

**WEST VIRGINIA LEGISLATURE**  
**2019 FIRST EXTRAORDINARY SESSION**

**Introduced**

**House Bill 104**

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

BY REQUEST OF THE EXECUTIVE

[Introduced May 20, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §30-20-8a, relating to authorizing the West Virginia Board of Physical Therapy  
3 to conduct criminal background checks on applicants seeking their initial license; requiring  
4 applicants seeking initial license to submit to national and state criminal record  
5 background check as condition of eligibility for license; mandating such applicants to  
6 submit fingerprints and authorize board, West Virginia State Police, and Federal Bureau  
7 of Investigation to use records submitted to screen applicants; prohibiting release of  
8 background check results, with certain exceptions; establishing that background check  
9 records are not public records for purposes of chapter 29B of said code; obligating such  
10 applicants to complete background check as soon as possible after application for license;  
11 requiring applicants to pay costs of fingerprinting and background check; prohibiting board  
12 from disqualifying applicants from licensure because of prior conviction unless conviction  
13 was for crime bearing rational nexus to the occupation for which licensure is sought;  
14 barring board from using crimes of moral turpitude to make licensure decisions; allowing  
15 applicants disqualified for licensure because of criminal conviction to reapply after five  
16 years after later date of conviction or date of release from penalty imposed for conviction  
17 and providing exception for violent or sexual offenses; establishing procedure for  
18 individuals with criminal records to petition board for determination whether such criminal  
19 record will disqualify individual from obtaining licensure; and requiring rulemaking by a  
20 certain deadline.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 20. PHYSICAL THERAPISTS.**

### **§30-20-8a. West Virginia Board of Physical Therapy criminal history record checks.**

1 (a) The West Virginia Board of Physical Therapy is authorized to require state and national  
2 criminal history record checks for the purpose of issuing licenses. The West Virginia Board of  
3 Physical Therapy shall require an applicant, including physical therapists and physical therapy

4 assistants, as a condition of eligibility for initial license to submit to a state and national criminal  
5 history record check as set forth in this section.

6 (b) The applicant shall meet all requirements necessary to accomplish the state and  
7 national criminal history record check, including:

8 (1) Submitting fingerprints for the purposes set forth in this subsection; and

9 (2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of  
10 Investigation to use all records submitted and produced for the purpose of screening the applicant  
11 for a license.

12 (c) The results of the state and national criminal history record check may not be released  
13 to or by a private entity except:

14 (1) To the individual who is the subject of the criminal history record check;

15 (2) With the written authorization of the individual who is the subject of the criminal history  
16 record check; or

17 (3) Pursuant to a court order.

18 (d) The criminal history record check and related records are not public records for the  
19 purposes of §29B-1-1 et seq. of this code.

20 (e) The applicant shall ensure that the criminal history record check is completed as soon  
21 as possible after the date of the original application for registration.

22 (f) The applicant shall pay the actual costs of the fingerprinting and criminal history record  
23 check.

24 (g) The board may not disqualify an applicant for initial licensure because of a prior criminal  
25 conviction that has not been reversed unless that conviction is for a crime that bears a rational  
26 nexus to the occupation requiring licensure.

27 (h) The board may not use crimes involving moral turpitude in making licensure  
28 determinations.

29 (i) If an applicant is disqualified for licensure because of a criminal conviction that has not

30 been reversed, the board shall afford the applicant the opportunity to reapply for licensure after  
31 the expiration of five years from the date of conviction or date of release from the penalty that was  
32 imposed, whichever is later, if the individual has not been convicted of any other crime during that  
33 period of time: *Provided*, That convictions for violent or sexual offenses or offenses shall subject  
34 an individual to a longer period of disqualification, to be determined by the board.

35 (j) An individual with a criminal record who has not previously applied for licensure,  
36 certification, or registration may petition the board at any time for a determination of whether the  
37 individual's criminal record will disqualify the individual from obtaining a license or other  
38 authorization to practice. This petition shall include sufficient details about the individual's criminal  
39 record to enable the board to identify the jurisdiction where the conviction occurred, the date of  
40 the conviction and the specific nature of the conviction. The board shall inform the individual of  
41 his or her standing within 60 days of receiving the petition from the applicant. The board may  
42 charge a fee established by rule to recoup its costs for each petition.

43 (k) The board shall propose rules or amendments to existing rules for legislative approval  
44 to comply with the provisions of this section. These rules or amendments to rules shall be  
45 proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time  
46 limit to be considered by the Legislature during its regular session in the year 2020.

NOTE: The purpose of this bill is to authorize the Board of Physical Therapy to request criminal background checks of applicants for initial licensure by the board and to establish conditions for the handling of the resulting information.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.