



Department of Public Safety

Division of Fire Safety

Berlin Administrative Office
1311 US Route 302 – Berlin – Suite 600
Barre, VT 05641
Firesafety.vermont.gov

(phone) (802)479-7561
(fax) (802) 479-7562

TO: House Committee on Government Operations
General, Housing, and Military Affairs
Senate Committee on Government Operations
Economic Development, Housing and General Affairs

FROM: Michael Desrochers, Executive Director, Division of Fire Safety
John Black, Chair, Electricians' Licensing Board
Gerald Garrow, Chair, Plumbers' Examining Board

DATE: January 15,2021

RE: Electrician and Plumber Licensing Boards; Recommendations Regarding Licensee Criminal Backgrounds

Pursuant to Act 152, Section 23, the Boards shall provide recommendations regarding whether the law regulating their respective professions should be amended to;

- Provide that criminal convictions constitute unprofessional conduct and therefore grounds on which the Board may deny initial licensure or license renewal or otherwise discipline a licensee and, if so, whether this authority should be limited to certain convictions.
- Require an applicant for initial licensure or license renewal, or both, to submit to a criminal background check as part of the application process.

Background:

The Electricians' Licensing Board and the Plumbers' Examining Board have historically disciplined a licensee for work related infractions with a few referrals to the Attorney General's Office for consumer related fraud issues. The Board has specific statutory authority to revoke, suspend or refuse to renew a person's license as set forth below. Of note, the Board's statutory licensing authority does not include authority to deny applicant licenses based on applicant criminal history convictions.

Existing Disciplinary Authority:

Electricians' Licensing Board pursuant to 26 V.S.A. § 909. (Revocation, suspension, and refusing of renewal of license) The Board, after notice to the licensee and opportunity for hearing, may revoke or suspend a license issued under this chapter, or refuse to renew the license of a person who has made application for renewal:

- (1) if the license was wrongfully or fraudulently obtained;
- (2) if the licensee has violated or failed to comply with any provision of this chapter, or any rule, regulation, or requirement adopted under this chapter;



(3) if the licensee is found by the Board to be unqualified to hold the license.

Plumbers' Examining Board pursuant to 26 V.S.A. Subchapter 2, § 2181(c), Plumber's Examining Board, Subchapter 2: (Membership; Power) Upon notice to the affected person and after a hearing, the Board may refuse to issue a license or may suspend or revoke a license or may take other disciplinary action against a licensee for any of the following reasons:

- (1) fraud or deceit in obtaining a license;
- (2) gross negligence, incompetency, misrepresentation, or misconduct by a licensee;
- (3) violation by a licensee of the rules of the Department of Health, the Department of Public Safety, or the Board.

Discussion:

The Electrical and Plumbing Boards agree that there are criminal convictions which may warrant denial of initial licensure and licensure renewal. With little experience in criminology or rehabilitation, many questions arose including:

- What criminal convictions should constitute denial of initial licensure or licensure renewal?
- When is an applicant's criminal background history considered null?
- Is the number of years without additional criminal conviction considered successful rehabilitation?
- What legal liability does the Board assume when issuing a license to an applicant with a criminal history background?
- What type of criminal background check should be required?

A. Crimes and Convictions

Criminal convictions in **13 V.S.A. § 5301 (7) Listed Crimes** provides a list of crimes the Board may review for consideration for initial licensure and or licensure renewal. These convictions include the following offenses:

- (A) stalking as defined in section 1062 of this title;
- (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4) of this title;
- (C) domestic assault as defined in section 1042 of this title;
- (D) first degree aggravated domestic assault as defined in section 1043 of this title;
- (E) second degree aggravated domestic assault as defined in section 1044 of this title;
- (F) sexual assault as defined in section 3252 of this title or its predecessor as it was defined in section 3201 or 3202 of this title;
- (G) aggravated sexual assault as defined in section 3253 of this title;

- (H) lewd or lascivious conduct as defined in section 2601 of this title;
- (I) lewd or lascivious conduct with a child as defined in section 2602 of this title;
- (J) murder as defined in section 2301 of this title;
- (K) aggravated murder as defined in section 2311 of this title;
- (L) manslaughter as defined in section 2304 of this title;
- (M) aggravated assault as defined in section 1024 of this title;
- (N) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;
- (O) arson causing death as defined in section 501 of this title;
- (P) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;
- (Q) maiming as defined in section 2701 of this title;
- (R) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;
- (S) unlawful restraint in the second degree as defined in section 2406 of this title;
- (T) unlawful restraint in the first degree as defined in section 2407 of this title;
- (U) recklessly endangering another person as defined in section 1025 of this title;
- (V) violation of abuse prevention order as defined in section 1030 of this title, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);
- (W) operating vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);
- (X) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);
- (Y) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);
- (Z) burglary into an occupied dwelling as defined in subsection 1201(c) of this title;
- (AA) the attempt to commit any of the offenses listed in this section;

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title);

(CC) aggravated sexual assault of a child in violation of section 3253a of this title;

(DD) human trafficking in violation of section 2652 of this title; and

(EE) aggravated human trafficking in violation of section 2653 of this title.

B. Board's Recommendation on Method of Disclosure

There are 3 different criminal background solutions the boards considered.

- Fingerprinted Supported Background Checks
- State of Vermont only Electronic Supported Background Checks
- Self-Disclosure

Electrical and Plumbing Board Recommendation

The Boards discussed the different options and recommend the Self-Disclosure of Criminal History for initial licensure and licensure renewal. The Office of Professional Regulation (OPR) was consulted regarding the self-disclosure method, and although OPR did not provide an official recommendation to the Boards, OPR advised that the self-disclosure method is effective and should work well should the applicant eligibility for these two professions include certain criminal history conviction requirements.

The Boards are able to implement a criminal history declaration form into the existing licensing programs as a condition for licensure eligibility. The Boards recommend the criminal self-disclosure affidavit as an efficient, effective mechanism to provide adequate assurance for safety of the public. This approach coupled with the Board's existing authority to investigate and render discipline under 26 V.S.A. will provide an additional layer of safety should the Legislature deem it appropriate.