

From: Herlihy, David <David.Herlihy@vermont.gov>
Sent: Monday, March 11, 2024 9:02 AM
To: Martin LaLonde <MLaLonde@leg.state.vt.us>; Maurer, Beth (she/her) <Elizabeth.Maurer@vermont.gov>; Hibbert, S. Lauren <Lauren.Hibbert@vermont.gov>; Simmons, Emily <Emily.Simmons@vermont.gov>; Desrochers, Michael <Michael.Desrochers@vermont.gov>; Dame, Bambi <Bambi.Dame@vermont.gov>; Moran, William <William.Moran@vermont.gov>
Cc: Layman, Lauren <Lauren.Layman@vermont.gov>; Michele Childs <MCHILDS@leg.state.vt.us>
Subject: RE: H.655 Licensing and sealed criminal convictions

Rep LaLonde –

1. *Do they access criminal records for licensing decisions?*

Each applicant is asked to disclose all criminal convictions and to provide documentation regarding the matters.

2. *What types of criminal offenses are relevant to the licensing decision? For example, we are not allowing sealing of criminal records that involve sex crimes or domestic abuse, and generally are excluding violent crimes.*

Vermont law provides that: “[t]he Board may refuse to issue a license or certificate to an applicant who applies to be licensed or certified under this chapter and who, by false or fraudulent representations, has obtained or sought to obtain practice in the profession, or by false or fraudulent representations in practice, has obtained or sought to obtain money or any other thing of value, or who assumes a name other than the applicant’s own for the purpose of misleading others, or for any other immoral, unprofessional, or dishonorable conduct.” 26 V.S.A. § 1398(a). The legal definition of unprofessional conduct includes: “(30) conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession, or failure to report to the Board a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction.” Looking at those two sections together, the Board’s obligation is to screen applicants for both “unprofessional” conduct and for “immoral [. . .] or dishonorable conduct.” Unprofessional conduct is any felony and any misdemeanor that relates to the practice of medicine. Misdemeanors that do not relate to the practice of medicine are reviewed to determine if they present immoral or dishonorable conduct.

3. How public is the licensing process? For example, if criminal records are used in the decision-making process, at what point would such records become public, if at all?

The licensing process consists of work by staff and meetings of board members. The public is not present while staff is performing their work, but the documents are all public records. When we receive a request for an applicant’s licensing documentation it must be reviewed to determine if any of the documentation should be withheld pursuant to the Vermont Public Records Act. We are guided by

the definitions 1 V.S.A. § 317. Examples of information that is withheld are Social Security Numbers and private medical information. Generally, public records relating to criminal convictions, such as charges and conviction records, must be released in response to a public records request.

The Licensing Committee of the Board meets to review applications that present issues that require discretionary review by members. Those meetings are public. Applications that include information that is not subject to public disclosure, such as private health information, are discussed in executive session as provided by 1 V.S.A. § 313. Discussion of public records about a criminal conviction would not be a proper basis for entering executive session. When the Board denies an application, the applicant may request a hearing and the hearing would be a public proceeding. During the course of a hearing, a party may move to close the hearing to protect certain information, such as a person's private medical information. I do not believe that information about a criminal conviction would normally be a basis for closing a hearing.

I hope you find this information helpful. Please let me know if you have any other questions about these issues.

David K. Herlihy
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From: Martin LaLonde <MLaLonde@leg.state.vt.us>
Sent: Thursday, March 7, 2024 4:54 PM
To: Maurer, Beth (she/her) <Elizabeth.Maurer@vermont.gov>; Hibbert, S. Lauren <Lauren.Hibbert@vermont.gov>; Herlihy, David <David.Herlihy@vermont.gov>; Simmons, Emily <Emily.Simmons@vermont.gov>; Desrochers, Michael <Michael.Desrochers@vermont.gov>; Dame, Bambi <Bambi.Dame@vermont.gov>; Moran, William <William.Moran@vermont.gov>
Cc: Layman, Lauren <Lauren.Layman@vermont.gov>; mchilds <mchilds@leg.state.vt.us>
Subject: Re: H.655 Licensing and sealed criminal convictions

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Thanks Lauren for reaching out to other licensing entities.

Here is what I need to know from each entity:

1. Do they access criminal records for licensing decisions?
2. What types of criminal offenses are relevant to the licensing decision? For example, we are not allowing sealing of criminal records that involve sex crimes or domestic abuse, and generally are excluding violent crimes.

3. How public is the licensing process? For example, if criminal records are used in the decision-making process, at what point would such records become public, if at all?

My current plan is to allow an exception to the use of sealed records by licensing entities. They would be able to access a confidential index of individuals who have a sealed record, access sealed records of applicants to determine their relevance, and use the information for their decisions. We may require that the sealed records remain confidential during the first two steps.

I'm happy to join a meeting on Monday to discuss. Also, we need to vote this bill out next week to make crossover and there will be a limited opportunity to take live testimony from everyone, though written testimony would be appreciated.

And please forward these messages to the additional individuals that Beth mentions, though no need to send to Jeffrey Wallin as we have already had him testify.

I am copying Michele Childs, our legislative counsel on this bill.

Best,
Martin LaLonde
Representative, South Burlington
Chair, House Judiciary Committee

From: Maurer, Beth (she/her) <Elizabeth.Maurer@vermont.gov>
Sent: Thursday, March 7, 2024 4:09 PM
To: Hibbert, S. Lauren <Lauren.Hibbert@vermont.gov>; Herlihy, David <David.Herlihy@vermont.gov>; Simmons, Emily <Emily.Simmons@vermont.gov>; Desrochers, Michael <Michael.Desrochers@vermont.gov>; Dame, Bambi <Bambi.Dame@vermont.gov>; Moran, William <William.Moran@vermont.gov>
Cc: Martin LaLonde <MLaLonde@leg.state.vt.us>; Layman, Lauren <Lauren.Layman@vermont.gov>; Maurer, Beth (she/her) <Elizabeth.Maurer@vermont.gov>
Subject: RE: H.655 Licensing and sealed criminal convictions

Hello Lauren and team ~

Thanks so much for reaching out and looping us into this conversation ~ it is a pleasure to meet you all. I do think it would be great to have a Teams meeting understanding, of course, how busy everyone; to hear from colleagues who operate in worlds different than mine could be beneficial. With that said if schedules do not allow and you need something in writing, please let me know and I would be happy to pull something together for you.

When I think about who else might have/want a voice in this conversation I think about our colleagues from the Family Services Division (FSD) who license foster and adoptive parents, Stacey Edmunds, Director of the Residential Licensing and Special Investigations Unit – RLSI – would likely be a great resource in the conversation. In the same stream of consciousness here I also think about our designated agencies (DA's and SSA's) who are child placing agencies in the private sector and how this bill could impact their work. I also wonder if Jennifer Myka, FSD's legal counsel might be interested in joining the conversation given she works with both FSD and CDD to help us think this through as I imagine that the request to unseal criminal records could create a workload for legal (merely a speculation on my part with limited information at this point) and that Jennifer's cross-division expertise could be invaluable to the conversation.

I also think about our colleagues from the Vermont Criminal Information Center and inviting Jeffrey Wallin to the conversation – while VCIC does not issue specific professional licenses I do wonder what their thoughts are about this bill and its impact on their work (if any?).

These are just my preliminary thoughts after reading your email – now onto reading the bill and your testimony – thank you for providing both!

And thank you, again for the opportunity to discuss this bill; I look forward to our work together.

Warmly,
Beth

From: Hibbert, S. Lauren <Lauren.Hibbert@vermont.gov>
Sent: Thursday, March 7, 2024 12:53 PM
To: Herlihy, David <David.Herlihy@vermont.gov>; Simmons, Emily <Emily.Simmons@vermont.gov>; Desrochers, Michael <Michael.Desrochers@vermont.gov>; Maurer, Beth (she/her) <Elizabeth.Maurer@vermont.gov>; Dame, Bambi <Bambi.Dame@vermont.gov>; Moran, William <William.Moran@vermont.gov>
Cc: Martin LaLonde <mlalonde@leg.state.vt.us>; Layman, Lauren <Lauren.Layman@vermont.gov>
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With apologies, I forgot to include Lauren Layman.

From: Hibbert, S. Lauren
Sent: Thursday, March 7, 2024 12:52 PM
To: Herlihy, David <David.Herlihy@vermont.gov>; Simmons, Emily <Emily.Simmons@vermont.gov>; Desrochers, Michael <Michael.Desrochers@vermont.gov>; Maurer, Beth (she/her) <Elizabeth.Maurer@vermont.gov>; Dame, Bambi <Bambi.Dame@vermont.gov>; Moran, William <William.Moran@vermont.gov>

Cc: Martin LaLonde <mlalonde@leg.state.vt.us>

Subject: H.655 Licensing and sealed criminal convictions

Hello, Fellow Licensing Folks and Representative LaLonde,

I am emailing to connect us all. For purposes of introduction, Representative LaLonde is the Chair of the House Judiciary Committee, David Herlihy is the Executive Director of the Board of Medical Practice (within the Department of Health, AHS), Emily Simmons is the General Counsel for the Agency of Education, Mike Desrochers is the Executive Director of the Division of Fire Safety (with the Department of Public Safety), Beth Maurer is the Director of Child Care Licensing (within the Child Development Division, Department of Children and Families, AHS), and Bambi Dame is the EMS Chief (within the Department of Health, AHS). I am the Deputy Secretary of State and previous Director of the Office of Professional Regulation. Lauren Layman is the General Counsel for the Office of Professional Regulation.

Whew. We are a big and diverse group. Please let me know if I am missing anyone responsible for occupational/professional licensure in the State of Vermont. There are some of you I have not met yet in person or the virtual world. It is a pleasure to meet you!

I am emailing you all collectively because last week, Lauren Layman and I testified before the House Judiciary Committee regarding H.655, which is a bill that expands the types of crimes where a conviction would be sealable. As you likely know, once convictions are sealed, they are not visible on fingerprint-supported criminal background checks nor does the conviction have to be disclosed when asked about an individual's criminal history. The most recent version of the bill can be found [here](#).

Our testimony can be found [here](#). The language of H.655 was modified a bit between when we filed the testimony and the current draft. Essentially, we requested that licensing entities have access to sealed criminal records to make licensure determinations (both initial and disciplinary). We (OPR) are asking to be included in the exceptions found in 13 V.S.A. §7607(c). Procedurally, this would mean that licensing entities would have access to a special index of cases that are sealed; then, if needed, a licensing entity would be able to access the sealed record and use it in a licensing determination. There was a discussion in the committee about if a licensing entity would be required to go to court to unseal a conviction and if yes, what would have to be shown for unsealing OR if it could be used without the conviction being permanently unsealed in a public licensing case.

As we told the committee, we think it might be helpful for the committee to hear from you so they could understand the effect of these changes on the licensing decisions you make. Before that, I would be happy to coordinate a meeting with all of us and Rep. LaLonde either in the cafeteria or via Teams.

I look forward to hearing from you all,

Lauren

S. Lauren Hibbert (she/her)
Deputy Secretary of State, Secretary of State

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