



INSTITUTE FOR JUSTICE

November 22, 2019

**Via Electronic Submission**

Mr. Steve Moninger  
Regulatory Services Division  
Texas Department of Public Safety  
P.O. Box 4087, MSC-0240  
Austin, Texas 78773-0246

RE: Institute for Justice's Comments on October 25, 2019 Proposed Amendments to *Guidelines for Disqualifying Criminal Offenses*, 37 Tex. Admin. Code § 35.4

Dear Mr. Moninger,

The Institute for Justice (IJ) supports the proposed amendments to *Guidelines for Disqualifying Criminal Offenses*, 37 Tex. Admin. Code § 35.4, published in Proposed Rule, 44 Tex. Reg. 6306, 6308-10 (Oct. 25, 2019). IJ is a national nonprofit organization that fights against laws that irrationally burden peoples' right to pursue their chosen livelihood. These laws include those that burden a qualified person's access to their desired occupation because of irrelevant criminal convictions.<sup>1</sup>

In July 2019, IJ received copies of public records reflecting the Texas Department of Public Safety's denials of private security license applications for about 1,200 people. Review of these records revealed that the Department often denied applications based on irrelevant, and sometimes decades-old, criminal convictions, including a single conviction of marijuana possession and first-time convictions of driving while intoxicated. Denying occupational licenses under such circumstances is arbitrary and, ironically, decreases public safety by increasing recidivism rates.

IJ is gratified to see the proposed changes to § 35.4, which signal that positive change is on the horizon. Each of the proposed changes to § 35.4 sensibly enhances the opportunities for those who have served their criminal sentences to obtain gainful employment in the private security industry.

Especially praiseworthy is the proposed removal of the former § 35.4(f), which allowed the private security licensing authority to revoke, suspend, or deny a private security license

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<sup>1</sup> You may recall that I spoke with you over the phone on October 11, 2019, about how the Texas Department of Public Safety is updating the rules to enhance opportunities for people who have served their criminal sentences to obtain gainful employment. I sent you a follow-up email later that day and attached a September 25, 2019 letter from my colleague, IJ senior attorney Jeff Rows.

because the applicant had a “[c]onviction for a felony or class A offense that does not relate to” private security. 44 Tex. Reg. at 6309. Eliminating this provision would make the regulation consistent with recently amended section 53.021(a) of the Texas Occupations Code. In those amendments, which became effective on September 1, 2019, the Legislature deleted the “unrelated offenses” category from the list of potentially disqualifying offenses for licensure. *See* H.B. 1342, § 5(a), 86th Leg. (Tex. 2019); Tex. Occ. Code § 53.021(a). This reform reflects the Legislature’s “intent . . . to enhance opportunities” for people who have served their criminal sentences “to obtain gainful employment.” Tex. Occ. Code § 53.003(a). Thus, the removal of § 35.4(f) would effect the plain text of the statute and the Legislature’s intent. It would also harmonize Texas law with that of 20 other states and the District of Columbia, all of which require that there be a “direct relationship” between an earlier criminal offense and the duties and responsibilities of the particular occupation.

The Department should also adopt the proposed sentence added to former § 35.4(o), which would require that the licensing authority consider fitness factors, such as the time elapsed since the offense and evidence of rehabilitation, when considering the length of the disqualifying period. *See* 44 Tex. Reg. at 6310. This would strengthen the direct-relationship test and would track the nationwide trend of considering such fitness factors when considering license applications.

In the same positive vein, the Department should also adopt the proposed changes to § 35.4(c)(6). *See* 44 Tex. Reg. at 6309. The proposed changes would more narrowly tailor the disqualifying offense of disorderly conduct, depending on the specific type of disorderly conduct and the specific private security occupational license sought. Given the diverse private security professions (e.g., alarm system installer, locksmith, personal protection officer, security officer), the Department should also consider tailoring the broad categories of remaining potentially disqualifying offenses listed in § 35.4(c) in a similarly reasonable way based on the specific offense and the specific profession.

Finally, the Department should adopt the reductions to the disqualifying periods for felony and misdemeanor convictions that are set forth in the proposed version of § 35.4(d), (e), and (g). *See* 44 Tex. Reg. at 6309. People reentering society after prison need jobs just as much as anyone else. A 2016 study shows that, between 1997 and 2007, recidivism rates grew by at least 9% in states with the heaviest licensing burdens and shrank by 2.5% in states with the lightest licensing burdens.<sup>2</sup> Allowing formerly incarcerated people to secure productive roles in society sooner rather than later will reduce the risk of crime. Thus, all stand to benefit from the reduction of these disqualifying periods.

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<sup>2</sup> Stephen Slivinski, *Turning Shackles Into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform*, CTR. FOR THE STUDY OF ECON. LIBERTY AT ARIZ. ST. U., Nov. 7, 2016, at 2, <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>.

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Thank you for considering these comments. If you have any questions, please feel free to contact me at (703) 682-9320 or [tpino@ij.org](mailto:tpino@ij.org).

Sincerely,

/s/ Tatiana Pino  
Tatiana Pino, Esq.<sup>3</sup>

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<sup>3</sup> Licensed only in Florida and the District of Columbia.