

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB425

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Edwards

3. Committee: Finance and Appropriations

4. Title: Barrier crimes.

- 5. Summary:** Eliminates certain crimes from the definition of "barrier crime" and requires the State Board of Behavioral Health and Developmental Services, the Board of Education, the State Board of Health, and the State Board of Social Services to each adopt regulations that develop and implement a waiver process for individuals who have been convicted of a barrier crime and who serve in a position or seek to serve in a position with any qualified entity subject to the regulations of the board. The bill eliminates current exceptions and time limit mandates, as such information is required to be set out in each agency's waiver process. The bill sets out information to be included in the regulations of the individual boards. The bill also directs the Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services to each publish information about the agency's waiver process in an easily accessible format on a website maintained by the department. The bill includes additional requirements for each waiver process, such as if an individual's application for a waiver is denied, the department must state the basis for denial in writing and provide such explanation to the individual. The bill provides that although a waiver granted to an individual by one department shall not be transferrable to a position under another department, proof of receipt of a waiver from one department shall be considered positively by another department when reviewing an application for a waiver. Additionally, each department is required to notify the Department of State Police when a waiver has been granted within 10 days of issuing the decision in writing to the person who was subject to the waiver.

In cases where a waiver has been granted, the bill also prohibits any business screening service from disseminating information regarding the barrier crime conviction that was the subject of such waiver unless it is clearly indicated that the waiver was granted, and the bill sets out a penalty for any business screening service that violates that prohibition. The bill prohibits any qualified entity from discharging or otherwise discriminating against a person for any reason concerning solely the barrier crime conviction that was the subject of a waiver that has been granted. The bill also exempts all documents relating to a waiver application from the Virginia Freedom of Information Act except for an application cover sheet and whether the waiver has been granted or denied or if the application is pending.

Additionally, the bill eliminates the state-level barrier crimes requirements for foster and adoptive parents and provides that a child-placing agency shall not approve a foster or adoptive home if any individual has been convicted of crimes prohibited under federal law or is the subject of a founded complaint of abuse or neglect as maintained in registries pursuant to state and federal law. The bill has a delayed effective date of the earlier of (i) the first day of the fourth month following notification of the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by the Superintendent of State Police that the Department of State Police has implemented the necessary system upgrades as required by this act or (ii) July 1, 2025; however, the provisions related to foster and adoptive parents become effective on July 1, 2022. The bill requires the Boards of Behavioral Health and Developmental Services, Education, Health, and Social Services to promulgate regulations by December 1, 2024, to implement the provision of the bill. The bill also requires the Secretaries of Education, Health and Human Resources, and Labor to provide recommendations on the development of a navigation system no later than July 1, 2024, for assisting applicants in navigating the waiver processes across each department. Individuals with barrier crime convictions serving in a position pursuant to a currently existing exception, waiver, or screening process that the bill eliminates shall continue to be subject to such exception, waiver, or screening process and shall not be terminated upon enactment of the bill or required to apply for a barrier crime conviction waiver so long as he continues to be employed by the same employer. The bill also permits the boards to have a phased implementation of the regulations not to exceed two years after the bill's enactment in order to prevent overwhelming department resources for receiving applications and to ensure that applications are answered in a timely manner. The bill also directs the Department of State Police to implement any necessary enhancements to the Criminal History and Rap Back Information System by the effective date of the first enactment of this act.

6. Budget Amendment Necessary: Yes, Item 311 (\$36,400)

7. Fiscal Impact Estimates: See 8 below.

8. Fiscal Implications:

This bill was developed by the General Assembly Joint Subcommittee to study barrier crimes. The subcommittee met over a period of 13 months to make recommendations to overhaul the barrier crime code in order to increase opportunities for employment in Virginia. This legislation creates additional administrative processes for numerous state agencies. Each agency listed in the legislation was asked for their input on possible costs of the bill. The following table summarizes the information provided by the various agencies on anticipated costs.

	General Fund Cost			
	FY 2024	FY 2025	FY 2026	Positions
DBHDS	\$ 36,400	\$ 178,548	\$ 357,095	3
DSS		\$ 543,704	\$ 312,858	3
DOE		\$ 380,020	\$ 380,020	3
VDH	\$ -	\$ 636,060	\$ 833,644	6
VSP	\$ -	\$ -	\$ -	-
Total	\$ 36,400	\$ 1,738,332	\$ 1,883,617	15

Department of Behavioral Health and Developmental Services (DBHDS)

This bill would have a significant fiscal impact to DBHDS. In order to comply with the legislation, DBHDS Background Investigations Unit would need to contract to write new regulations. The agency would also need ongoing staff to enforce waiver regulations and handle the Auditor of Public Accounts appeals process, and a staff member to oversee informal conferences and write the formal decision for the commissioner's signature. This waiver would apply to all licensed provider direct care staff as well as state facility direct care staff. In addition, if the decision not to grant the waiver is appealed to a formal hearing, this would require funds for a court reporter and a hearing officer in addition to the staff time needed to prepare for both the informal conference and formal hearings. DBHDS currently has 1.5 FTEs responsible for regulations, and estimates the scope of this legislation would require some additional temporary assistance. The legislation requires the new process to be in place by December 1, 2024, which would require funding to develop regulations beginning in FY 2024 and additional staff beginning in FY 2025 (staffing costs assumed at half a year in FY 2025). At a minimum, DBHDS anticipates the following costs:

- Contractor to write regulations \$35/hour for 6 months. \$36,400
- 1 program manager: \$75,000 salary + \$32,385 fringe = \$107,385
Nonpersonnel (Laptop, cell phone, certifications, training, supplies, etc.): \$5,000
Subtotal: \$112,385
- 3 program analysts: \$50,000 + \$26,570 fringe = \$76,570 x 3 = \$229,710
Nonpersonnel (Laptop, cell phone, certifications, training, supplies, etc.): \$5,000 x 3 = \$15,000

DBHDS Program Costs (Non-Nova)**	FY 2024 One-Time	Ongoing
Contractor to write regulations	\$36,400	
Salary, Fringe, Overhead	\$0	\$357,095
Total	\$36,400	\$357,095

Department of Social Services (DSS)

The Department currently has a barrier crime waiver for child welfare agencies. This legislation will expand the service population by allowing waivers for certain barrier crimes for all licensing programs. The legislation could impact the number of applicants for licensure, which could potentially increase the number of licensed adult programs. The legislation will also remove the Commonwealth's barrier crime requirements and add the federal barrier crime requirements for foster and adoptive parents. This could result in an increase of eligible potential foster and adoptive parents available to foster and adopt Virginia's foster care children.

Additional home office and state operations staff will be needed three months prior to the implementation date. They will be required to draft the waiver process and implement and manage the barrier crime waivers. It is anticipated that two staff, pay band 5s, will be needed to process the barrier crime waivers due to the required skill of analysis and interpreting laws and regulations. The majority of the barrier crime waivers will be requested for adult programs as there are approximately 27,000 employees for assisted living facilities and approximately 575 employees for adult day care centers. There are approximately 1,400 child placing agency and children's residential employees. It is unknown how many would apply for a barrier crime waiver. There is a high turnover rate (35 percent for adult programs), with approximately 9,500 background checks completed annually for adult employment programs. If 5 percent apply for waivers, there would be 475 waiver applications each year. Two staff could manage this workload, and assist individuals needing waivers with the application process, to ensure adequate review of the documents. Assuming the provisions of this bill will be implemented July 1, 2025, the cost for staff in FY 2025 is \$60,383 GF and \$200,227 GF in FY 2026 and each year thereafter. Staff costs include salary, benefits, non-personnel position costs (such as phone and computer charges), as well as a one-time on-boarding charge in the first year.

The Department is also requesting one staff, a Senior Hearing Officer for Appeals and Fair Hearings to review the reason for the waiver denial appeals and any supporting documents, estimating they would be able to conduct about 4 hearings per day. Staff would need to be onboard three months prior to the implementation date of July 1, 2025, or April 2025. Therefore, \$33,321 GF would be needed in FY 2025 and \$112,631 GF in FY 2026 and each year thereafter. Staff costs include salary, benefits, non-personnel position costs (such as phone and computer charges), as well as a one-time on-boarding charge in the first year.

Modifications to the division's information system would also be required to comply with this legislation. Information system enhancements would include the development of 5 additional screens to capture the waiver request and the details around it (tenure, applicant, reason etc.), modification of the payment interface to include waiver request fees, inclusion of alerts/notification/tasks for various workers including inspectors, integration with state police (back and forth) to send the approved waivers and receive back a response, correspondence related changes for applicant communication (request received, approval/denial, appeals, appeal outcome) and associated batches, new reports/dashboards to

track the waivers, and security roles and access changes to support the above and a new appeals trigger at a one-time cost of \$450,000 GF in FY 2025.

Department of Education (DOE)

The Virginia Department of Education estimates they would need 3 positions to provide administrative support at a total cost of \$380,020 annually for 3 FTEs:

- Two Pay Band 5 analysts/coordinators - \$130,443 each (based on \$86,000 salary).
- One Pay Band 3 admin support - \$89,134 (based on \$53,000 salary)

Each position would also require \$10,000 for technology and travel costs.

Virginia Department of Health (VDH)

The Virginia Department of Health (VDH) projects that there will be a fiscal impact in the form of increased expenditures in the new barrier crime waiver program without a corresponding increase in revenue. The cost of this new mandate cannot be absorbed by VDH's existing staff and resources. SB425 does not give any authority to assess fees related to barrier crime waiver applications.

VDH anticipates the need for a total of six positions: three serving in the role of Policy and Planning Specialist I; one serving in the role of Policy and Planning Manager I; one serving in the role of Administrative Office Specialist II; and one serving in the role of Hearing and Legal Services Officer III. The Policy and Planning Specialists I would be responsible for reviewing barrier crime waiver applications, corresponding with applicants, and on making recommendations for the approval or denial of a waiver. The Administrative Office Specialist II would be the first point-of-contact for applicants, assist in scheduling and resource allocation for informal fact-finding conferences, and have primary responsibility for administrative tasks for the Program, such as establishing and maintaining filing systems and other records. The Policy and Planning Manager I would supervise both the Policy and Planning Specialists II and the Administrative Office Specialist II; this FTE would also be responsible for reviewing and approving initial denials or approvals of waiver. The Hearing and Legal Services Officer III would be responsible for any informal fact-finding proceedings from applicants who dispute the denial of their barrier crime waiver application. This FTE would also be responsible for writing a recommendation to the State Health Commissioner regarding the final disposition of the matter for the Commissioner's approval or denial, in whole or in part.

The legislation indirectly impacts three licensure programs that VDH currently operates for nursing homes, hospices and hospice facilities, and home care organizations; there are just over 2,000 regulants in total in these three programs, which are all potential employers of persons with barrier crime convictions. VDH does not have data to determine the volume of persons who may apply for a barrier crime waiver, because historically VDH's role has been retrospective in that it verifies compliance with barrier crime requirements when conducting

inspections; VDH's inspections involve review of personnel files of hired or contracted persons, not those who have been rejected from employment for a barrier crime conviction. VDH believes that one Policy and Planning Specialist I per program may be sufficient and that any excess volume of applicants in one program can be collectively shouldered by all three FTEs. Expenditures related to the cost for obtaining criminal record information is indeterminable at this time, again owing to the lack of data about the volume of applications. VDH would access the criminal record information through VDSP's Non-Criminal Justice Interface (NCJI); NCJI records search is \$20 per search.

Based on the second enactment clause in SB425, VDH would need to hire the Policy and Planning Manager I in Q3 of FY2025 and to hire at least one Policy and Planning Specialist I and the Administrative Office Specialist II in Q4 of FY2025 in order to be operational on July 1, 2025. The remaining two FTEs would be needed starting Q1 of FY2026. VDH used a salary of \$64,412 and a fringe benefit of \$39,007 for each Policy and Planning Specialist I; a salary of \$82,721 and a fringe benefit of \$43,617 for the Policy and Planning Manager I; a salary of \$37,192 and a fringe benefit of \$32,153 for the Administrative Office Specialist II; and a salary of \$120,000 and a fringe benefit of \$53,004 for the Hearing and Legal Services Officer III. These projections reflect salaries at the 75th percentile for those role titles and current fringe benefit rates. Additionally, per FTE, VDH anticipates expenditures for an office phone (\$650), computer (\$3,000), other equipment and supplies (\$600), and general liability/surety/workers compensation (\$650); for rent, VDH anticipates an expenditure of \$4,500 for the Hearing and Legal Services Officer III and expenditures of \$3,300 each for the remaining five FTEs. These additional expenditures are based on current expenditures for existing VDH staff.

VDH's Office of Information Management (OIM) is projecting a total expenditure of \$521,500 in FY2025 to create an application portal for barrier crime waiver program. The estimated scope of this IT project would include (1) an internet portal with restricted access so only registered users can login and submit applications; (2) an administration portal used by application review staff to review, approve, deny and/or correspond with an applicant; and (3) a public view on the internet with list of applicants, application submission date, and the current status that can be searchable with predefined criteria. The total given above reflects the need for development at \$380,000 (4,000 hours at an hourly rate of \$95), testing at \$52,500 (750 hours at an hourly rate of \$70), creation of security documentation for \$14,000 (200 hours at an hourly rate of \$70), and a project manager at \$75,000 (1,000 hours at an hourly rate of \$75). VDH OIM also estimates that ongoing maintenance starting in FY2026, which supposes no major changes to the application portal after initial development, to be 20% of the initial development cost or \$104,300. In preparing this expenditure projection, VDH OIM assumes all software and hardware for this portal development and hosting can be completed done using existing infrastructure.

Virginia State Police (VSP)

Virginia State Police has commented that this bill will not have a fiscal impact on their operations.

Office of the Attorney General

To the extent aggrieved individuals appeal the informal fact-finding decision to the court (as a final case decision pursuant the Administrative Process Act), there will be a fiscal impact on the Office of the Attorney General as they will be required to represent the client agency in the court proceeding.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Behavioral Health and Developmental Services, Department of Education, Department of Social Services, Virginia Department of Health, Virginia State Police, Office of the Attorney General.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is similar to HB 805.