



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

Board of Examiners for Audiologists,
Hearing Aid Dispensers, Speech-Language
Pathologists & Music Therapists
4201 Patterson Avenue
Baltimore, Maryland 21215

February 7, 2024

The Honorable C.T. Wilson
Chair, House Economic Matters Committee
Room 231 House Office Building
Annapolis, MD 21401-1991

Re: HB 175 Occupational Licensing and Certification – Criminal History – Prohibited Disclosures and Predetermination Review Process – Letter of Concern

Dear Chair Wilson and Committee members:

The State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists (the “Board”) is submitting this Letter of Concern for HB 175 Occupational Licensing and Certification – Criminal History – Prohibited Disclosures and Predetermination Review Process. The bill provides the various circumstances under which certain departments of State government, including the Department of Health, and its various units, including the Board, may deny a license or certificate based upon the criminal history of the applicant.

The bill provides that an applicant for an occupational license may not be required to disclose the following on an application: A deferred adjudication; participation in a diversion program; an arrest not followed by a conviction; a conviction for which no term of imprisonment may be imposed; a conviction that has been sealed, vacated, dismissed, expunged, or pardoned; an adjudication of a delinquent act as a juvenile; a conviction for a misdemeanor that did not involve physical harm to another individual; a conviction for which a period of 3 years has passed since the applicant completed serving their sentence if the sentence did not include a term of imprisonment; or unless the conviction was for a crime of violence as defined in § 14-101 of the Criminal Law Article, a conviction for which a period of 3 years has passed since the end of the individual’s term of imprisonment.

The bill also changes the threshold by which a Board may deny a prospective licensee licensure by replacing the “unreasonable risk to property or to the safety or welfare of specific individuals

or general public” standard with the “direct and substantial threat to public safety or specific individuals or property” standard.

In addition, the bill provides that an individual may file a predetermination request with a board for review of the individual's criminal history to determine whether the individual's criminal history would disqualify the individual from obtaining the occupational license. The predetermination is binding on the board unless there is a subsequent direct and material adverse change to the individual's criminal history.

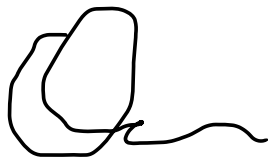
The Board is concerned that the process for requesting and obtaining a written determination from the Board is similar to, but not identical to, the existing process for petitioning a state unit for a declaratory ruling under Md. Code Ann., State Gov't § 10-301, et seq. A petition for a declaratory ruling request “the manner in which the [State] unit would apply a ... statute that the unit enforces to a person ... on the facts set forth in the petition.” State Gov't § 10-304(a). Because there is no provision for a state unit to charge a fee for considering a petition for a declaratory ruling, a potential applicant could avoid paying any fee to the Board to conduct an assessment under the bill by petitioning for a declaratory ruling under the State Gov't provisions.

The Board also reviews prospective licensees' criminal records as a matter of course, both self-reported and through obtaining a criminal history report. The Board routinely communicates with prospective licensees regarding any criminal justice system contacts, inviting prospective licensees to explain the circumstances around any convictions. The Board is concerned that the addition of a predetermination process is duplicative of the Board's current procedures and would place an additional burden on Board staff.

For these reasons, the Board strongly urges an unfavorable report on HB 175.

If you would like to discuss this further, please contact me at (443) 832-0597 or at keena.stephenson1@maryland.gov.

Respectfully,

A handwritten signature in black ink, appearing to read 'Keena S. Stephenson', with a long, sweeping horizontal stroke extending to the right.

Keena S. Stephenson
Executive Director

The opinion of the Board expressed in this document do not necessarily reflect that of the Department of Health or the Administration.