

4. **Discussion and possible action regarding proposed rule changes to title 37 TAC, Chapter 403, Criminal Convictions and Eligibility For Certification, including but not limited to, §403.1, Purpose, §403.3, Scope, §403.5, Access to Criminal History Record Information, §403.9, Mitigating Factors, §403.11, Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds and §403.15, Report of Convictions by an Individual or a Department.**

Chapter 403

CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

§403.1. Purpose.

- (a) The purpose of this chapter is to establish policy, procedures and criteria on the eligibility of persons with a criminal conviction for a certificate or renewal of a certificate issued by the Texas Commission on Fire Protection (the commission) and to establish procedures for suspension, probation, revocation, or denial of a certificate held or applied for by persons with a criminal conviction pursuant to Chapter 53, Texas Occupations Code.
- (b) The duties and responsibilities of persons who hold certifications issued by the commission each involve matters that directly relate to public safety, specifically to the reduction of loss of life and property from fire. Thus, conduct involving the injury to a person or the destruction of property by fire, relates directly to the fitness of the individual to be fire protection personnel. Fire protection personnel often have access to areas not generally open to the public. The public relies on the honesty, trustworthiness, and reliability of persons certified by the commission. Thus, crimes involving moral turpitude, including, but not limited to, fraud and dishonesty, are directly relevant. In addition, the ability of such persons to function unimpaired by alcohol or the illegal use of drugs, in dangerous or potentially dangerous circumstances, including, but not limited to, the operation of emergency vehicles is paramount in light of the duty to protect the health and safety of the public.

§403.3. Scope.

- (a) The policy and procedures established in this chapter apply to a person who holds or applies for any certificate issued under the commission's regulatory authority contained in Government Code, Chapter 419.
- (b) When a person is charged with, or convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or
- (c) When a person engages in conduct that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or other jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, that causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The commission may consider the person's conduct even though a final conviction has not occurred and may:
 - (1) deny to a person the opportunity to be examined for a certificate;
 - (2) deny the application for a certificate;
 - (3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;
 - (4) refuse to renew a certificate;
 - (5) suspend, revoke or probate the suspension or revocation of an existing certificate; or
 - (6) limit the terms or practice of a certificate holder to areas prescribed by the commission.
- (d) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission, the commission may:
 - (1) deny to a person the opportunity to be examined for a certificate;
 - (2) deny the application for a certificate;
 - (3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;
 - (4) refuse to renew a certificate;

- (5) suspend, revoke or probate the suspension or revocation of an existing certificate; or
- (6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

§403.5. Access to Criminal History Record Information.

- (a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency to investigate the eligibility of a person applying to the commission for or holding a certificate.
- (b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:
 - (1) a court order;
 - (2) with written consent of the person being investigated;
 - (3) in a criminal proceeding; or
 - (4) in a hearing conducted under the authority of the commission.
- (c) Early review. A fire department that employs a person regulated by the commission, a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the commission certification program may seek the early review under this chapter of the person's present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by submitting the required forms and fee(s). A decision based on an early review does not bind the commission if there is a change in circumstances.

§403.7. Criminal Convictions Guidelines.

- (a) The following crimes are considered to relate directly to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of persons certified by the commission:
 - (1) offenses under the Government Code, Chapter 419, relating to the Texas Commission on Fire Protection;
 - (2) offenses under the Texas Transportation Code Title 6 Roadways, which are punishable by fines greater than \$200, or imprisonment, or both fine and imprisonment;
 - (3) offenses under the Health and Safety Code, Chapter 481, concerning controlled substances;
 - (4) offenses under the Health and Safety Code, Chapter 483, concerning dangerous drugs;
 - (5) offenses under the following titles of the Texas Penal Code:
 - (A) Title 5-offenses against the person;
 - (B) Title 6-offenses against the family;
 - (C) Title 7-offenses against property;
 - (D) Title 8-offenses against public administration;
 - (E) Title 9-offenses against public order and decency;
 - (F) Title 10-offenses against public health, safety and morals;
 - (G) Title 11-offenses involving organized crime; and
 - (H) Title 4-inchoate offenses Chapter 15 preparatory offenses to any of the offenses in this section;

- (6) the offenses listed in this subsection are not inclusive, in that the commission may consider other particular crimes in special cases in order to promote the intent of the statutes administered by the commission.
- (b) In all cases the commission shall consider:
- (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purposes for requiring the certificate issued by the commission;
 - (3) the extent to which the certificate might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
 - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the certificate holder;
 - (5) the level and nature of supervision of the person by others; and
 - (6) the level and nature of access to public, commercial, and residential properties, including access after regular business hours and access to areas not open to the general public.

§403.9. Mitigating Factors.

- (a) In addition to the factors that must be considered under §403.7 of this title (relating to Criminal Convictions Guidelines), in determining the present fitness of a person who has been convicted of a crime, the commission shall consider the following evidence:
- (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person at the time of the commission of the crime;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person prior to and following the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
 - (6) other evidence of the person's present fitness, including letters of recommendation from:
 - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other persons in contact with the convicted person.
- (b) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission as required the recommendations of prosecution, law enforcement, and correctional authorities as required by statute and these rules upon request by the commission staff. The applicant shall upon request also furnish:
- (1) a copy of the indictment, information or complaint;
 - (2) a copy of the judgement(s) or order(s) of the court adjudicating guilt, granting probation, community supervision, deferred adjudication, or discharge from probation or community supervision;
 - (3) a record of steady employment in the form of a letter from current or former employers;
 - (4) a record that the applicant has supported his or her dependents in the form of a letter from a person in the applicant's community with personal knowledge of the circumstances;

- (5) evidence that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, in the form of copies of official records, documents, or a letter from the person's probation or parole officer where applicable concerning his or her current status; and
- (6) a copy of the police or offense report(s).

§403.11. Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds.

- (a) If the commission Standards Division (the division) proposes to suspend, revoke, limit, or deny a certificate based on the criteria in this chapter, the division shall notify the individual per Government Code, Chapter 2001. The notice of intended action shall specify the facts or conduct alleged to warrant the intended action.
- (b) If the proposed action is to limit, suspend, revoke, or refuse to renew a current certificate, or deny an application for a new certificate, a written notice of intended action shall comply with the preliminary notice requirements of Government Code §2001.054(c). The individual may request, in writing, an informal conference with the commission staff in order to show compliance with all requirements of law for the retention of the certificate, pursuant to Government Code §2001.054(c). A written request for an informal staff conference must be submitted to the division director no later than 15 days after the date of the notice of intended action. If the informal staff conference does not result in an agreed consent order, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.
- (c) If the individual does not request an informal staff conference or a formal hearing in writing within the time specified in this section, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.
- (d) If the commission limits, suspends, revokes, or denies a certificate under this chapter, the executive director shall give the person written notice:
 - (1) of the reasons for the decision;
 - (2) that the person may appeal the decision of the executive director to the commission in accordance with §401.63 of this title (relating to Appeals to the Commission) within 30 days from the date the decision of the executive director is final and appealable;
 - (3) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for judicial review of the evidence presented to the commission and its decision; and that such petition must be filed with the court no later than 30 days after the commission action is final and appealable.

§403.15. Report of Convictions by an Individual or a Department.

- (a) A certificate holder must report to the commission, any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, within 14 days of the conviction date.
- (b) A fire department or local government entity shall report to the commission, any conviction of a certificate holder other than a minor traffic offense (class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, within 14 days of the conviction date.
- (c) A certificate holder is subject to suspension, revocation or denial of any or all certifications for violation of the requirements of subsection (a) of this section. Each day may be considered a separate offense.
- (d) A fire department or government entity regulated by the commission violating subsection (b) of this section may be subject to administrative penalties of up to \$500. Each day may be considered a separate offense.
- (e) Notification may be made by mail, e-mail, or in person to the Texas Commission on Fire Protection (TCFP) Austin office. TCFP Form #0014 shall be used.