

BARRIER CRIMES

FOR APPLICANTS FOR LICENSURE, REGISTRATION OR APPROVAL; AGENTS OF APPLICANTS; ADULTS LIVING IN CHILD DAY CENTERS OR FAMILY DAY HOMES; EMPLOYEES; OR VOLUNTEERS PROVIDING CARE TO CHILDREN

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:

- Child Day Centers
- Family Day Homes
- 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; 22.1-289.031; 22.1-289.032; 22.1-289.034, 22.1-289.035; 22.1-289.036; 22.1-289.037; 22.1-289.039; 22.1-289.040

Child day programs and family day systems 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.

The list of barrier crimes is broken into six clauses. All six clauses apply to child day programs and family day systems.

§ 22.1-289.035

No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to §22.1-289.031, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or its agents or designees to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in §19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

§ 22.1-289.036

If any person specified in subsection A required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse

or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Superintendent pursuant to § 22.1-289.038, no license as a child day center, family day home, or family day system or registration as a family day home shall be granted by the Superintendent and no approval as a family day home shall be granted by the family day system.

"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
Immediate Custody, Arrest, Detention and Shelter	
Immediate Custody, Arrest, Detention and Shelter - Violation of provisions of protective orders	16.1-253.2
Crimes by Gangs	
Crimes by Gangs - Criminal street gang participation	18.2-46.2
Crimes by Gangs- Recruitment of persons for criminal street gang	18.2-46.3
Crimes by Gangs - Third or subsequent conviction of criminal street gang crimes	18.2-46.3:1
Crimes by Gangs– Enhanced punishment for gang activity taking place in a gang-free zone	18.2-46.3:3
Extortion and Other Threats	
Extortion and Other Threats - Stalking	18.2-60.3
Extortion and Other Threats - Violation of protective orders	18.2-60.4
Dangerous Use of Firearms or Other Weapons	
Dangerous Use of Firearms or Other Weapons - Discharging firearms or missiles within or at building or dwelling house	18.2-279
Dangerous Use of Firearms or Other Weapons - Willfully discharging firearms in public places	18.2-280
Dangerous Use of Firearms or Other Weapons - Setting spring gun or other deadly weapon	18.2-281
Dangerous Use of Firearms or Other Weapons - Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance	18.2-282
Dangerous Use of Firearms or Other Weapons - Brandishing a machete or other bladed weapon with intent to intimidate	18.2-282.1
Dangerous Use of Firearms or Other Weapons - Shooting from vehicles so as to endanger persons	18.2-286.1
Dangerous Use of Firearms or Other Weapons - Wearing of body armor while committing a crime	18.2-287.2
Commercial Sex Trafficking, Prostitution, Etc.	
Commercial Sex Trafficking, Prostitution, Etc. - Prostitution; solicitation; commercial exploitation of a minor	18.2-346.01
Commercial Sex Trafficking, Prostitution, Etc. - Aiding prostitution or illicit sexual intercourse, etc.	18.2-348
Commercial Sex Trafficking, Prostitution, Etc. - Using vehicles to promote prostitution or unlawful sexual intercourse	18.2-349
Riot and Unlawful Assembly	
Riot and Unlawful Assembly – What constitutes a riot	18.2-405
Riot and Unlawful Assembly - Unlawful assembly	18.2-406

Any violation of:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
Homicide	
Homicide- Aggravated murder	18.2-31
Homicide Murder, first and second degree	18.2-32
Homicide- Murder of a pregnant woman	18.2-32.1
Homicide-Killing a fetus	18.2-32.2
Homicide- Felony homicide	18.2-33
Homicide Voluntary manslaughter	18.2-35
Homicide-Involuntary manslaughter	18.2-36
Homicide- Involuntary manslaughter; driving a vehicle while under the influence	18.2-36.1
Homicide-Involuntary manslaughter; operating a watercraft while under the influence	18.2-36.2
Crimes by Mobs	
Crimes by Mobs – Shooting, stabbing, etc. with intent to maim, kill, etc. by mob	18.2-41
Crimes by Mobs - Assault or battery by mob	18.2-42
Terrorism Offenses	
Terrorism Offenses - Committing, conspiring and aiding and abetting acts of terrorism	18.2-46.5
Terrorism Offenses - Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device	18.2-46.6
Terrorism Offenses - Act of bioterrorism against agricultural crops or animals	18.2-46.7
Kidnapping and Related Offenses	
Kidnapping and Related Offenses - Abduction and Kidnapping defined	18.2-47.A or 18.2-47.B
Kidnapping and Related Offenses - Abduction with Intent to Extort Money or for Immoral Purposes	18.2-48
Kidnapping and Related Offenses - Threatening, attempting or assisting in such abduction	18.2-49
Kidnapping and Related Offenses – Enticing, etc., another into a dwelling house with intent to commit certain felonies	18.2-50.3
Assaults and Bodily Woundings	
Assaults and Bodily Woundings – Shooting, stabbing, etc. with intent to maim, kill, etc.	18.2-51
Assaults and Bodily Woundings – Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical service personnel	18.2-51.1
Assaults and Bodily Woundings – Aggravated malicious wounding	18.2-51.2
Assaults and Bodily Woundings – Reckless endangerment of others by throwing objects from places higher than one story	18.2-51.3
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	18.2-51.5

Assaults and Bodily Woundings – Strangulation of another	18.2-51.6
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 – Possession of infectious biological substances or radiological agents	18.2-52.1
Assaults and Bodily Woundings – Shooting, etc. in committing or attempting a felony	18.2-53
Assaults and Bodily Woundings – Use or display of firearm in committing a felony	18.2-53.1
Assaults and Bodily Woundings – Attempts to poison	18.2-54.1
Assaults and Bodily Woundings – Adulteration of food, drink, drugs, cosmetics, etc.	18.2-54.2
Assaults and Bodily Woundings – Bodily injuries caused by prisoners, state juvenile probationers, and state and local adult probationers or adult parolees	18.2-55
Assaults and Bodily Woundings – Hazing of youth gang members	18.2-55.1
Assaults and Bodily Woundings – Hazing unlawful; civil and criminal liability; duty of school, etc., officials	18.2-56
Assaults and Bodily Woundings – Reckless handling of firearms; reckless handling while hunting	18.2-56.1
Assaults and Bodily Woundings – Allowing access to firearms by children	18.2-56.2
Assaults and Bodily Woundings – Assault and battery (Exception: A child day center may hire for compensated employment persons who have been convicted of not more than 1 misdemeanor 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. § 22.1-289.035 G)	18.2-57
Assaults and Bodily Woundings – Pointing laser at law-enforcement officer	18.2-57.01
Assaults and Bodily Woundings – Disarming a law-enforcement or correctional officer	18.2-57.02
Assaults and Bodily Woundings – Assault and battery against a family or household member	18.2-57.2
Robbery	
Robbery – Robbery	18.2-58
Robbery – Carjacking	18.2-58.1
Extortion and Other Threats	
Extortion and Other Threats - Extortion of money, property or pecuniary benefit	18.2-59
Extortion and Other Threats -Threats of death or bodily injury to a person or member of his family; to persons on school property; and to health care providers	18.2-60
Extortion and Other Threats - Threatening the governor or his immediate family	18.2-60.1
Criminal Sexual Assault	
Criminal Sexual Assault – Rape	18.2-61
Criminal Sexual Assault – Carnal knowledge of a child between 13 and 15 years of age	18.2-63
Criminal Sexual Assault – Carnal knowledge of certain minors	18.2-64.1
Criminal Sexual Assault – Carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or post trial offender	18.2-64.2

Criminal Sexual Assault – Forcible sodomy	18.2-67.1
Criminal Sexual Assault – Object sexual penetration	18.2-67.2
Criminal Sexual Assault – Aggravated sexual battery	18.2-67.3
Criminal Sexual Assault – Sexual battery	18.2-67.4
Criminal Sexual Assault – Infected sexual battery	18.2-67.4:1
Criminal Sexual Assault – Sexual abuse of a child under 15 years of age	18.2-67.4:2
Criminal Sexual Assault – Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery	18.2-67.5
Criminal 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
Criminal Sexual Assault – Repeat offender (maximum sentence for offense based on prior sexual assault convictions)	18.2-67.5:2
Criminal Sexual Assault – Repeat offender (life imprisonment for offense based on prior violent sexual assault convictions)	18.2-67.5:3
Arson and Related Crimes	
Arson and Related Crimes – Burning or destroying dwelling house, etc.	18.2-77
Arson and Related Crimes – Burning or destroying meeting house, etc.	18.2-79
Arson and Related Crimes – Burning or destroying any other building or structure	18.2-80
Arson and Related Crimes – Burning or destroying personal property, standing grain, etc.	18.2-81
Arson and Related Crimes – Burning building or structure while in such building or structure with intent to commit felony	18.2-82
Arson and Related Crimes – Threats to bomb or damage buildings or means of transportation; false information as to danger to such buildings, etc.	18.2-83
Arson and Related Crimes – 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 and Related Crimes – Manufacture, possession, use, etc. of fire bombs or explosive materials or devices	18.2-85
Arson and Related Crimes – Setting fire to woods, fences, grass, etc.	18.2-86
Arson and Related Crimes – Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized	18.2-87
Arson and Related Crimes – Setting off chemical bombs capable of producing smoke in certain public buildings	18.2-87.1
Arson and Related Crimes- Carelessly damaging property by fire	18.2-88
Uniform Machine Gun Act	
Uniform Machine Gun Act - Use of a machine gun in a crime of violence	18.2-289
Uniform Machine Gun Act - Use of a machine gun for aggressive purposes	18.2-290
Sawed-Off Shotgun and Sawed-Off Rifle Act	
Sawed-Off Shotgun and Sawed-Off Rifle Act - Possession or use of a sawed-off shotgun or rifle	18.2-300

Other Illegal Weapons	
Other Illegal Weapons - Possession of firearms while in possession of certain substances	18.2-308.4
Miscellaneous Dangerous Conduct	
Miscellaneous Dangerous Conduct - Failure to secure medical attention for an injured child	18.2-314
Commercial Sex Trafficking, Prostitution, Etc.	
Commercial Sex Trafficking, Prostitution, Etc. - Taking, detaining, etc., person for prostitution, etc. or consenting thereto; human trafficking	18.2-355
Commercial Sex Trafficking, Prostitution, Etc. - Receiving money for procuring person	18.2-356
Commercial Sex Trafficking, Prostitution, Etc. - Receiving money from earnings of male or female prostitute	18.2-357
Commercial Sex Trafficking, Prostitution, Etc. - Commercial sex trafficking	18.2-357.1
Commercial Sex Trafficking, Prostitution, Etc. - Crimes against nature involving children who are family	18.2-361.B
Family Offenses; Crimes Against Children, Etc.	
Family Offenses; Crimes Against Children, Etc. - Sexual intercourse by persons forbidden to marry; incest	18.2-366
Family Offenses; Crimes Against Children, Etc. - Abuse and neglect of vulnerable adults	18.2-369
Family Offenses; Crimes Against Children, Etc. - Taking indecent liberties with children	18.2-370
Family Offenses; Crimes Against Children, Etc. - Taking indecent liberties with child by person in custodial or supervisory relationship	18.2-370.1
Family Offenses; Crimes Against Children, Etc. – Sex offenses prohibiting proximity to children	18.2-370.2
Family Offenses; Crimes Against Children, Etc. - Sex offenses prohibiting residing in proximity to children	18.2-370.3
Family Offenses; Crimes Against Children, Etc. - Sex offenses prohibiting working on school property	18.2-370.4
Family Offenses; Crimes Against Children, Etc. - Offenses prohibiting entry onto school or other property	18.2-370.5
Family Offenses; Crimes Against Children, Etc. - Penetration of mouth of child with lascivious intent	18.2-370.6
Family Offenses; Crimes Against Children, Etc. - Abuse and neglect of children; abandoned infant	18.2-371.1
Obscenity and Related Offenses	
Obscenity and Related Offenses - Production, publication, sale, financing etc., of child pornography	18.2-374.1
Obscenity and Related Offenses - Possession, reproduction, distribution, solicitation, and facilitation of child pornography	18.2-374.1:1
Obscenity and Related Offenses - Use of communications systems to facilitate certain offenses involving children	18.2-374.3
Obscenity and Related Offenses - Display of child pornography or grooming video or materials to a child	18.2-374.4
Obscenity and Related Offenses - Employing or permitting a minor to assist in an offense under Article 5 (18.2-372 et seq.) of Chapter 8 of Title 18.2	18.2-379
Obscenity and Related Offenses - Unlawful creation of an image of another	18.2-386.1

Obscenity and Related Offenses - Unlawful dissemination or sale of images of another	18.2-386.2
Riot and Unlawful Assembly	
Riot and Unlawful Assembly – Conspiracy; incitement, etc., to riot	18.2-408
Riot and Unlawful Assembly –Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection	18.2-413
Riot and Unlawful Assembly – Injury to property or persons by persons unlawfully or riotously assembled	18.2-414
Activities Tending to Cause Violence	
Activities Tending to Cause Violence - Burning cross on property of another or public place with intent to intimidate	18.2-423
Activities Tending to Cause Violence - Burning object on property of another or a highway or other public place with intent to intimidate	18.2-423.01
Activities Tending to Cause Violence - Placing swastika on certain property with intent to intimidate	18.2-423.1
Activities Tending to Cause Violence - Displaying noose on property of another or a highway or other public place with intent to intimidate	18.2-423.2
Unlawful Paramilitary Activity	
Unlawful Paramilitary Activity - Paramilitary activity	18.2-433.2
Interference with Administration of Justice	
Interference with Administration of Justice - Providing false information or failing to provide registration information	18.2-472.1
Escape of, Communications with and Deliveries to Prisoners	
Escape of, Communications with and Deliveries to Prisoners - Delivery of drugs, firearms, explosives, etc. to prisoners or committed persons	18.2-474.1
Escape of, Communications with and Deliveries to Prisoners –Prisoner escaping from jail	18.2-477
Escape of, Communications with and Deliveries to Prisoners –Escapes from juvenile facility	18.2-477.1
Escape of, Communications with and Deliveries to Prisoners –Commission of felony certain offenses while in a secure juvenile facility or detention home	18.2-477.2
Escape of, Communications with and Deliveries to Prisoners – Escape from jail or custody by force or violence without setting fire to jail	18.2-478
Escape of, Communications with and Deliveries to Prisoners – Escape without force or violence or setting fire to jail	18.2-479
Escape of, Communications with and Deliveries to Prisoners –Escape, etc., by setting fire to jail	18.2-480
Treason and Related Offenses	
Treason and Related Offenses – Treason	18.2-481
Treason and Related Offenses - Advocacy of change in government by force, violence or other unlawful means	18.2-484
Treason and Related Offenses - Conspiring to incite one race to insurrection against another race	18.2-485
Civil Commitment of Sexually Violent Predators	
Civil Commitment of Sexually Violent Predators - Escape of persons committed	37.2-917
Crimes by Prisoners	
Crimes by Prisoners - Felonies by prisoners	53.1-203

"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 and Related Offenses	
Burglary and Related Offenses - Burglary	18.2-89
Burglary and Related Offenses – Entering dwelling house, etc., with intent to commit murder, rape, robbery, or arson	18.2-90
Burglary and Related Offenses – Entering dwelling house, etc., with intent to commit larceny, assault and battery, or other felony	18.2-91
Burglary and Related Offenses – Breaking and entering dwelling house with intent to commit other misdemeanor	18.2-92
Burglary and Related Offenses – Entering bank, armed, with intent to commit larceny	18.2-93
Burglary and Related Offenses – Possession of burglarious tools, etc.	18.2-94

"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
Possession of Retail Marijuana and Retail Marijuana Products	
Possession of Retail Marijuana and Retail Marijuana Products – Home cultivation of marijuana for personal use	4.1-1101
Drugs	
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
Drugs – Transporting controlled substances into the Commonwealth	18.2-248.01
Drugs – Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine	18.2-248.02
Drugs – Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine	18.2-248.03
Drugs – Sale, gift, distribution, or possession with intent to sell, give, or distribute marijuana	18.2-248.1
Drugs – Illegal stimulants and steroids	18.2-248.5
Drugs – Possession and distribution of flunitrazepam	18.2-251.2
Drugs – Possession and distribution of gamma-butyrolactone or 1, 4-butanediol	18.2-251.3
Drugs – Distribution of certain drugs to persons under 18	18.2-255
Drugs – Sale or manufacture of drugs on or near certain properties	18.2-255.2
Drugs – Certain premises deemed common nuisance	18.2-258

Drugs – Maintaining a fortified drug house	18.2-258.02
Drugs – Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit, or forgery	18.2-258.1
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:

OFFENSE Or Substantially Similar Offense Under the Laws of Another Jurisdiction	VA CODE SECTION
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;
- 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:

"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.

"Offense for which registration is required" includes:

1. Any Tier I, Tier II, or 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.

"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.