

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§157.37. Certification or Licensure of Persons With Criminal Backgrounds.

(a) Purpose. This section lists guidelines and criteria for establishing the eligibility of persons with criminal backgrounds for certification or continued certification as emergency medical services (EMS) personnel or licensure or continued licensure as paramedics. The Department of State Health Services (department) will apply the requirements of the Health and Safety Code, Chapter 773, Subchapter C, and will consider and review the criteria listed in the Health and Safety Code, Chapter 773, Subchapter C, §773.0615, §773.0616, and §773.0617 to determine a person's EMS certification eligibility before enrollment in an EMS education and training course, or to determine whether to deny, suspend or revoke an EMS certification or paramedic license based upon the person's criminal history. **[It is also the purpose of this section to apply the requirements of the Occupations Code, Chapter 53, Subchapter B, and to consider and review the criteria listed in the Occupation Code, Chapter 53, Subchapter B, §53.022 and §53.023. The Texas Department of Health (department) may deny, decertify, revoke, and/or suspend a certificate or license to persons who have committed a felony or misdemeanor to include, but not limited to, those in this section.]**

(b) Department Access to Criminal History Record Information. **[Access to criminal history record information.]**

(1) The department is entitled to obtain criminal history information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or any other law enforcement agency to investigate and determine the EMS certification eligibility of a person who has filed a petition for a pre-enrollment criminal history prescreening or an initial application for EMS certification or a reciprocity application for EMS certification or paramedic licensure or the continued certification/licensure eligibility of a certificant or licensed paramedic. **[candidate for EMS personnel certification, recertification, licensure or renewal and to investigate the continued eligibility of a certificant/licensee.]**

(2) A person who has filed a petition for a pre-enrollment criminal history prescreening or an initial application for EMS certification or a reciprocity application for EMS certification or licensure or an EMS certificant or licensed paramedic who has disclosed a criminal history record or who has a known criminal history record shall timely submit a complete set of his or her fingerprints along with the appropriate processing fee to the Texas Department of Public Safety (DPS), as required under the Government Code, §411.087 and/or §411.110.

[(2) A candidate for EMS certification/licensure or an EMS certificant/licensed paramedic who has disclosed a criminal history record or who has a known criminal history record shall be required to submit a completed set of fingerprints as required under the Government Code, §411.087 and/or §411.110.]

(3) With respect to a prescreening petitioner or an applicant for EMS certification or licensure who has a criminal history record, the department is authorized to close a petition or [an] application file and deem that the petition or application is withdrawn when the petitioner or applicant has failed to respond to the department's request(s) for information during its prescreening or investigation [for eligibility determination under the Occupations Code, Chapter 53 Subchapter B; Health and Safety Code, Chapter 773; or the rules adopted thereunder] within 60 days of said request(s).

(c) Petition for Criminal History Prescreening. The department may provide a prescreening criminal history record check for persons interested in pursuing an EMS certification or licensure to determine the person's eligibility for certification before enrolling in an EMS educational or training program approved by the department. A petition for prescreening is not considered an application for initial or renewal certification or licensure. To request a criminal history prescreening, the petitioner shall:

(1) submit a completed Petition for Criminal History Prescreening form;

(2) submit a nonrefundable fee of \$50;

(3) complete and return all Criminal History Prescreening documents provided to the petitioner by the department and timely provide documents and information requested by the department.

(4) submit his or her complete fingerprints along with the appropriate processing fee to the Texas Department of Public Safety, as required under the Government Code, §411.087 and/or §411.110;

(5) submit or arrange for submission of all court documentation to the department, including final court orders noting sentencing information, conditions of probation, releases from probation, revocation of probation, and any other information relating to the petitioner's criminal history, or other information requested by the department;

(6) shall inform the department of any new court actions or petitioner's criminal activities that have developed or become a part of his or her criminal history, to include, but not be limited to, any new arrests, criminal charges or indictments, criminal investigations, motions to revoke probation, etc. since filing the prescreening petition with the department; and/or

(7) be subject to a department criminal history investigation, if and when the petitioner subsequently files an application for EMS certification.

(d) Limitation on Information Required for Certification/License Renewal. For the renewal of an EMS certification or paramedic license, the department:

(1) may not require an applicant to provide any unchanged criminal history information already included in one or more of the applicant's previously filed initial or renewal applications for EMS certification or paramedic licensure; and

(2) may require the applicant to provide only new information relevant to the period occurring since the date of the applicant's last initial or renewal application for EMS certification or paramedic licensure, including information relevant to any new department requirement applicable to the certification or license held by the applicant.

(e) [(c)] Criminal History Evaluation Criteria[convictions].

(1) For a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for any offense, other than those listed under paragraph (5) of this subsection, that [When the conviction of a felony or misdemeanor] relates directly to the duties and responsibilities of EMS personnel, the department may:

(A) deny to the person an initial or renewed EMS certification or paramedic licensure or the person's opportunity to take a certification or paramedic licensure examination; [deny to a person the opportunity for eligibility for a certificate or license;]

(B) disqualify the person's eligibility to acquire an EMS certificate or paramedic license [disqualify a person from receiving a certificate or license]; or

(C) [decertify,] revoke or suspend the person's EMS [an existing] certification or paramedic license.

(2) In determining [considering] whether an offense, [a crime] other than those listed under paragraph (5) of this subsection relates directly to the duties and responsibilities [occupation] of EMS personnel, the department shall consider and review the following:

(A) the Health and Safety Code, Chapter 773, Subchapter C, §773.0615 [Occupations Code, Chapter 53, Subchapter B, §53.022];

(B) the nature and seriousness of the crime;

(C) the relationship of the crime to the purposes for requiring a certificate or license to engage in the occupation;

(D) the extent to which involvement in EMS would afford a certificant or licensee an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and

(E) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the EMS profession.

(3) In determining the fitness to perform the duties and discharge the responsibilities of emergency medical services personnel for a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, any offense other than those listed under paragraph (5) of this subsection the department shall consider, in addition to the factors listed in paragraph (2) of this subsection:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of deferred adjudication community supervision, or receiving deferred disposition; and

(F) other evidence of the person's fitness, including letters of recommendation from:

(i) prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) any other person in contact with the person.

(G) the petitioner, applicant, certificant, or licensed paramedic has the responsibility, to the extent possible, to obtain and provide to the department the recommendations of the persons required by subparagraph (F) of this paragraph; and

(H) in addition to providing evidence related to the factors under paragraph (2) of this subsection, the petitioner, applicant, certificant, or licensed paramedic shall furnish proof in the form required by the department that the petitioner, applicant, certificant, or licensed paramedic has:

(i) maintained a record of steady employment;

(ii) supported the applicant's or certificate holder's dependents;

(iii) maintained a record of good conduct; and

(iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the petitioner, applicant, certificant, or licensed paramedic has been convicted, been placed on deferred adjudication community supervision, or received deferred disposition.

(4) [(3)] The following crimes are considered to directly relate to the certification and licensure of EMS personnel because of their nature and seriousness and because they impact the ability to carry out the duties and responsibilities associated with patient care and public safety and shall be considered and reviewed:

(A) offenses under the Health and Safety Code, Chapter 773;

(B) under the Transportation Code, except offenses for which points are assessed under the Transportation Code, §708.052;

(C) offenses under the Alcoholic Beverage Code;

(D) offenses under the Health and Safety Code, Texas Controlled Substances Act, Chapters 481, 482 and 483, relating to substance abuse;

(E) offenses under Department of Public Safety of the State of Texas, Government Code, Chapter 411, Subchapter H, relating to the license to carry a concealed handgun;

(F) offenses under the following titles of the Texas Penal Code:

(i) Title 4 - offenses of attempting or conspiring to commit any of the offenses in this clause;

(ii) Title 5 - offenses against the person;

(iii) Title 6 - offenses against the family;

- (iv) Title 7 - offenses against property;
- (v) Title 8 - offenses against public administration;
- (vi) Title 9 - offenses against public order and decency;
- (vii) Title 10 - offenses against public health, safety, and morals; and/or
- (viii) Title 11 - offenses involving organized crime.

(G) Offenses listed in subparagraph (F)(i)-(viii) of this subsection are not exclusive in that the department may consider similar criminal convictions from other state, federal, foreign or military jurisdictions which, although not listed in paragraph (F)(i)-(viii) indicate the lack of ability, capacity, or fitness of the individual to perform the duties and responsibilities of EMS personnel.

(5) A person shall be disqualified from eligibility to acquire an EMS certification, or a person's initial or renewal application for EMS certification or paramedic licensure shall be denied, or a person's EMS certification or paramedic license, whether active or inactive, shall be revoked if the petitioner, applicant, certificant, or licensed paramedic is convicted of or place on deferred adjudication community supervisor or deferred disposition for:

(A) an offense listed in Code of Criminal Procedure, Article 42.12, §3g(a)(1)(A) through (H), as follows:

- (i) murder;
- (ii) capital murder;
- (iii) indecency with a child;
- (iv) aggravated kidnapping;
- (v) aggravated sexual assault;
- (vi) aggravated robbery;
- (vii) substance abuse offenses, as described in Health and Safety Code, Chapter 481, for which punishment is increased under:

(I) Health and Safety Code, §481.140, regarding the use of a child in the commission of an offense; or

(II) , Health and Safety Code, §481.134(c), (d), (e) or (f), regarding an offense committed within a drug free zone, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under one of those subsections;

(viii) sexual assault;

(B) an offense, other than an offense described by subparagraph (A) of this paragraph, committed on or after September 1, 2009, for which the person is subject to register as a sex offender under Code of Criminal Procedure, Chapter 62.

[(d) Criteria for eligibility and continued eligibility. The department will apply the criteria outlined in the Occupations Code, Chapter 53, Subchapter B, §53.023. In applying the criteria, it shall be the responsibility of the candidate/certificant/licensee to obtain and send the department the entire court record for each criminal offense and recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The candidate/certificant/licensee shall also furnish documentation acceptable to the department of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted.]

[(1) The department believes that those certified/licensed in the EMS profession shall conduct the occupation with honesty, trustworthiness and integrity. The department shall consider, review and take action against those candidates/certificants/licenseses who during the course of the criminal history evaluation, or by nature of their conviction of certain crimes, exhibit to the department an inability or unwillingness to follow those requirements.]

[(2) As authorized under the Occupations Code, Chapter 53, Subchapter B, §53.021(b), upon a certificant/licensee's felony conviction, felony probation revocation, revocation of parole or revocation of mandatory supervision which results in incarceration, their certificate/license shall be decertified/revoked.]

[(e) Procedures for denying, decertifying, revoking, suspending, or probating a certificate or license to persons with criminal backgrounds can be found in §157.36(c)-(k) of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License).]

(f) Documentation Required During Criminal History Prescreening or Investigation.

During a criminal history prescreening or investigation, it shall be the responsibility of the prescreening petitioner, applicant for EMS certification or paramedic licensure, or certificant or licensed paramedic to obtain and send to the department for each criminal offense in his or her criminal history the entire court record, including final court orders

noting sentencing information, conditions of probation, revocation of or release from probation, and any other information relating to the petitioner's criminal history, or requested by the department, along with any recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The petitioner, applicant, certificant, or licensed paramedic shall also furnish documentation acceptable to the department of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted, placed on deferred adjudication community supervision, deferred disposition.

(g) Notice and Appeal Procedures. Notice and appeal procedures in §157.36(d) and (e) of this title is applicable for a person that the department proposes disqualification from eligibility to acquire an EMS certification, or denial of an application for EMS certification or paramedic licensure, or suspension or revocation of a EMS certification or paramedic license based on the requirements and/or criteria outlined in this section as it relates to a person's criminal history record for any offense other than those listed under subsection (e)(5) of this section.