

Criminal Records – Employment Barrier Crimes

Introduction:

State law (§§ 32.1-126.01 and 32.1-162.9:1 of the Code of Virginia) requires that each nursing home, home care organization and hospice obtain a criminal record background check on new hires within 30 days of employment. The law requires that these background checks be obtained using the Central Criminal Records Exchange from the Virginia State Police. The law further requires that no employee be permitted to work in a position that involves direct contact with a patient until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed. Direct supervision means that the supervising employee is physically present, within an immediate distance.

Certain felony and misdemeanor convictions are a bar to employment in a hospital, nursing home and home care organization.

Criminal convictions, verified through a criminal record check which bar employment:

Generally, criminal convictions for offenses involving abuse or neglect disqualify an applicant from employment. The following list further specifies these offenses but should not be considered comprehensive. See § [32.1-126.01](#) and § [32.1-162.9:1](#) of the Code of Virginia for a complete list of offenses which bar employment.

- Felony violation of a protective order (§ [16.1-253.2](#))
- Murder or manslaughter (§ [18.2-30](#) et seq.)
- Malicious wounding by mob (§ [18.2-41](#))
- Abduction (subsection A or B of § [18.2-47](#))
- Abduction for immoral purposes (§ [18.2-48](#))
- Assaults and bodily wounding (§ [18.2-51](#) et. seq.)
- Robbery (§ [18.2-58](#))
- Carjacking (§ [18.2-58.1](#))
- Extortion by threat (§ [18.2-59](#))
- Threats of death or bodily injury (§ [18.2-60](#))
- Felony stalking (§ [18.2-60.3](#))
- Felony violation of a protective order (§ [18.2-60.4](#))
- Sexual assault (§ [18.2-61](#) et. seq.)
- Arson (§ [18.2-77](#) et. seq.)
- Drive by shooting (§ [18.2-286.1](#))
- Use of a machine gun in a crime of violence (§ [18.2-289](#))
- Aggressive use of a machine gun (§ [18.2-290](#))
- Use of a sawed off shotgun in a crime of violence (§ [18.2-300](#))

- Pandering (§ [18.2-355](#))
- Crimes against nature involving children (§ [18.2-361](#))
- Incest (§ [18.2-366](#))
- Taking indecent liberties with children (§ [18.2-370](#) or § [18.2-370.1](#))
- Abuse and neglect of children (§ [18.2-371.1](#))
- Failure to secure medical attention for an injured child (§ [18.2-314](#))
- Obscenity offenses (§ [18.2-374.1](#))
- Possession of child pornography (§ [18.2-374.1:1](#))
- Electronic facilitation of pornography (§ [18.2-374.3](#))
- Abuse and neglect of incapacitated adults (§ [18.2-369](#))
- Employing or permitting a minor to assist in an act constituting an offense (§ [18.2-372](#) et seq.)
- Delivery of drugs to prisoners (§ [18.2-474.1](#))
- Escape from jail (§ [18.2-477](#))
- Felonies by prisoners (§ [53.1-303](#))

Convictions that would NOT bar an applicant from employment:

Under state law, convictions for offenses unrelated to abuse or neglect would not disqualify an applicant for employment.

Even if the applicant has been convicted of a barrier crime it may not always prevent employment. An applicant who has one misdemeanor conviction specified above may be hired if:

- (i) The criminal offense did NOT involve abuse or neglect; AND
- (ii) Five years have lapsed since the conviction occurred.

Other convictions may disqualify an applicant on the basis of a facility's established hiring, personnel or other policies.

NOTE: This guideline should not be taken as definitive. For further clarification regarding barrier crimes and criminal offenses, refer to Title 18.2 (Crimes and Offenses Generally) of the Code of Virginia or seek a legal opinion.