

(PROPOSED FOR DISCUSSION)

69K-1.009 Effect of Law Enforcement Records on Applications for Licensure.

(1) For the purposes of this rule chapter, the following definitions will apply:

(a) “Applicant” means an individual applying for licensure or relicensure under Chapter 497, F.S., and an officer, director, majority owner, partner, manager, or other person who manages or controls an entity applying for licensure or relicensure under Chapter 497, F.S.

(b) “Application” or “application process” refers to an application for licensure procedurally processed under Chapter 497, F.S.

(c) “Charge” or “charges” refers to the official allegations contained in the official document setting out the crimes that an applicant is alleged to have committed, including an “information,” “indictment,” or other document that specifies the charges against an applicant.

(d) “Felony” means and includes any crime of any type, whether or not related to the death care industry, which crime is designated as a “felony” by statute in the jurisdiction of prosecution, or designated as a “felony” in the charges. If a crime is a felony in the jurisdiction of prosecution, it will be treated as a felony under this rule notwithstanding that the same activity is not a felony in Florida. The term “felony” includes felonies of all degrees.

(e) “Law enforcement record” includes the following:

1. Any criminal charge filed against the applicant in the courts of any state or federal district or territory, or other country, for which the applicant pled guilty or no contest, regardless of whether there was an adjudication of guilt by the court, or for which the applicant was found guilty, and regardless of whether the matter is under appeal by the applicant; and,

2. Criminal charges that were subsequently pardoned or for which civil rights have been restored. The phrase includes criminal charges which, at the time of the application, are under an order to seal by a court of competent jurisdiction; and

3. All criminal charges against the applicant, whether by information or other charging document, even where no formal determination of disposition has been made.

(f) “Misdemeanor” means and includes any crime of any type which is designated as a “misdemeanor” by statute in the jurisdiction of prosecution, or is so designated in the charges. If a crime is considered a misdemeanor in the jurisdiction of prosecution, it will be treated as a misdemeanor under this rule chapter notwithstanding that the same activity is not a misdemeanor in Florida. The term includes misdemeanors of all degrees.

(2) Law Enforcement Records and Required Documentation. The licensing authority uses law enforcement records to determine whether an applicant is subject to the permanent bar or disqualifying periods set forth in Section 497.1411, F.S., including determining whether an applicant has the requisite character pursuant to Sections 497.263, 497.264, 497.281, 497.368, 497.369, 497.371, 497.373, 497.374, 497.380, 497.385, 497.453, 497.602, 497.604, and 497.606, F.S.

(a) As provided by statute, an applicant for licensure is required to disclose the applicant’s law enforcement record.

During the application process, which process continues up to the time of the issuance of a license or the denial of the application, the applicant is required to accurately and truthfully answer questions about the applicant's law enforcement record. The applicant is responsible for the accuracy of all information contained in any application submitted by the applicant or submitted by another person on the applicant's behalf, including documents or information submitted during the application process related to the law enforcement record.

(b) As provided by statute, an applicant must provide the Department with fingerprints and permit the Department to obtain the applicant's law enforcement record from the Florida Department of Law Enforcement and the Federal Bureau of Investigation. The Department will not process an application when fingerprints are required until the Department receives readable and properly executed fingerprints. Applications are incomplete until fingerprints are received.

(c) At the direction of the Department, as a part of the application process, and in addition to the application, the following documentation is required to be submitted by the applicant:

1. A true and complete copy of the police arrest affidavit or arrest report or similar document for all arrests.
2. A true and complete copy of the charging document, such as an information, indictment, or ticket.
3. A true and complete copy of the plea, judgment, and sentence.
4. A true and complete copy of the order of entry into pre-trial intervention, where applicable, and the order of termination of pre-trial intervention showing dismissal of the charges.
5. A true and complete copy of any order of restoration of civil rights.
6. A true and complete copy of any order sealing court records.
7. A true and complete copy of any order expunging court records.
8. A true and complete copy of any pardon.

(d) If during the application process the Department requests that an applicant submit documentation related to the applicant's law enforcement record but that documentation cannot be obtained because the document no longer exists, the applicant must supply a certified or sworn statement, signed by a representative of the agency that would have been the custodian of such documentation. The custodian must indicate that documentation of such matter does not exist or that the record was lost, damaged or destroyed, or otherwise indicate why the documentation cannot be produced.

(e) All requested documentation must be legible.

(f) The requirements set forth in this rule continue throughout the application process and apply to all types of applications including initial applications, applications for additional licenses and applications for reinstatement of a previously suspended license.

(3) Effect of Failure to Truthfully Answer Application Questions Regarding Applicant's Law Enforcement Record.

(a) The existence of an applicant's law enforcement record is considered a material element of the application and the application process and the failure to accurately and truthfully answer application questions or Department requests regarding the law enforcement record is considered a material misrepresentation or material misstatement under Section 497.152(4)(f), F.S.

(b) If an applicant fails to accurately and truthfully answer the licensing authority's questions about the applicant's law enforcement record related to law enforcement background, the application will be denied.

(4) Applicants With Multiple Crimes.

(a) Where an applicant has committed multiple crimes, a base period of disqualification and an additional period of disqualification will be calculated as follows:

1. The base period is the disqualifying period which is, or was, the last to expire.
2. Two years will be added to the base period for each additional felony not involving moral turpitude and not subject to the permanent bar in Section 497.1411, F.S.; and,
3. Two years will be added to the base period for each additional misdemeanor directly related to the death care industry.

(b) The combined total disqualifying period will begin upon the applicant's final release from supervision or completion of the sentence for the crime upon which the base period is established.

(c) Multiple crimes arising out of the same act, or related acts, performed over a relatively short period of time and in a concerted course of conduct, and crimes committed in one transaction, episode, or course of conduct are treated by the licensing authority as one crime for application of this rule. For the crimes to be considered a single crime, the applicant must have pled to or been convicted of such crimes on the same date and the judgment and sentence for those crimes must have been imposed concurrently. In such cases, the crime with the longest associated disqualifying period will be used for the base period calculation.

(5) Mitigating Factors.

(a) If applicable, the mitigating factors listed below will be used to shorten the total disqualifying period only when the 10-year disqualifying period established in Section 497.1411, F.S., is applicable. Where more than one mitigating factor is present, the applicant is entitled to add all applicable years of mitigation together and deduct that number from the total disqualifying period only when the 10-year disqualifying period is applicable; however, the 10-year disqualifying period may not be reduced to less than five years. The following Mitigating factors apply:

1. One year is deducted if the applicant was age 21 or younger when the felony crime which is the basis for the disqualifying period was committed and if there are no felony crimes on the applicant's law enforcement record after reaching the age of 22.
2. One year is deducted if the applicant furnishes proof that the applicant was addicted to drugs, suffering from active alcoholism, or suffering from a psychiatric disorder, at the time of the crime which is the basis for the disqualifying period and the applicant furnishes a letter from a medical doctor, psychologist, or therapist, who is licensed by a duly constituted state licensing body, that states that the licensed person has examined or treated the applicant and that in his or her professional opinion the condition is currently in remission and has been in remission for at least the previous 12 months.
3. One year is deducted if the applicant provides letters of recommendation from three or more persons who are not

relatives of the applicant and who have known the applicant for at least the five years immediately preceding the application.

4. One year is deducted for each associate degree, bachelor's degree, master's degree or other higher education degree earned by an applicant from an accredited institution of higher learning subsequent to the commission of the crime which is the basis for the disqualifying period.

5. One year is deducted if the applicant has performed 180 or more hours of volunteer work for a charitable organization within the three years immediately preceding the application, as evidenced by a letter signed by an official of the charitable organization where the volunteer hours were performed.

6. One year is deducted if the applicant has held one or more professional licenses from any jurisdiction or professional licensing organization for at least one year within the five years immediately preceding application and subsequent to the commission of the crime which is the basis for the disqualifying period, and only if the applicant held the license during that time period without administrative action being taken.

7. One year is deducted if the applicant has been employed at least 40 hours per week for a continuous two-year period within the five years immediately preceding the application as evidenced by a letter from the employer(s), tax forms, or pay stubs.

8. One year is deducted if the applicant has served at least one year in the United States Armed Forces, active or reserves, subsequent to the commission of the crime which is the basis for the disqualifying period and provided the discharge was honorable.

(b) The burden is on the applicant to establish these mitigating factors. Any of the mitigating factors must be established by providing a true and complete copy of the document proving that mitigating factor.

(7) Aggravating Factors.

(a) The following aggravating factors apply:

1. Two years are added to the disqualifying period if the applicant's law enforcement record indicates that a crime that is the basis of the disqualifying period victimized a natural person who was over age 65 at the time the crime was committed;

2. One year is added to the disqualifying period if the applicant was found by the court to have violated probation for the crime or crimes used to establish the disqualifying period;

3. One year is added to the disqualifying period if the applicant was found to have committed a crime involving aggravated violence in which bodily injury resulted;

4. One year is added to the disqualifying period if any regulatory action was taken against the applicant by any regulatory authority that resulted in a penalty being imposed and was not based on failure to change an address or failure to report an administrative action;

5. One year is added to the disqualifying period and in addition to subsection (4), above, if any regulatory action was taken against the applicant by any regulatory authority for an action by the applicant that caused consumers or clients

financial harm or loss in an amount over \$10,000.00;

6. One year is added to the disqualifying period if the applicant's law enforcement record contains a crime that caused financial harm to any person in an amount over \$10,000.00.

(b) The burden is on the applicant to rebut evidence of any and all aggravating factors used by the licensing authority to deny the application.

(8) Collateral Attack on Criminal Proceedings. The licensing authority will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results.

(9) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The statutory grounds for denial of licensure exist immediately upon an entry of judgment, regardless of whether an appeal is or is not allowed to be or is being taken.

(b) If on appeal the judgment is reversed, and the judgment was the basis for the licensing authority's denial of an application, then the applicant may reapply for licensure after providing proof of the reversal.

(10) Sealed or Expunged Criminal Records.

(a) Pursuant to Sections 943.0585(6) and 943.059(6), F.S., an applicant is required to disclose or acknowledge, and is not permitted to affirmatively deny, any arrest or criminal proceeding when the record of such has been legally and properly sealed by order of a court of competent jurisdiction or by operation of law in the jurisdiction in which the arrest or criminal proceeding took place prior to the time of application.

(b) The licensing authority will not withhold or stay the issuance of a denial of a license application pending action on requests for sealing or expunging criminal records.

(c) An expunged crime will not be considered by the licensing authority as a basis for denial or disqualification of an applicant.

(11) Disclosure and Effect of a Pardon or Restoration of Civil Rights.

(a) A crime for which an applicant has been granted a pardon or has had his or her civil rights restored under Chapter 940, F.S., and section 8, Article IV, Florida Constitution, will not be subject to the disqualifying periods in Section 497.1411, F.S., unless such clemency specifically excludes licensure in the death care industry. The applicant's fitness and trustworthiness after a pardon or restoration will be evaluated as provided in Section 497.1411, F.S., according to the following factors:

1. The facts and circumstances of the criminal offense for which the pardon was granted or the applicant's civil rights were restored.

2. The applicant's criminal history, if any, subsequent to the pardon or restoration of rights.

3. Whether the applicant has completed any supervision or sanction associated with any crime.

(b) The licensing authority will not withhold or stay denial of a license application pending action on requests for a pardon or restoration of civil rights.

(12) Effect of Varying Terminology.

(a) For purposes of this rule, if the applicant's crime took place outside of Florida and is not defined or categorized as a felony or misdemeanor crime, the licensing authority will analogize the crime to the most similar crime under Florida laws by using the elements of that crime as defined in the statute of the jurisdiction in which the applicant was prosecuted and matching those elements to the most similar Florida Statute.

(b) With regard to the following six subparagraphs, the licensing authority treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.
2. Found guilty; entered a finding of guilt.
3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.
4. Nolo contendere; no contest; did not contest; did not deny; no denial.
5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.
6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(c) When necessary, the licensing authority will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(13) Supervised Persons. The licensing authority will not license any applicant while the applicant is imprisoned, in custody, under supervision, on probation, serving a sentence, or in a pre-trial intervention, diversion, or other similar program, for any felony or misdemeanor directed related to the death care industry.

(14) Effect of Disqualifying Periods. The disqualifying periods applied pursuant to Section 497.1411, F.S., or established in this rule do not give an applicant a right to licensure after any set period of time. After the disqualifying period, an applicant may re-apply for licensure and the law in effect at the time will apply to that application.

(15) Foreign Law Enforcement Records. In the event that a law enforcement record includes convictions, charges, or arrests outside the United States, the licensing authority will consider the following factors to reduce, eliminate, or apply a disqualifying period or to determine if the permanent bar under Section 497.1411, F.S., is applicable:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States; and,

(b) The degree of penalty associated with the same or similar crimes in the United States.

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