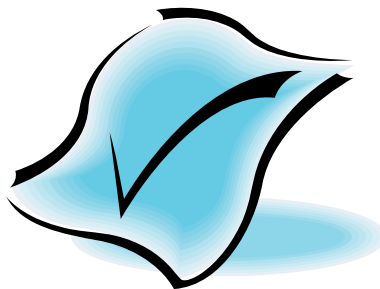

Criminal history and EMS

Considering a career? Read the law first

By Donald Jansky, JD



Does a criminal history keep someone from receiving EMS certification or licensure? There is no simple answer. DSHS must abide by the Texas Occupations Code in determining whether to allow the certification or licensure to go forward, so it might be wise to check the factors that DSHS is obligated to use in reviewing an applicant's criminal history. Chapter 53 of the Texas Occupations Code (TOC), "Consequences of Criminal Conviction," lays out the factors that must be considered in reviewing criminal history. And DSHS's own rule – Chapter 25 of Texas Administrative Code (TAC), Section 157.37, titled "Certification or Licensure of Persons with Criminal Backgrounds" – details DSHS's obligation to consider and review the criteria listed in TOC Chapter 53 and spells out the department's authority to deny, decertify, revoke or suspend a certificate or license to people who have *committed* a felony or misdemeanor. Even if the behavior did not result in a criminal conviction or a deferred adjudication – or even just an arrest – DSHS can still propose denial of an application.

Reading the law and rule should help answer most EMS candidates' concerns. Getting familiar with the law is really the first step – whether it's a misdemeanor or a felony, whether the crime happened 15 years ago or just last year, or whether a criminal history includes one crime or several.

A majority of EMS applicants with a criminal history are not denied certification or licensure. The underlying intent of TOC Chapter 53 appears to be to keep a

criminal history from being an automatic bar to licensure. Certification depends on a number of factors listed in TOC Chapter 53. The first set lists four major factors that go to the seriousness and nature of the crime, and how the crime might relate to the licensed occupation. The second set (around a dozen or so) goes to the general background of the applicant. Those factors include the applicant's current age, age at time of the crime, work history, rehabilitation and rehabilitative effort, and letters of recommendation from law enforcement and other people. Also, applicants with a criminal history are required to provide not only certified copies of court records, law enforcement offense or incident reports, and their personal written explanation of the crime, but also other documentation to show rehabilitation, work history and good conduct in the community.

DSHS staff will not begin to gather the required information (mostly from the applicant) about the applicant's crimes and general background until it has received an application. If you have a criminal history, gathering the required information can take time. So begin early. Waiting until you have passed your National Registry (NR) exam will only prolong the process. A better option would be to start your documentation collection early and then file your application while you are in the last part of your course. That way, by the time you pass the NR exam, the DSHS application review and criminal history evaluation could be that much further along.

The length of time it takes for DSHS to review these documents depends upon the complexity of the criminal history and how

quickly the applicant provides the required documentation and any additional information requested. Most cases are then presented to the Enforcement Review Committee (ERC) for a decision on whether to grant or deny the application. But this is not done until the applicant has sufficiently completed the application by providing written proof of course completion and passing the NR exam. Even if the applicant receives a formal letter proposing application denial, he or she can still request a formal administrative hearing and also request a face-to-face meeting – an enforcement conference – with DSHS staff to discuss the case prior to such hearing. However, if the decision is still to propose denial, and if the applicant requests an appeal hearing in a timely manner, one will be scheduled and conducted by the State Office of Administrative Hearings before an administrative law judge. The hearing usually results in a written recommendation by the judge to the DSHS commissioner, who makes the final decision about whether to issue the certification or license.

Not only can a potential EMS candidate review Chapter 53 to get a better idea about the factors DSHS uses to deny an application, it can be useful in figuring out what kind of documentations DSHS will require. Section 53.022 states that the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime

Why does DSHS ask about criminal history?

The EMS rule dealing with the Certification or Licensure of Persons With Criminal Backgrounds says that DSHS “may deny, decertify, revoke, and/or suspend a certificate or license to persons who have committed a felony or misdemeanor...”. This rule is in Title 25 of the Texas Administrative Code (TAC), Chapter 157, Section 157.37(a) and can be found online under TAC Viewer at www.sos.state.tx.us/tac.

Also, 25 TAC 157.36(c), titled: “Criteria for denial of certification, or licensure,” notes that a certificate or license may be denied for, but not limited to, the following reasons: . . .

(3) conviction of a crime which directly relates to the profession of EMS personnel as described in §157.37 of this title; . . .

(8) making a plea of no contest in any criminal action which relates or could relate to the candidate’s ability to carry out EMS duties;

(9) receiving a deferred adjudication in a criminal action which relates or could relate to the candidate’s ability to carry out EMS duties; . . .

Additionally, 25 TAC 157.36(b), titled: “Nonemergency suspension, decertification and revocation of a certificant or paramedic licensee,” states that the Department may suspend or decertify an EMS certificate-holder or suspend or revoke a licensed paramedic for, but not limited to, the following reasons: . . .

(1) violating any provision of . . . Federal, State, or local laws, rules or regulations affecting, but not limited to, the practice of EMS;

(2) any conduct which is criminal in nature and/or any conduct which is in violation of any criminal, civil and/or administrative code or statute; . . .

(23) having been convicted of any misdemeanor or felony . . .

(29) engaging in any conduct listed in §157.37(a)-(c) of this title whether or not resulting in a conviction.

to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

But, more importantly, the law lists a wide variety of other factors to be considered. And it specifies certain information (simply described) that the applicant is to provide to DSHS for its evaluation process.

Section 53.023 requires the department to consider and for the applicant to provide:

- (1) the extent and nature of the person’s past criminal activity;

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- (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; and
 - (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and 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 person in contact with the convicted person.

Also, according to Section 53.023:

- (7) the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities; and
- (8) the applicant shall furnish proof in the form required by the licensing authority that the applicant has:
 - (A) maintained a record of steady employment;
 - (B) supported the applicant's dependents;
 - (C) maintained a record of good conduct; and
 - (D) paid all outstanding court costs, supervision fees, fines, and

restitution ordered in any criminal case in which the applicant has been convicted.

The applicant should also keep in mind DSHS regulations about why particular criminal offenses relate to the certification and licensure of EMS personnel. These crimes are noted in 25 TAC 157.37(c)(3) and include offenses under the Health and Safety Code, Transportation Code, Alcoholic Beverage Code and Texas Controlled Substances Act; and certain crimes under the Penal Code, including offenses involving organized crime and offenses against the person, the family, property, public administration, public order and decency, public health, and safety and morals.

But again, for the EMS candidate who has yet to enroll in an EMT or paramedic course, the next best effort a potential candidate – especially one with a substantial criminal history – can make to determine whether the department might propose application denial is to review TOC Chapter 53. Then, if the decision is made to make EMS a career and to enroll in the course, the applicant can begin collection of the documentation that DSHS will use in its evaluation process and send in application toward the end of the course. Still unsure? Consult with an attorney who specializes in representing applicants for state licensure.

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Criteria for evaluation of criminal history
The evaluating criteria of the Texas
Occupations Code, are as follows:

Section 53.022, titled FACTORS IN DETERMINING WHETHER CONVICTION RELATE TO OCCUPATION, states: In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023, titled “ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER,” states:

(a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

- (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; and
- (6) other evidence of the person’s fitness, including letters of recommendation from:

- (A) prosecutors and 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 person in contact with the convicted person.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:

- (1) maintained a record of steady employment;
 - (2) supported the applicant’s dependents;
 - (3) maintained a record of good conduct; and
 - (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.
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