

RULE §35.4 GUIDELINES FOR DISQUALIFYING CRIMINAL OFFENSES

- (a) The private security profession is in a position of trust; it provides services to members of the public that involve access to confidential information, to private property, and to the more vulnerable and defenseless persons within our society. By virtue of their licenses, security professionals are provided with greater opportunities to engage in fraud, theft, or related property crimes. In addition, licensure provides those predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct and to escape detection or prosecution.
- (b) Therefore, the commission determined that offenses detailed in subsection (c) of this section directly relate to the duties and responsibilities of those who are licensed under the Act. Such offenses include crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Such offenses also include those "aggravated" or otherwise enhanced versions of the listed offenses.
- (c) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of either the offenses that may relate to a particular regulated occupation or of those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). With the exception of those offenses listed in paragraphs (6)(A) - (6)(F) of this subsection, the offenses listed in paragraphs (1) - (5) and (7) - (14) of this subsection are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the commission may find that an offense not described below also renders a person unfit to hold a license. In particular, an offense that is committed in one's capacity as a licensee under the Act, or an offense that is facilitated by one's license under the Act, will be considered related to the licensed occupation and may render the person unfit to hold the license.
- (1) Arson, damage to property--Any offense under the Texas Penal Code, Chapter 28.
 - (2) Assault--Any offense under the Texas Penal Code, Chapter 22.
 - (3) Bribery--Any offense under the Texas Penal Code, Chapter 36.
 - (4) Burglary and criminal trespass--Any offense under the Texas Penal Code, Chapter 30.
 - (5) Criminal homicide--Any offense under the Texas Penal Code, Chapter 19.
 - (6) Disorderly conduct--Any of the offenses detailed in paragraphs (6)(A) - (6)(F), but only if committed by an applicant for, or holder of, a license as a security officer, personal protection officer, or private investigator:
 - (A) 42.01(a)(7) and 42.01(a)(8) only - discharge of firearm in public place and display of firearm or other deadly weapon in public place calculated to alarm.
 - (B) 42.06, False Alarm or Report. Page 88 of 118
 - (C) 42.062, Interference with Emergency Request for Assistance.
 - (D) 42.07, Harassment.
 - (E) 42.072, Stalking.
 - (F) 42.12, Discharge of Firearm in Certain Municipalities.
 - (7) Fraud--Any offense under the Texas Penal Code, Chapter 32.
 - (8) Kidnapping--Any offense under the Texas Penal Code, Chapter 20.
 - (9) Obstructing governmental operation--Any offense under the Texas Penal Code, Chapter 38.
 - (10) Perjury--Any offense under the Texas Penal Code, Chapter 37.
 - (11) Robbery--Any offense under the Texas Penal Code, Chapter 29.
 - (12) Sexual offenses--Any offense under the Texas Penal Code, Chapter 21.
 - (13) Theft--Any offense under the Texas Penal Code, Chapter 31.
 - (14) In addition:

- (A) An attempt to commit a crime listed in this subsection;
 - (B) Aiding and abetting in the commission of a crime listed in this subsection; and
 - (C) Being an accessory (before or after the fact) to a crime listed in this subsection.
- (d) A felony conviction for an offense listed in subsection (c) of this section is disqualifying for ten (10) years from the date of conviction.
- (e) A Class A misdemeanor conviction for an offense listed in subsection (c) of this section is disqualifying for five (5) years from the date of conviction.
- (f) Independently of whether the offense is otherwise described or listed in subsection (c) of this section, a conviction for an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3g, or Article 42A.054, or that is a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or a conviction for burglary of a habitation, is permanently disqualifying subject to the requirements of Texas Occupations Code, Chapter 53.
- (g) A Class B misdemeanor conviction for an offense listed in subsection (c) of this section is disqualifying for two (2) years from the date of conviction.
- (h) Any unlisted offense that is substantially similar in elements to an offense listed in subsection (c) of this section is disqualifying in the same manner as the corresponding listed offense.
- (i) A pending charge under an indictment or information for an offense listed in subsection (c) of this section is grounds for summary suspension.
- (j) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person against whom disqualifying charges have been filed or who has been convicted of a disqualifying offense, the department will consider:
- (1) The extent and nature of the person's past criminal activity;
 - (2) The age of the person when the crime was committed;
 - (3) The amount of time that has elapsed since the person's last criminal activity;
 - (4) The conduct and work activity of the person before and after the criminal activity;
 - (5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
 - (6) The date the person will be eligible; and
 - (7) Any other evidence of the person's fitness, including letters of recommendation.
- (k) In addition to the documentation listed in subsection (j) of this section, the applicant or licensee shall furnish proof in the form required by the department that the person has:
- (8) Maintained a record of steady employment;
 - (9) Supported the applicant's dependents;
 - (10) Maintained a record of good conduct; and
 - (11) Paid all outstanding court costs, supervision fees, fines and restitution ordered in any criminal case in which the applicant has been charged or convicted.
- (l) The failure to timely provide the information listed in subsection (j) and subsection (k) of this section may result in the proposed action being taken against the application or license.
- (m) The provisions of this section are authorized by the Act, §1702.004(b), and are intended to comply with the requirements of Texas Occupations Code, Chapter 53. All periods of disqualification provided in this section are subject to an analysis under subsection (j) of this section, and the requirements of Texas Occupations Code, Chapter 53.