

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.

The following is a list, broken down by clause, of relevant barrier crimes as well as exceptions.

“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.; penalty	18.2-348
Brandishing a machete or other bladed weapon with intent to intimidate; penalty	18.2-282.1
Criminal Street Gang - Recruitment of persons for criminal street gang; penalty	18.2-46.3
Criminal Street Gang – Enhanced punishment for gang activity taking place in a gang-free zone; penalties	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 – Prohibited criminal street gang participation; penalty	18.2-46.2
Discharging firearms or missiles within or at building or dwelling house; penalty	18.2-279
Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance; penalty	18.2-282
Prostitution; solicitation; commercial exploitation of a minor; penalties	18.2-346.01
What constitutes a riot; punishment	18.2-405
Setting spring gun or other deadly weapon	18.2-281
Shooting from vehicles so as to endanger persons; penalty	18.2-286.1
Stalking; penalty	18.2-60.3
What constitutes an unlawful assembly; punishment	18.2-406
Using vehicles to promote prostitution or unlawful sexual intercourse; penalty	18.2-349
Violation of provisions of protective orders; penalty	16.1-253.2
Violation of protective orders; penalty	18.2-60.4
Wearing of body armor while committing a crime; penalty	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
Threatening, attempting or assisting in such abduction; penalty	18.2-49
Abduction and kidnapping defined; punishment	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; penalty; abandoned infant	18.2-371.1
Abuse and neglect of incapacitated adults; penalty	18.2-369
Advocacy of change in government by force, violence or other unlawful means	18.2-484
Use of a machine gun for aggressive purpose	18.2-290
Arson and Related Offenses	
Arson and Related Offenses – Burning building or structure while in such building or structure with intent to commit felony	18.2-82
Arson and Related Offenses – Burning or destroying any other building or structure*	18.2-80
Arson and Related Offenses – Burning or destroying dwelling house, etc.	18.2-77
Arson and Related Offenses – Burning or destroying meeting house, etc.	18.2-79
Arson and Related Offenses– Burning or destroying personal property, standing grain, etc.*	18.2-81
Arson and Related Offenses – Causing, inciting, etc. commission of act proscribed in § 18.2-83	18.2-84
Arson and Related Offenses – Manufacture, possession, use, etc. of fire bombs or explosive materials or devices; penalties	18.2-85
Arson and Related Offenses – Setting fire to woods, fences, grass, etc.	18.2-86
Arson and Related Offenses – Setting off chemical bombs capable of producing smoke in certain public buildings *	18.2-87.1
Arson and Related Offenses – Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized *	18.2-87
Arson and Related Offenses – Threats to bomb or damage buildings or means of transportation; false information as to danger to such buildings, etc.; punishment, venue *	18.2-83
Arson- Carelessly damaging property by fire *	18.2-88
Assault or battery by mob	18.2-42
Assaults and Bodily Woundings	
Assaults and Bodily Woundings – Adulteration of food, drink, drugs, cosmetics, etc.; penalty	18.2-54.2
Assaults and Bodily Woundings – Aggravated malicious wounding; penalty	18.2-51.2
Assaults and Bodily Woundings – Allowing access to firearms by children; penalty	18.2-56.2
Assaults and Bodily Woundings – Assault and battery; penalty **	18.2-57
Assaults and Bodily Woundings – Assault and battery against a family or household member; penalty	18.2-57.2
Assaults and Bodily Woundings – Attempts to poison	18.2-54.1
Assaults and Bodily Woundings – Bodily injuries caused by prisoners, state juvenile probationers, and state and local adult probationers or adult parolees	18.2-55

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Assaults and Bodily Woundings – Disarming a law-enforcement or correctional officer; penalty	18.2-57.02
Assaults and Bodily Woundings – Hazing of youth gang members unlawful; criminal liability	18.2-55.1
Assaults and Bodily Woundings – Hazing unlawful; civil and criminal liability; duty of school, etc. officials; penalty	18.2-56
Assaults and Bodily Woundings – Maiming, etc., of another resulting from driving while intoxicated	18.2-51.4
Assaults and Bodily Woundings – Maiming, etc., of another resulting from operating a watercraft while intoxicated; penalty	18.2-51.5
Shooting, stabbing, etc. with intent to maim, kill, etc. by mob	18.2-41
Assaults and Bodily Woundings – Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire	18.2-52
Assaults and Bodily Woundings – Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical service providers; penalty; lesser-included offense	18.2-51.1
Assaults and Bodily Woundings – Pointing laser at law-enforcement officer	18.2-57.01
Assaults and Bodily Woundings – Possession of infectious biological substances or radiological agents; penalties	18.2-52.1
Assaults and Bodily Woundings – Prohibition against reckless endangerment of others by throwing objects from places higher than one story; penalty	18.2-51.3
Assaults and Bodily Woundings – Reckless handling of firearms; reckless handling while hunting	18.2-56.1
Assaults and Bodily Woundings – Shooting, etc. in committing or attempting a felony	18.2-53
Assaults and Bodily Woundings – Shooting, stabbing, etc. with intent to maim, kill, etc.	18.2-51
Assaults and Bodily Woundings – Strangulation of another; penalty	18.2-51.6
Assaults and Bodily Woundings – 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; penalty; prima facie evidence of intent	18.2-423
Burning object on property of another or a highway or other public place with intent to intimidate; penalty	18.2-423.01
Carjacking; penalty	18.2-58.1
Commercial sex trafficking; penalties	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
Felonies by prisoners ; penalties	53.1-203
Punishment for certain offenses committed within a secure juvenile facility or detention home	18.2-477.2
Conspiracy; incitement, etc., to riot	18.2-408
Conspiring to incite one race to insurrection against another race	18.2-485
Crimes against nature; penalty (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; penalty	18.2-423.2
Unlawful creation of an image of another; penalty	18.2-386.1

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty	18.2-374.1:1
Production, publication, sale, financing, etc., of child pornography; presumption as to age	18.2-374.1
Unlawful dissemination or sale of images of another; penalty	18.2-386.2
Use of communications systems to facilitate certain offenses involving children	18.2-374.3
Display of child pornography or grooming video or materials to a child unlawful; penalty	18.2-374.4
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; penalty	18.2-50.3
Escape by persons committed; penalty	37.2-917
Escape, etc., by setting fire to jail	18.2-480
Prisoner escaping from jail; how punished	18.2-477
Escape from jail or custody by force or violence without setting fire to jail	18.2-478
Escape from juvenile facility; penalty	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; penalties	18.2-366
Injury to property or persons by persons unlawfully or riotously assembled	18.2-414
Homicide	
Homicide – Felony homicide defined; punishment	18.2-33
Homicide – How involuntary manslaughter punished	18.2-36
Homicide – Certain conduct punishable as involuntary manslaughter	18.2-36.1
Homicide – Involuntary manslaughter; operating a watercraft while under the influence; penalties	18.2-36.2
Homicide – Killing a fetus; penalty	18.2-32.2
Homicide – Murder of a pregnant woman; penalty	18.2-32.1
Homicide – Aggravated murder defined; punishment	18.2-31
Homicide – First and second degree murder defined; punishment	18.2-32
Homicide – How voluntary manslaughter punished	18.2-35
Taking, detaining, etc. person for prostitution, etc. or consenting thereto; human trafficking	18.2-355
Penetration of mouth of child with lascivious intent; penalty	18.2-370.6
Placing swastika on certain property with intent to intimidate; penalty; prima facie evidence of intent	18.2-423.1
Possession of firearms 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 registration information; penalty; prima facie evidence	18.2-472.1
Receiving money for procuring person; penalties	18.2-356
Receiving money from earnings of male or female prostitute; penalties	18.2-357
Robbery; penalties	18.2-58
Offenses prohibiting entry onto school or other property; penalty	18.2-370.5

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Sex offenses prohibiting proximity to children; penalties	18.2-370.2
Sex offenses prohibiting residing in proximity to children; penalty	18.2-370.3
Sex offenses prohibiting working on school property; penalty	18.2-370.4
Criminal Sexual Assault	
Criminal Sexual Assault – Aggravated sexual battery; penalty	18.2-67.3
Criminal Sexual Assault – Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery and sexual battery	18.2-67.5
Criminal Sexual Assault – Carnal knowledge of a child between 13 and 15 years of age	18.2-63
Criminal Sexual Assault – Carnal knowledge of a person detained or arrested by law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or posttrial offender	18.2-64.2
Criminal Sexual Assault – Carnal knowledge of certain minors	18.2-64.1
Criminal Sexual Assault – Forcible sodomy	18.2-67.1
Criminal Sexual Assault – Infected sexual battery; penalty	18.2-67.4:1
Criminal Sexual Assault – Object sexual penetration; penalty	18.2-67.2
Criminal Sexual Assault – Rape	18.2-61
Criminal Sexual Assault – Punishment upon conviction of third misdemeanor offense	18.2-67.5:1
Criminal Sexual Assault – Punishment upon conviction of certain subsequent violent felony sexual assault	18.2-67.5:3
Criminal Sexual Assault – Punishment upon conviction of certain subsequent felony sexual assault	18.2-67.5:2
Criminal Sexual Assault – Sexual abuse of a child under 15 years of age; penalty	18.2-67.4:2
Criminal 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 relationship; penalties	18.2-370.1
Terrorism Offenses	
Terrorism Offenses - Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty	18.2-46.5
Terrorism Offenses - Act of bioterrorism against agricultural crops or animals; penalty	18.2-46.7
Terrorism Offenses - Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited; penalty	18.2-46.6
Threats against the Governor or his immediate family	
Threats against the Governor or his immediate family	18.2-60.1
Threats of death or bodily injury to a person or member of his family; threats of death or bodily injury to persons on school property; threats of death or bodily injury to health care providers; penalty	18.2-60
Treason defined; how proved and punished	18.2-481
Paramilitary activity prohibited; penalty	18.2-433.2
Use of a machine gun for crime of violence	18.2-289

***Exception:** A child-placing agency may approve a *kinship* foster parent if the applicant was convicted of any misdemeanor offense under any of the crimes marked with a single asterisk, 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 (F)(ii).

****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 (E); 63.2-1721 (E); 19.2-392-.02.

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

Any violation of:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Burglary; how punished	18.2-89
Breaking and entering dwelling house with intent to commit other misdemeanor	18.2-92
Entering bank, armed, with intent to commit larceny	18.2-93
Entering dwelling house, etc., with intent to commit larceny, assault and battery, or other felony ***	18.2-91
Entering dwelling house, etc., with intent to commit murder, rape, robbery, or arson; penalty	18.2-90
Possession of burglarious tools, etc.	18.2-94

*****Exception:** A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home 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 (F).

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

Any FELONY violation of:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine prohibited; penalties	18.2-248.02
Assisting individuals in unlawfully procuring prescription drugs; penalty	18.2-258.2
Certain premises deemed common nuisance; penalty	18.2-258
Distribution of certain drugs to persons under 18 prohibited; penalty	18.2-255
Home cultivation of marijuana for personal use; penalties	4.1-1101
Maintaining a fortified drug house; penalty	18.2-258.02
Possession and distribution of gamma-butyrolactone; 1, 4-butanediol; enhanced penalty	18.2-251.3
Illegal stimulants and steroids; penalty	18.2-248.5
Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited; penalties	18.2-248

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine; penalty	18.2-248.03
Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit, or forgery	18.2-258.1
Possession and distribution of flunitrazepam; enhanced penalty	18.2-251.2
Penalties for sale, gift, distribution, or possession with intent to sell, give, or distribute marijuana	18.2-248.1
Prohibiting the sale or manufacture of drugs on or near certain properties; penalty	18.2-255.2
Transporting controlled substances into the Commonwealth; penalty	18.2-248.01

As a general **exception** to clause (iii) 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 (H).

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

Any FELONY violation of:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Possession of controlled substances unlawful	18.2-250

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, who has had his civil rights restored by the Governor or other appropriate authority, provided 10 years have elapsed following the conviction or eight 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- 1721 (G).

Exception: A child-placing agency may approve a *kinship* foster parent 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. § 63.2-901.1 (F)(i).

"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

"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.