



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

10/30/2019 12:30:29 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Occupational Therapy TITLE-SERIES: 13-08

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Consideration of Prior Criminal Convictions in Initial Licensure Determinations

CITE STATUTORY AUTHORITY: 30-1-24, 30-28-7

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/30/2019 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: WV Board of Occupational Therapy

ADDRESS: 1063 Maple Dr., Suite 4B  
Morgantown, WV 26505

EMAIL: vmalnikoff@wvbot.org

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Establishes procedures for consideration of prior criminal convictions in initial licensure determinations.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Passage of HB118 during 2019 First Extraordinary Session

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No fiscal impact

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Vonda K Malnikoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

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TITLE 13  
LEGISLATIVE RULE  
BOARD OF OCCUPATIONAL THERAPY

SERIES 8  
CONSIDERATION OF PRIOR CRIMINAL CONVICTIONS  
IN INITIAL LICENSURE DETERMINATIONS

**§13-8-1. General.**

1.1. Scope. -- This rule establishes procedures for consideration of prior criminal convictions in initial licensure determinations.

1.2. Authority. -- W. Va. Code §30-1-24, and W. Va. Code §30-28-7

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five (5) years from final filing date.

**§13-8-2. Definitions.**

2.1. "Board" means the West Virginia Board of Occupational Therapy established pursuant to W. Va. Code §30-28-1 et seq.

2.2. "Initial licensure" means obtaining a license in West Virginia for the practice of occupational therapy for the first time.

2.3. "License" or "licensure" means the official authorization by the board to practice occupational therapy.

2.4. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

**§13-8-3. Rational nexus to the practice of occupational therapy.**

3.1. The board may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the practice of occupational therapy. In determining whether a criminal conviction bears a rational nexus to occupational therapy, the board shall consider at a minimum:

3.1.a. The nature and seriousness of the crime for which the individual was convicted;

3.1.b. The passage of time since the commission of the crime;

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3.1.c. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of an occupational therapist or occupational therapy assistant; and

3.1.d. Any evidence of rehabilitation or treatment undertaken by the individual.

**§13-8-4. Application after denial.**

4.1. If an applicant has been denied licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

4.1.a. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

4.1.b. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

4.1.c. The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the board on a case by case basis.

**§13-8-5. Petition for licensure eligibility determination.**

5.1. An individual with a criminal record who has not previously applied for licensure may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

5.2. The petition shall be submitted on an application form prescribed by the board and shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

5.3. The applicant may submit, with the petition for licensure eligibility, evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice occupational therapy.

5.4. The board shall provide the determination within 60 days of receiving the petition and the applicable fee, as prescribed by the board, from the applicant.