acceptance of Obscene Articles or Publications (included because of 18.2-379)	18.2-378
Employing or Permitting a Minor to Assist in – Unlawful Creation of an Image of Another	18.2-386.1
Employing or Permitting a Minor to Assist in – Display of Child Pornography or	18.2-374.4

<b>OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
Grooming Video or Materials to a Child	
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 Exhibitions and Performances (included because of 18.2-379)	18.2-375
Employing or Permitting a Minor to Assist in – Obscene Sexual Display (included because of 18.2-379)	18.2-387.1
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 – Production, Publication, Sale, Financing Etc., of Child Pornography	18.2-374.1
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 – Unlawful Dissemination or Sale of Images of Another	18.2-386.2
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 an Act Constituting an Offense Under Article 5 (18.2-372 et seq.) of Chapter 8 of Title 18.2	18.2-379
Enticing another into a dwelling house with intent to commit certain felonies	18.2-50.3
Escape by persons committed to facility for sexually violent predators	37.2-917
Escape by setting fire to jail	18.2-480
Escape from jail by force or violence without setting fire to jail (post-conviction)	18.2-477
Escape from jail or custody by force or violence without setting fire to jail (pre-conviction)	18.2-478
Escape from juvenile facility	18.2-477.1
Escape without force or violence or setting fire to jail	18.2-479
Extortion of money, property or pecuniary benefit	18.2-59
Failure to Secure Medical Attention for an Injured Child	18.2-314
Sexual intercourse by persons forbidden to marry; Incest	18.2-366
Injury to property or persons by persons unlawfully or riotously assembled	18.2-414
<b>Murder or Manslaughter</b>	
Murder or Manslaughter – Felony Homicide	18.2-33
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 Watercraft While Under the Influence	18.2-36.2
Murder or Manslaughter – Killing a Fetus	18.2-32.2
Murder or Manslaughter – Murder of a Pregnant Woman	18.2-32.1
Murder or Manslaughter – Murder, Capital	18.2-31
Murder or Manslaughter – Murder, First and Second Degree	18.2-32
Murder or Manslaughter – Voluntary Manslaughter	18.2-35
Taking, detaining, etc. person for prostitution, etc. or consenting thereto; human trafficking	18.2-355

<b>OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
Penetration of mouth of child with lascivious intent	18.2-370.6
Placing swastika on certain property with intent to intimidate	18.2-423.1
Possession of firearm while in possession of certain controlled substances	18.2-308.4
Possession or Use of a Sawed-Off Shotgun or Rifle	18.2-300
Providing false information or failing to provide sex offender registration information	18.2-472.1
Receiving money for procuring person	18.2-356
Receiving money from earnings of male or female prostitute	18.2-357
Robbery	18.2-58
Sex offenses prohibiting entry onto school or other property	18.2-370.5
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
<b>Sexual Assault</b>	
Sexual Assault – Aggravated Sexual Battery	18.2-67.3
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 – Carnal Knowledge of a Child Between 13 and 15 Years of Age	18.2-63
Sexual Assault – Carnal Knowledge of an Inmate, Parolee, Probationer, Detainee, or Pretrial or Post Trial Offender	18.2-64.2
Sexual Assault – Carnal Knowledge of Certain Minors	18.2-64.1
Sexual Assault – Forcible Sodomy	18.2-67.1
Sexual Assault – Infected Sexual Battery	18.2-67.4:1
Sexual Assault – Object Sexual Penetration	18.2-67.2
Sexual Assault – Rape	18.2-61
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 (life imprisonment for offense based on prior sexual assault convictions)	18.2-67.5:3
Sexual Assault – Repeat offender (maximum sentence for offense based on prior sexual assault convictions)	18.2-67.5:2
Sexual Assault – Sexual Abuse of a Child under 15 Years of Age	18.2-67.4:2
Sexual Assault – Sexual Battery	18.2-67.4
Taking Indecent Liberties with Children	18.2-370
Taking Indecent Liberties with Children (by person in custodial or supervisory position to child)	18.2-370.1
Terrorism - Committing, conspiring and aiding and abetting acts of terrorism	18.2-46.5

<b>OFFENSE</b> <b>Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
Terrorism - Act of bioterrorism against agricultural crops or animals	18.2-46.7
Terrorism - Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device	18.2-46.6
Threats against the Governor or his immediate family	18.2-60.1
Threats of Death or Bodily Injury	18.2-60
Treason	18.2-481
Paramilitary activity prohibited	18.2-433.2
Use of a Machine Gun in a Crime of Violence	18.2-289

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

**Any violation of:**

<b>OFFENSE</b> <b>Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
Burglary	18.2-89
Burglary – Breaking and Entering Dwelling House with Intent to Commit Other Misdemeanor	18.2-92
Burglary – Entering Bank, Armed, with Intent to Commit Larceny	18.2-93
Burglary – Entering Dwelling House, Etc., with Intent to Commit Larceny, Assault and Battery, or Other Felony (Exception: A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwellinghome or other structure with intent to commit larceny or any substantially similar offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other appropriate authority, provided that 25 years have elapsed following the conviction. § 63.2-1721)	18.2-91
Burglary – Entering Dwelling House, Etc., with Intent to Commit Murder, Rape, Robbery, or Arson	18.2-90
Burglary – Possession of Burglarious Tools, Etc.	18.2-94

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

**Exception: A child-placing agency may approve as a foster or adoptive parent who has conviction of any offense in under clause (iii) of barrier crime definition in Code § 19.2-392.02 or any substantially similar offense in another jurisdiction, who has had civil rights restored by Governor or other authority, if twenty years have elapsed since conviction. (§ 63.2-1721)**

**Any FELONY violation of:**

<b>OFFENSE</b> <b>Or Substantially Similar Offense Under the Laws of Another Jurisdiction</b>	<b>VA CODE SECTION</b>
Possession or Distribution of Drugs – Allowing a Minor or Incapacitated Person to be Present During Manufacture or Attempted Manufacture of	18.2-248.02

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Methamphetamine	
Possession or Distribution of Drugs – Assisting Individuals in Unlawfully Procuring Prescription Drugs	18.2-258.2
Possession or Distribution of Drugs – Certain Premises Deemed Common Nuisance	18.2-258
Possession or Distribution of Drugs – Distributing Certain Drugs to Persons under 18	18.2-255
Possession or Distribution of Drugs – Home Cultivation of Marijuana for Personal Use; Penalties	4.1-1101
Possession or Distribution of Drugs – Maintaining a Fortified Drug House	18.2-258.02
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
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
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 Controlled Substance	18.2-248
Possession or Distribution of Drugs – Manufacturing, Selling, Giving, Distributing, or Possessing with Intent to Manufacture, Sell, Give, or Distribute Methamphetamine	18.2-248.03
Possession or Distribution of Drugs – Obtaining Drugs, Procuring Administration of Controlled Substances, Etc., by Fraud, Deceit, or Forgery	18.2-258.1
Possession or Distribution of Drugs – Possession and Distribution of Flunitrazepam	18.2-251.2
Possession or Distribution of Drugs – Sale, Gift, Distribution, or Possession with Intent to Sell, Give, or Distribute Marijuana	18.2-248.1
Possession or Distribution of Drugs – Sale or Manufacture of Drugs On or Near Certain Properties	18.2-255.2
Possession or Distribution of Drugs – Transporting Controlled Substances into the Commonwealth	18.2-248.01

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

**Exception: A child-placing agency may approve as a foster parent or adoptive parent an applicant convicted of any offense set forth in § 18.2-250, or any substantially similar offense under the laws of another jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, who has had his civil rights restored by the Governor or other appropriate authority, provided 10 years have elapsed following the conviction or 8 years have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test administered by a laboratory or medical professional within 90 days prior to being approved, and such test returned with a negative result; and (iv) complies with any other obligations as determined by the Department. (§§ 63.2-901.1, 63.2-1721)**



**Exception: A child-placing agency may approve as a kinship foster parent an applicant who has been convicted of any offense set forth in § 18.2-250, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed from the date of the conviction and the child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child.**

**Any FELONY violation of:**

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
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 Tier I, Tier II, Tier III offense;
2. Murder;
3. Any offense similar to a Tier I, Tier II, or Tier III offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof; and
4. 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.

"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.

"Tier I offense" means (i) any 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, or (ii) any violation of, attempted violation of, or conspiracy to violate:

1. § [18.2-63](#) unless registration is required pursuant to subdivision 1 of the definition of Tier III offense; 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 former felony violation of § 18.2-346; any felony violation of § 18.2-346.01; any violation of subdivision (4) of § [18.2-355](#); any violation of subsection C of § [18.2-357.1](#); subsection B 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 of § [18.2-374.3](#); or a third or subsequent conviction of § [18.2-67.4](#), § [18.2-67.4:2](#), subsection C of § [18.2-67.5](#), § [18.2-386.1](#), or, if the offense was committed on or after July 1, 2020, § [18.2-386.2](#).

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.
6. If the offense was committed on or after July 1, 2019, any felony violation of § [18.2-348](#) or [18.2-349](#).

"Tier II offense" means any violation of, attempted violation of, or conspiracy to violate § [18.2-64.1](#), subsection C of § [18.2-374.1:1](#), or subsection C, D, or E of § [18.2-374.3](#).

"Tier III 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](#);
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 Tier III 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 Tier III 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.).

B. "Tier I offense" as defined in this section, "Tier II offense" as defined in this section, "Tier III offense" as defined in this section, and "murder" as defined in this section includes any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof.

C. 1. Any offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof that is similar to (i) any Tier I, II, or III offense or (ii) murder as defined in this section shall require registration and reregistration in accordance with this chapter in a manner consistent with the registration and reregistration obligations imposed by the similar offense listed or defined in this section, unless such offense requires more stringent registration and reregistration obligations under the laws of the jurisdiction where the offender was convicted. In instances where more stringent registration and reregistration obligations are required under the laws of the jurisdiction where the offender was convicted, the offender shall register and reregister as required by this chapter in a manner most similar with the registration obligations imposed under the laws of the jurisdiction where the offender was convicted.

2. 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 shall require registration and reregistration in accordance with this chapter in the manner most similar with the registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted unless such offense is similar to (i) any Tier I, II, or III offense or (ii) murder as defined in this section and the registration and reregistration obligations imposed by the similar offense listed or defined in this section are more stringent than those registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted. In instances where the similar offense listed or defined in this section imposes more stringent registration and reregistration obligations, the offender shall register and reregister as required by this chapter in a manner consistent with the registration and reregistration obligations imposed by the similar offense listed or defined in this section.

D. 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. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the

offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. The attorney for the Commonwealth may file such a motion at any time during which the offender is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender unless an attorney has been retained and appears on behalf of the offender or counsel has already been appointed.

E. Prior to entering judgment of conviction of an offense for which registration is required if the victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment, warrant, or information does not allege that the victim of the offense was a minor, physically helpless, or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in § [18.2-67.10](#), and shall also determine the age of the victim at the time of the offense if it determines the victim to be a minor. When such a determination is required, the court shall advise the defendant of its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to § [19.2-296](#). If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

**"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.