

# Virginia Board of Nursing Criminal Background Check Process

# Objectives

- Legal authority for VBON and Criminal Background Checks (“CBCs”)
- CBCs and impact on public safety
- Terms, Tools and Resources used by VBON in the Criminal Background Check (“CBC”) process
- Identify how CBC information may be utilized by VBON in licensure decision making

# Authority for CBCs

- Virginia Code § 54.1 – 3005.1 ([54.1-3005.1](#)).

*The Board shall require each **applicant** for licensure as a practical nurse, registered nurse or licensed massage therapist to submit fingerprints and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information...*

# Why CBC?

- Nurses and Massage Therapists work with vulnerable populations. Therefore, it is in the public interest to review criminal conduct and past behavior in the licensing process.
- Applicants with criminal histories may omit information on applications.
- Fingerprint-based CBC are objective and reliable.
- VBON responsibility to exclude individuals from licensure/registration who pose a risk to the public health and safety.

# Who?

- All individuals seeking initial RN, LPN and Massage Therapist (LMT) licensure.
- Includes applicants for licensure by exam and endorsement.
- Includes applicants for reinstatement.

# Terms

- **Criminal background check(CBC)** –utilizing fingerprints (biometrics), a search for evidence of an individual's criminal history in the national criminal history record files and state criminal justice data repositories.
- **Criminal conviction record** means criminal history information obtained from sources other than the FBI pertaining to an individual's conviction of a crime.

# Terms

- **FBI identification record**-a listing of certain information taken from fingerprint cards, submitted to and retained by the FBI. If a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI *and as submitted* by agencies having criminal justice responsibilities.
- **RAP Sheet**-Record of Arrests and Prosecution as maintained by state and federal databases (e.g. FBI/VSP).
- **Source Documents** – Includes arrest reports, charging documents, pre-sentence reports, plea agreements, sentencing reports, court conviction documents, probation reports.

# What is considered a Criminal Conviction?

- The final judgement on a verdict or finding of guilty, plea of guilty, or a plea of *nolo contendere* and does not include a final judgment which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory (See Black's Law Dictionary).
- In Virginia, a “conviction” occurs upon a verdict or finding of guilt, the pronouncement of sentence, and the entry of the final order by the trial court (See Rule 1:1 Virginia Supreme Court).

# What is a “Deferred” finding by a court?

- For certain criminal offenses, a court may taking a finding of guilt “under advisement” or “defer the finding” for a set period of time with certain conditions (e.g. no further arrests, attending anger management classes, etc.).
- Is a deferred finding a “conviction”?
  - If a deferment and a person successfully completes the terms of the court’s order, then the charge may be dismissed and there is no conviction.
  - However, if a person does not complete the terms of the court’s order, there may be a finding of guilt and this would be a conviction.

# Disclosure

**It is important to consider when submitting your VBON license application:**

- You are required to disclose any convictions.
- You are not required to disclose arrests if you were not convicted and no further action resulted from the arrest(s).
  - However, if you were fingerprinted upon arrest for a criminal offense, it will show up on your RAP sheet.

# CBC Results

What happens with the results?

- Results are reviewed by the Board to determine:
  - if contains any convictions;
  - if contains convictions that meet the criteria under [Virginia Code § 54.1-3007](#) for referral to Board for action;
  - if disclosed on previous application(s).
- After review process complete, applicants may be notified of the outcome by letter and/or the status will be updated on the “checklist”.

# Notification Letters

- Notification Letters to Applicants may indicate:
  - Applicant's record revealed no conviction(s), therefore, application for license may proceed through the licensing process.
  - Applicant's record revealed conviction(s) that may meet the criteria for cause for denial or Board action in accordance with the BON process for non-routine applications.

# Notification Letters (cont.)

- Applicant's record revealed conviction(s) that warranted approval by the Executive Director, or designee, to continue the licensing process.
- Applicant's record revealed convictions not disclosed [on current application] or [on previously submitted application documentation]; therefore, this failure to disclose conviction information may be grounds for disciplinary action or cause for denial of license.

## Convictions Referred for Board Actions under § 54.1-3007

- Conviction of any Felony or any misdemeanor involving “moral turpitude” (lying, cheating, stealing, etc.).
- Convictions that indicate a possible impairment or pattern of impairment (DUI, drug possession, etc.).
- Convictions not disclosed on current or previous applications\* (\*applies to reinstatements).
  - Failure to disclose convictions may be considered *fraud or deceit in procuring or attempting to procure a license.*

# Other Factors Considered in Determination

Each application is considered on case by case basis and there are NO absolute bars to obtaining a nursing or massage therapist license.

However, the following factors are considered:

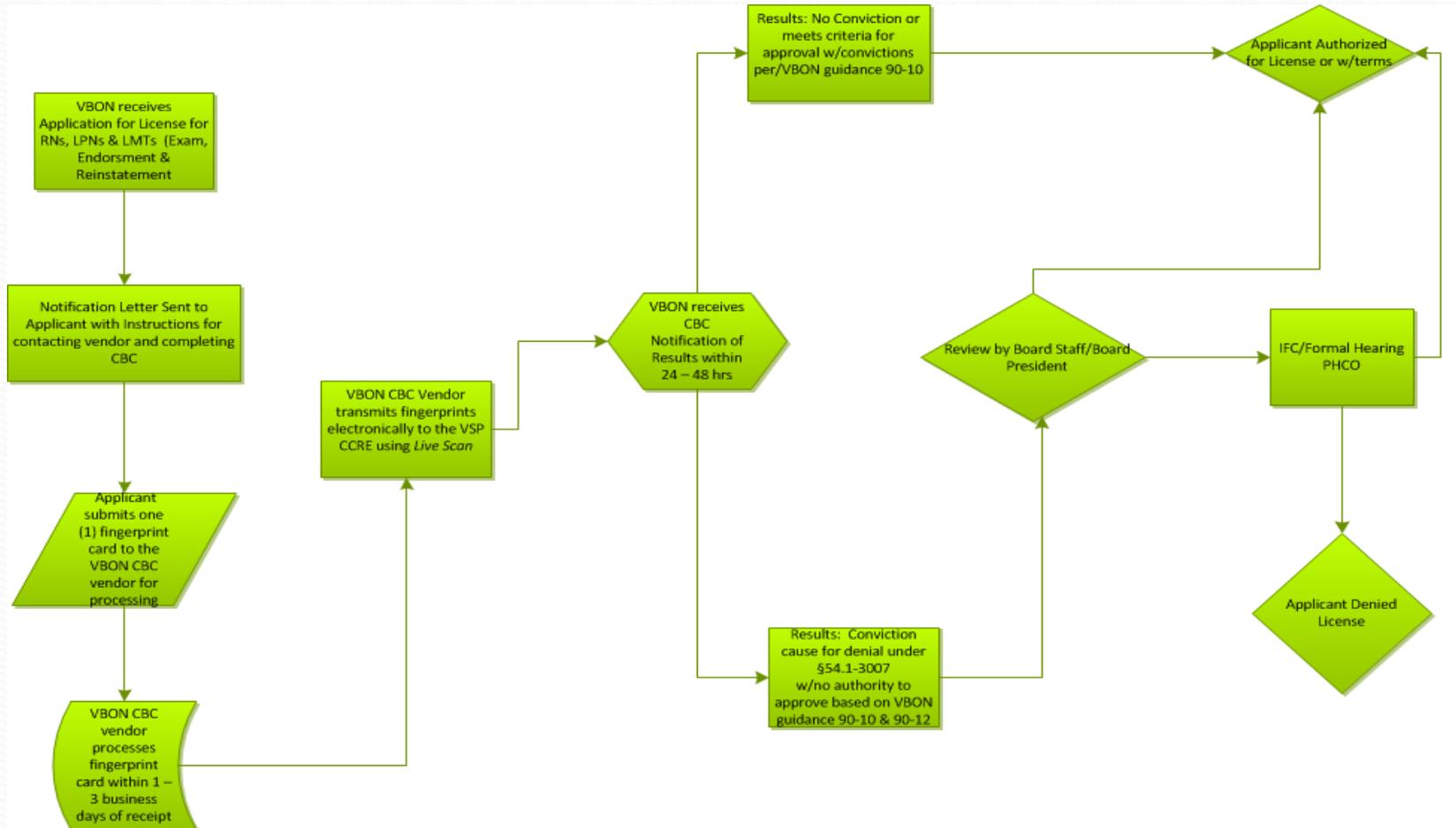
- Number and/or pattern of convictions.
- Nature of convictions.
- Recency of convictions (See: [BON Guidance 90-10](#) and [BON Guidance 90-59](#)).

For more detailed information, DHP issued a Joint Statement with the VBON with regard to the impact of criminal histories on licensure (or employment) at: [DHPBON Joint Guidance Doc 90-55.doc](#).

# Challenging Results

- What if I do not agree with the FBI results?
  - You will have an opportunity to challenge the *accuracy* of the results, in accordance with the *Applicant's Rights* (See: [Applicants Challenge Instructions \(FBI\)](#) & [Applicant Challenge Instructions \(VSP\)](#))
  - If you decide to challenge, you must notify the VBON CBC Unit by letter (with a copy of the challenge to the FBI) within **14 calendar days** from the date you are notified by VBON regarding results that may affect your license application.
  - VBON will hold a final decision regarding your license application in abeyance until final determination is received from the FBI, which may take up to 90 days to complete.

# CBC Work Flow



# Decision/Policy Issues

- Time frames for decision making:
  - ❑ CBC may only be requested after application is received by BON.
  - ❑ Applications may only remain active for up to 1 year.
    - How long will criminal background check results be considered valid once requested by applicant? **90 days** which may only be extended by the Board President based on good cause.
    - How long will an applicant have to challenge CBC results before a final decision on the application is rendered? **14 calendar days** from the date the applicant is notified by VBON regarding results.