



**State of Vermont**  
**Office of the Secretary of State**  
**Office of Professional Regulation**  
89 Main Street, 3rd Floor  
Montpelier, VT 05620-3402  
sos.vermont.gov

**Sarah Copeland Hanzas, Secretary of State**  
**S. Lauren Hibbert, Deputy Secretary**  
**Kevin A. Rushing, Director**

**March 1, 2024**

**To: Hon. Martin Lalonde, Chair**  
**House Committee on Judiciary**

**From: S. Lauren Hibbert, Deputy Secretary of State**  
**Lauren Layman, General Counsel, Office of Professional Regulation**

**Re: H. 655 - An act relating to qualifying offenses for sealing criminal history records and access to sealed criminal history records**

Dear Committee,

Thank you for the opportunity to testify about H. 655 and how the Office of Professional Regulation can support this laudable work.

#### **OPR Process**

The Secretary of State's Office and the Office of Professional Regulation believe in rehabilitation and access to licensure for individuals with a criminal background. We have adopted many policies to support these goals and worked with the General Assembly to adopt laws and practices facilitating licensure for folks with criminal backgrounds.

Currently, we have a policy of asking everyone who applies for a license about their arrest and conviction record. For a select number of professions, we conduct a criminal background check through VCIC. If an applicant responds that they have a criminal background, OPR asks for court records related to the conviction and a personal statement. Our enforcement and licensing unit then review these documents to determine whether the crime has a close nexus to the practice of the profession, if there are mitigating considerations, and if there is evidence of rehabilitation.

After this review, the majority of applicants who disclose a criminal conviction are granted a license. If OPR determines that granting a license in that profession would pose a risk of harm to the public, a notice of preliminary denial is sent to the applicant. The applicant then has a right to request a hearing before a professional board or an administrative law officer (depending on the profession) with due process rights under the Administrative Procedures Act. *See* 3 V.S.A. § 814(a) *and* 3 V.S.A. Ch. 25, subchapter 2. After a hearing, the license could be granted, denied, or, sometimes, issued with conditions.

Even after a determination that an applicant's license should be denied, the applicant has the right to an appellate review internally to OPR, and ultimately to the Supreme Court.

In addition to this robust application process, in 2020, we requested that the legislature adopt a “second-chance determination” process by which, before someone invests in education and training, they can request a determination from our office regarding whether a criminal conviction would preclude licensure in that profession. This determination is binding on OPR unless another crime occurs between when the determination is issued and when the applicant applies for licensure.

### **Need for Background Information**

OPR’s mission is public protection. The professions we regulate put someone in a position of trust and authority, frequently providing services to people who are in a vulnerable position either physically or financially. For this reason, our agency does need to be aware of an applicant’s criminal history to make sure we don’t grant a professional right to someone who could use that right to harm to the public.

We appreciated that H. 655 continues the status quo that the majority of violent felonies are not expungable or sealable. However, OPR is concerned about its inability under H. 655 to learn about an expanded group of crimes when reviewing an application for a license. OPR understands that the aim of the Legislature may be to prevent these previous crimes from even being considered in the licensing context. However, we want to ensure that the Legislature is aware of the impact expanding the number of crimes eligible for expungement or sealing will have on our state’s professional licensing functions (for OPR and other licensing entities such as the Board of Medical Practice, the Agency of Education, the Department of Public Safety, etc.).

OPR is particularly concerned about not having access to information about fraud-related crimes and voyeurism, especially for granting licenses in financial fields (e.g., accounting) and fields where the public entrusts a professional with their privacy (e.g., massage therapy). Again, knowledge of this background would not automatically disqualify an applicant from obtaining a license in these professions. It would, however, allow for a thoughtful, comprehensive review of the risk posed the public and the applicant’s rehabilitative efforts. Without access to the information, OPR is operating in the dark.

<b>Current State</b>	
Still Non-Qualifying for Expungement or Sealing under both bills and status quo	Everything violent, including all “listed” offenses Abuse of vulnerable adults Cruelty to children, animals, and vulnerable adults Hate crimes Selling/trafficking illegal drugs
Already Qualifying for Expungement or Sealing	Fraud Uttering a forged instrument Simple possession of illegal drugs
<b>Expansion under H. 655</b>	
Additionally Qualifying under both bills if passed	Almost everything nonviolent Almost everything involving dishonesty: fraud, forgery, credit-card skimming, counterfeiting

	If H.655 passed	If H.762 language were included
Additional Qualifying Crimes specific to a particular bill	Embezzlement would be included	Voyeurism would be included

### Recommendation

OPR does believe that H. 655 can be modified to provide us with the information we need to continue to protect the public while also achieving the policy goals of this legislation. Procedurally, OPR is recommending that we have access modeled after Section 5 of H.655, which modifies the effect of sealing a record. This section (page 21, line 18) allows the Department of Corrections access to a list of sealed records for the purpose of a risk assessment. We are recommending that licensing entities be added to the exemptions 13 V.S.A. § 7607(c). Our proposed language is:

*The licensing bodies (or this can list all of them) shall have access to sealed records regarding the following criminal convictions for the purpose of making professional licensing decisions:*

- (A) misdemeanors;*
- (B) voyeurism;*
- (C) all financial crimes; and,*
- (D) qualifying felony property offenses and selling, dispensing, or transporting regulated drugs.*

Access through the index is essential for OPR. Under H. 655 as proposed, OPR would not be aware of whether someone had a conviction that was sealed when they applied for a license. In turn, OPR would not be able to file a motion for unsealing from the court. By providing access to the index, OPR would quickly be able to determine whether the underlying sealed conviction was relevant to the practice of the profession. If it isn't, no preliminary denial will result (as is the practice now). If OPR determined that a preliminary denial was needed, the applicant would have a right to full due process for the hearing, and subsequent appellate rights.

Sealed records, even if released to OPR, would still not be made public unless a court unsealed the record for purposes of public disclosure. A procedure for unsealing that record is found in H.762, Section 2 (13 V.S.A. 7606a(c)(7)). That language provides

*The court may issue an order permitting information from a sealed criminal history record to be disclosed to an employer or a person or entity that issues licenses, professional licenses, or professional certifications upon a showing by the employer, person, or entity that the sealed information is relevant to the employment, license, or certification and that there is a substantial risk that the employer, person, entity, or public may suffer physical or financial harm if the disclosure is not permitted. An employer, person, or entity seeking disclosure pursuant to this subsection (c) shall serve a copy of any motion seeking the disclosure upon the person whose criminal history records have been sealed and upon the holder of the criminal history record from whom disclosure is sought.*

We recommend the following amendment to that provision and incorporation of the provision in H. 655:

*The court ~~may~~ shall issue an order permitting information from a sealed criminal history record ~~to be disclosed to an employer or a person or a licensing~~ entity that issues licenses, professional licenses, or professional certifications upon a showing by ~~the employer, person, or a licensing~~ entity that the sealed information is relevant ~~to the employment, to the professional license, or to the certification the individual holds~~ or is applying for and that there is a substantial risk that the ~~employer, person, entity, or~~ public may suffer physical or financial harm if the disclosure is not permitted. ~~An employer, person, or a licensing~~ entity seeking disclosure pursuant to this subsection (c) shall serve a copy of any motion seeking the disclosure upon the person whose criminal history records have been sealed and upon the holder of the criminal history record from whom disclosure is sought.*

We are recommending that licensing entities are not in the same provisions as employers or person. There is an enhanced responsibility for entities issuing licenses and the barrier to having access to a sealed conviction should be lower.

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