# Superintendent’s Memo #210-20


**COMMONWEALTH of VIRGINIA
Department of Education**

DATE: August 14, 2020

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

## SUBJECT: Legislative Changes, Effective July 1, 2020, Affecting the Employment and Hiring of Individuals with Certain Convictions

The purpose of this memorandum is to notify you of three legislative changes by the 2020 General Assembly, effective July 1, 2020. The newly enacted language is provided, with revised or added language in italics and deleted language reflected by strikeout.

**Employment and Award of Contracts for Individuals**

**Convicted of a Felony or Other Crimes**

The revised legislation modifies the required certifications relating to criminal offenses that all public school employees must make as a condition of employment by a local school board. The revised law prohibits school boards from employing any individual convicted of any violent felony as set forth in the definition of a “barrier crime” in the *Code* or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child. Under the law, a school board may employ an individual convicted of a felony or offense of moral turpitude not defined as a “barrier crime” that does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that for felony convictions, the individual’s civil rights have been restored by the Governor. The revised legislation also includes requirements relating to the award of contracts for the provision of services that require the contractor or its employees to have direct contact with students on school property.

[§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required; penalty.](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-296.1/)

A. As a condition of employment for all of its public school employees, whether full-time or part-time, permanent, or temporary, every school board shall require on its application for employment certification~~(i) that~~*of whether* the applicant has~~not~~ been convicted of~~a~~*any violent* felony~~or~~*set forth in the definition of barrier crime in subsection A of §*[***19.2-392.02***](https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-392.02/)*;* any offense involving the sexual molestation, physical or sexual abuse*,* or rape of a child;~~and (ii) whether the applicant has been convicted of a~~*or any* crime of moral turpitude. Any ~~person~~ *individual* making a materially false statement regarding any such offense~~shall be~~*is* guilty of a Class 1 misdemeanor and*, in the case of a teacher,* upon conviction, the fact of ~~said~~ *such* conviction~~shall be~~*is* grounds for the Board~~of Education~~ to revoke~~such person's~~*his* license to teach.

B.*No school board shall employ* *any individual who has been convicted of any violent felony set forth in* *the definition of barrier crime in subsection A of §*[***19.2-392.02***](https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-392.02/) *or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.*

*C. Any school board may employ* *any individual who has been convicted of any felony or crime of moral turpitude that is not set forth in* *the definition of barrier crime in subsection A of §*[***19.2-392.02***](https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-392.02/) *and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights restored by the Governor.*

*D.* Every school board shall also require on its application for employment, as a condition of employment requiring direct contact with students, whether full-time or part-time, permanent, or temporary, certification that the applicant has not been the subject of a founded case of child abuse and neglect. Any person making a materially false statement regarding a finding of child abuse and neglect~~shall be~~*is* guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction~~shall be~~*is* grounds for the Board of Education to revoke such person's license to teach.

~~C.~~ *E.*As a condition of awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the school board shall require the contractor to provide certification~~that all persons~~*of whether any individual* who will provide such services~~have not~~*has* been convicted of~~a~~*any violent* felony~~or~~*set forth in* *the definition of barrier crime in subsection A of §*[***19.2-392.02***](https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-392.02/)*;* any offense involving the sexual molestation~~or~~*,* physical or sexual abuse*,* or rape of a child*; or any crime of moral turpitude*.

Any~~person~~*individual* making a materially false statement regarding any such offense~~shall be~~*is* guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction~~shall be~~*is* grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. School boards shall not be liable for materially false statements regarding the certifications required by this subsection.

This subsection shall not apply to a contractor or his employees providing services to a school division in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees will have no direct contact with students.

*F. No school board shall award a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities when any individual who provides such services has been convicted of any violent felony set forth in* *the definition of barrier crime in subsection A of §*[***19.2-392.02***](https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-392.02/) *or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.*

*G. Any school board may award a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities when any individual who provides such services has been convicted of any felony or crime of moral turpitude that is not set forth in* *the definition of barrier crime in subsection A of §*[***19.2-392.02***](https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-392.02/) *and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights restored by the Governor.*

**Possession of Marijuana (Civil Offense)**

The 2020 General Assembly changed the law governing the possession of marijuana. The revised legislation provides, in part, as follows:

[§ 18.2-250.1. Possession of marijuana unlawful.](https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-250.1/)

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ [54.1-3400](https://law.lis.virginia.gov/vacode/title54.1/chapter34/) et seq.).*The attorney for the Commonwealth or the county, city, or town attorney may prosecute such a case.*

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section is~~guilty of a misdemeanor and shall be confined in jail not more than 30 days and fined not~~*subject to a civil penalty of no* more than~~$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, is guilty of a Class 1 misdemeanor~~*$25*.*A violation of this section is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to §*[*18.2-251.02*](https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-251.02/)*.*

B.*Any violation of this section shall be charged by summons. A summons for a violation of this section may be executed by a law-enforcement officer when such violation is observed by such officer. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to §*[*46.2-388*](https://law.lis.virginia.gov/vacode/title46.2/chapter3/section46.2-388/)*. No court costs shall be assessed for violations of this section. A person's criminal history record information as defined in §*[*9.1-101*](https://law.lis.virginia.gov/vacode/title9.1/chapter1/section9.1-101/)*shall not include records of any charges or judgments for a violation of this section, and records of such charges or judgments shall not be reported to the Central Criminal Records Exchange. However, if a violation of this section occurs while an individual is operating a commercial motor vehicle as defined in §*[*46.2-341.4*](https://law.lis.virginia.gov/vacode/title46.2/chapter3/section46.2-341.4/)*, such violation shall be reported to the Department of Motor Vehicles and shall be included on such individual’s driving record.*

*C. The procedure for appeal and trial of any violation of this section shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§*[*19.2-260*](https://law.lis.virginia.gov/vacode/title19.2/chapter15/section19.2-260/)*et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt…*

[Note: The 2020 General Assembly also revised [§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana](https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-248.1/) by adding the following language relating to the possession of marijuana: *There shall be a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.*]

**Limits on Disseminating Information Relating to Marijuana Possession Charges, Arrests or Convictions and Prohibited Practices by Employers, Educational Institutions,**

**and State and Local Governments**

The 2020 General Assembly added the following statutory provision*,* which provides that records relating to the arrest, charge, or conviction for a violation of law governing the possession of marijuana shall not be open for public inspection or otherwise be disclosed. Under the law, employers and educational institutions are prohibited from requiring disclosure of such information in applications, interviews, or otherwise and state and local governments may not require disclosure of the information by applicants for a license, permit, registration, or service.

[§ 19.2-389.3. Marijuana possession; limits on dissemination of criminal history record information; prohibited practices by employers, educational institutions, and state and local governments; penalty.](https://law.lis.virginia.gov/vacode/19.2-389.3/)

*A. Records relating to the arrest, criminal charge, or conviction of a person for a violation of §*[*18.2-250.1*](https://law.lis.virginia.gov/vacode/18.2-250.1/)*, including any violation charged under §*[*18.2-250.1*](https://law.lis.virginia.gov/vacode/18.2-250.1/)*that was deferred and dismissed pursuant to §*[*18.2-251*](https://law.lis.virginia.gov/vacode/18.2-251/)*, maintained in the Central Criminal Records Exchange shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the determination as provided in §*[*18.2-308.2:2*](https://law.lis.virginia.gov/vacode/18.2-308.2%3A2/)*of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§*[*19.2-152.2*](https://law.lis.virginia.gov/vacode/19.2-152.2/)*et seq.) of Chapter 9, a pre-sentence or post-sentence investigation report pursuant to §*[*19.2-264.5*](https://law.lis.virginia.gov/vacode/19.2-264.5/)*or*[*19.2-299*](https://law.lis.virginia.gov/vacode/19.2-299/)*or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of §*[*19.2-298.01*](https://law.lis.virginia.gov/vacode/19.2-298.01/)*; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§*[*9.1-173*](https://law.lis.virginia.gov/vacode/9.1-173/)*et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of §*[*19.2-298.01*](https://law.lis.virginia.gov/vacode/19.2-298.01/)*; (vi) to any full-time or part-time employee of the State Police, a police department, or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in §*[*9.1-101*](https://law.lis.virginia.gov/vacode/9.1-101/)*; (vii) to the Virginia Criminal Sentencing Commission for research purposes; (viii) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ix) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in §*[*32.1-111.5*](https://law.lis.virginia.gov/vacode/32.1-111.5/)*; (x) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; (xi) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§*[*15.2-1503.1*](https://law.lis.virginia.gov/vacode/15.2-1503.1/)*and*[*19.2-389*](https://law.lis.virginia.gov/vacode/19.2-389/)*for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in §*[*32.1-111.5*](https://law.lis.virginia.gov/vacode/32.1-111.5/)*; and (xii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in §*[*46.2-341.4*](https://law.lis.virginia.gov/vacode/46.2-341.4/)*, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration.*

*B. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A.*

*C. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.*

*D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor for each violation.*

If you have any questions, please do not hesitate to contact Ms. Nancy Walsh, Director of Professional Practices, at Nancy.Walsh@doe.virginia.gov or (804) 371-2522.

JFL/nw

### c: Deans and Directors, Schools/Departments of Education

###  Virginia Institutions of Higher Education

###  Directors of Human Resources, Virginia School Divisions

###  Virginia School Boards Association