

## Chapter 217: Enrollment, Licensing, Appointment, and Separation

### §217.1. Minimum Standards for Enrollment and Initial Licensure.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure.

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

- (i) require completion of the Commission-approved personal history statement;
- (ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and
- (iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

- (i) require completion of a personal history statement that meets or exceeds the Commission-approved personal history statement;
- (ii) contact at least three personal references;
- (iii) contact all employers for at least the last ten years, if applicable;
- (iv) contact the chief administrator or the chief administrator's designee at each of the applicant's previous law enforcement employers; and
- (v) complete criminal history and driving records checks.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) Examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code § 501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable discharge;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required

applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed and expires:

- (1) 12 months from the original appointment date; or
- (2) on completion of training and passing of the jailer licensing examination.

(h) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

- (1) 12 months from the original appointment date; or
- (2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(i) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(j) The effective date of this section is February 1, 2020.

### **§217.3. Application for License and Initial Report of Appointment.**

(a) An agency appointing an individual who does not hold a commission license must file an application for the appropriate license with the commission. The application must be approved with a license issuance date before the individual is appointed or commissioned. The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(b) An application for a license or initial report of appointment must be submitted in an application format currently accepted by the commission.

(c) An agency that files an application for licensing must keep on file and in a format readily accessible to the commission a copy of the documentation necessary to show each licensee appointed by that agency met the minimum standards for licensing, including weapons proficiency for peace officers.

(d) An agency must retain records required under subsection (c) of this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(e) An agency failing to appoint an individual within 30 days after submitting an application must report a termination of employment in the current commission format.

(f) The effective date of this section is January 17, 2013.

**§217.5. Denial and Cancellation.**

(a) The commission may deny an application for any license and may refuse to accept a report of appointment if the:

- (1) applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;
- (2) applicant has not affixed any required signature;
- (3) required forms or documentation are incomplete, illegible, or are not attached;
- (4) application is not submitted or signed by a chief administrator, or designee with authority to appoint the applicant to the position reported;
- (5) application is not submitted by the appointing agency or entity;
- (6) agency reports the applicant in a capacity that does not require the license sought;
- (7) agency fails to provide documentation, if requested, of the agency's creation or authority to appoint persons in the capacity of the license sought or the agency is without such authority; or
- (8) application contains a false assertion by any person; or
- (9) applicant is subject to pending administrative action against a commission-issued license.

(b) An agency chief administrator or school district may not appoint an applicant subject to pending administrative action based on:

- (1) enrollment or licensure ineligibility; or
- (2) statutory suspension or revocation.

(c) If an application is found to be incorrect or subject to denial under subsection (a) of this section, any license issued to the applicant by the commission is subject to cancellation.

(d) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

- (1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or
- (2) still holds an active, valid license, or certificate.

(e) The effective date of this section is February 1, 2014.

**§217.7. Reporting Appointment and Separation of a Licensee.**

(a) Before a law enforcement agency may appoint a person licensed or seeking a license as a peace officer, county jailer, or telecommunicator the agency head or designee must:

- (1) obtain the person's written consent for the agency to view the person's employment records;
- (2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;
- (3) obtain a completed, signed, and notarized Personal History Statement (PHS);
- (4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;
- (5) obtain proof of eligibility after separation from the military, if applicable;
- (6) conduct and document a background investigation;
- (7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;
- (8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person's previous law enforcement employers, and document the contact on the F5 return; and
- (9) in addition to the requirements listed in this section:

(A) For a licensee with more than 180 days since their last appointment:

- i. obtain a new declaration of psychological and emotional health (L3 Form);
- ii. obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form); and
- iii. obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.

(B) For a person's initial appointment:

- i. obtain proof of meeting educational requirements;
- ii. obtain proof of meeting U.S. citizenship requirements;
- iii. obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;
- iv. obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;
- v. obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if more than 180 days from the graduation of the basic licensing course; and
- vi. submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought.

(10) For current licensees, submit a Statement of Appointment (L1 Form) within 7 days of the appointment.

(b) When a person licensed by the commission separates from an agency, the agency shall, within 7 business days:

(1) submit a Separation report (Form F5) to the commission; and

(2) provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

(c) A law enforcement agency that is given a signed consent form shall make the person's employment records available to a hiring law enforcement agency as authorized by Texas Occupations Code section 1701.451.

(d) An agency must retain records kept under this section while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to the commission.

(e) The effective date of this section is February 1, 2020.

#### **§217.8. Contesting an Employment Termination Report.**

(a) A person who is the subject of an employment termination report is entitled to file a petition contesting information included in the employment termination report. The written petition for correction of the report must be filed with the executive director on a form currently prescribed by the commission and a copy must be served on the law enforcement agency.

(b) A petition described in subsection (a) of this section must be received by the executive director not later than the 30th day after the person receives a copy of the report of separation.

(c) Upon receipt of the petition the executive director will refer the dispute to SOAH.

(d) A proceeding conducted pursuant to subsection

(c) of this section is a contested case under Chapter 2001, Texas Government Code. The parties to the proceeding shall be the person contesting the employment termination and the chief administrative officer of the law enforcement agency. The Commission is not considered a party in a proceeding conducted by SOAH. The chief administrative officer of the law enforcement agency shall have the burden of proof by a preponderance of the evidence. Following the contested case hearing, the administrative law judge shall issue a final order on the petition.

(e) If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the commission to change the report. The commission shall send the changed report to the law enforcement agency that prepared the original employment termination report. The

law enforcement agency shall replace the original employment termination report with the changed report.

(f) Any party to a proceeding described in subsection (d) of this section may file exceptions to the administrative law judge's final order in accordance with SOAH rules and procedures.

(g) The results of a hearing described in subsection (d) of this section are enforceable by the commission pursuant to Chapter 1701, Texas Occupations Code and Chapter 2001, Texas Government Code.

(h) The results of a hearing described in subsection (d) of this section are appealable in accordance with Chapter 2001, Texas Government Code.

(i) A chief administrative officer of a law enforcement agency who fails to comply with the results of a hearing after all appeals available to the agency have been exhausted is subject to disciplinary action pursuant to Chapter 1701, Texas Occupations Code, and Chapter 223 of this title.

(j) All information submitted under subsection (d) of this section is exempt from disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless the individual resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(k) The effective date of this section is February 1, 2014