# Criminal Conviction Guidelines for Occupational Licensing

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I. Overview

These guidelines are issued by the Texas Commission on Environmental Quality (TCEQ) pursuant to the Texas Occupations Code, § 53.025(a). These guidelines describe the process by which the TCEQ’s Executive Director determines whether a criminal conviction:

- renders a prospective applicant an unsuitable candidate for an occupational license;
- warrants the denial of a renewal application for an existing license; or
- warrants revocation or suspension of a license previously granted.

These guidelines present the general factors that are considered for all license applications, and also the reasons why particular crimes are considered to relate to each type of license issued by TCEQ.

Criminal convictions, above a Class C Misdemeanor, that may be considered grounds to deny an application for all license types include, but are not limited to:

- misrepresentation such as fraud, extortion, bribery, theft by check, or deceptive business practices;
- crimes or registration requirements identified by Code of Criminal Procedure, Article 62;
- property crimes such as theft or burglary;
- crimes against persons such as homicide, kidnapping, and assault; or
- environmental law violations.

II. Responsibilities of Prospective Applicants, Applicants for Initial, and Renewal Licenses with Criminal Histories (30 Texas Administrative Code (TAC) § 30.34)

A. All applicants must provide a criminal attestation as part of the application package.

B. When requested, all licensing applicants have the responsibility, to the extent possible, to obtain and provide to the TCEQ’s Executive Director letters of recommendation from the prosecution, law enforcement, and correctional authorities as described in 30 TAC §30.34(b)(6) or other evidence of fitness to hold a license.

The applicant has the further obligation to furnish proof in the form required by the executive director that the applicant has:
1. Maintained a record of steady employment;
2. Supported the applicant's dependents;
3. Maintained a record of good conduct;
4. Paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and
5. Completed any other obligations imposed by the court.

III. Prospective Applicants (30 TAC § 30.13)

Prospective applicants may request an evaluation of their criminal history, by filling out the approved form, prior to enrolling in an educational program that prepares them for an initial license or before taking an examination for an initial license when that individual has reason to believe that they are ineligible for the license because of a conviction or deferred adjudication for a felony or a misdemeanor offense above a Class C.

A. Upon receiving a request to issue a criminal history evaluation letter regarding an individual's eligibility for a license, the executive director will:
   1. Request a criminal background check through the Department of Public Safety (DPS) or other applicable data system for the individual requesting the evaluation letter; and
   2. Make a determination whether or not grounds for ineligibility do or do not exist.

B. If the executive director determines that grounds for ineligibility do not exist, the requestor shall be notified in writing of the executive director's determination not later than the 90th day after the date the evaluation request is received.

C. If the executive director determines that the requestor is ineligible for a license, the requestor shall be notified in writing not later than the 90th day after the date the request is received. The notice will set out each basis for potential ineligibility.

D. The executive director's determination of eligibility is final.

E. At any time, if the executive director discovers new facts unknown or undisclosed at the time of the determination of eligibility, the executive director may re-evaluate the individual's eligibility and issue a new determination letter as needed.
IV. Application for an Initial License, Renewal of Current Licenses, or Applications for Additional Licenses (30 TAC § 30.33)

When the executive director discovers criminal convictions for any applicant, the executive director may deny that individual’s application.

A. Upon receiving an application for any license, the executive director will:
   1. Request a criminal background check through the DPS or other applicable data system for the individual making application; and
   2. Make a determination whether grounds for denial of the application do or do not exist.

B. If the executive director determines that grounds for the denial of the application do not exist, the executive director shall complete the processing of the application and issue the license.

C. If the executive director determines that there are grounds for the denial of the application, the applicant shall be notified in writing of the executive director's intent to deny the application. The notification letter will:
   1. Clearly identify the convictions that form the basis of the proposed denial;
   2. Cite the TCEQ rule and statutory authority for the proposed denial; and
   3. Advise the applicant that a hearing may be requested to challenge the proposed denial.

D. In accordance with 30 TAC § 30.33(a)(2), the applicant may request a hearing on the executive director’s intent to deny the application. The hearing request must:
   1. Be made in writing;
   2. Contain the applicant's name, address, and phone number; and
   3. Be received by the TCEQ's Office of the Chief Clerk no later than 30 calendar days after the date the intent to deny notification letter was issued.

E. If the applicant requests a hearing:
   1. A hearing will be conducted by an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH);
   2. The ALJ will issue a Proposal for Decision for consideration by the Commission; and
3. The Commission will ultimately decide whether the license application should be denied.

F. At any time, if the executive director discovers new facts unknown or undisclosed at the time of the determination of eligibility, the executive director may re-evaluate the eligibility of the applicant and issue a new determination letter as needed.

V. **Current Unexpired Licenses (30 TAC § 30.33)**

For individuals who are currently licensed when the agency discovers a criminal conviction, the executive director may suspend or revoke an unexpired license.

A. Upon discovery of a criminal conviction for a licensed individual, the executive director will:

1. Request a criminal background check through the DPS or other applicable data system for the licensed individual in question; and
2. Make a determination whether grounds for suspension or revocation of the individual's license do or do not exist.

B. If the executive director determines that there are grounds for the suspension or revocation of the license, the licensee shall be notified in writing of the executive director's intent to suspend or revoke the license. The notification letter will:

1. Clearly identify the convictions that form the basis of the proposed suspension or revocation;
2. Cite the TCEQ rule and statutory authority for the proposed suspension or revocation; and
3. Advise the licensee that a hearing may be requested to challenge the proposed suspension or revocation.

C. If the licensee requests a hearing:

1. A hearing will be conducted by an ALJ with the SOAH;
2. The ALJ will issue a Proposal for Decision for consideration by the Commission; and
3. The Commission will ultimately decide whether the license should be suspended or revoked.

D. At any time, if the executive director discovers new facts unknown or undisclosed at the time of the determination of eligibility, the executive
director may re-evaluate the eligibility of the licensee and issue a new determination letter as needed.

VI. General Factors Considered in Reviews of Criminal Histories (30 TAC § 30.34)

A. In determining whether a criminal conviction should be grounds to deny a license the following factors are considered for all license applications:

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 applicant 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.

B. 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 agency will also consider the following:

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, 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.

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VII. Relation of Crimes to Specific Licenses Issued by TCEQ (30 TAC § 30.35)

Below is a list of the occupational licenses issued by TCEQ and how particular categories of crimes may relate to those specific licenses. The vast majority of criminal convictions reviewed by the executive director will fit within the categories of crimes described below. However, these guidelines are not intended to be an exhaustive listing, i.e. they do not prohibit the executive director from considering crimes not listed herein. Multiple violations of any criminal statute, above a Class C Misdemeanor, will always be reviewed, for any license type. Multiple violations may reflect a pattern of behavior that renders the applicant unfit for the license.

A. BACKFLOW PREVENTION ASSEMBLY TESTER (BPAT)

BPAT licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

BPAT licensees are in a position to approve backflow prevention assemblies during inspections that may not be operable or have code or safety violations in exchange for an inducement offered by the individual or entity requesting the test of the equipment.

BPAT licensees have continual access to:

- private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.
- business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in additional sexually violent offenses.
- private residences and businesses, where they may come into direct contact with unattended property, which could allow the opportunity to engage in additional crimes against property.
- persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

B. CUSTOMER SERVICE INSPECTORS (CSI)

CSI licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

CSI licensees are in a position to approve inspections of facilities that may have code or safety violations in exchange for an inducement offered by the individual or entity requesting the inspection.

CSI licensees have continual access to:
• private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.

• business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in additional sexually violent offenses.

• private residences and businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.

• persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

C. LANDSCAPE IRRIGATORS, IRRIGATION TECHNICIANS AND, IRRIGATION INSPECTORS

Landscape Irrigators and Irrigation Technicians have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

Irrigation Inspectors are in a position to pass irrigation systems during inspections that may have code or safety violations in exchange for an inducement offered by the individual or entity requesting the inspection.

These licensees have continual access to:

• private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.

• business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in additional sexually violent offenses.

• private residences and businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.

• persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

D. ON-SITE SEWAGE FACILITY (OSSF) APPRENTICES, DESIGNATED REPRESENTATIVES, INSTALLERS, MAINTENANCE PROVIDERS AND SITE EVALUATORS

The OSSF Apprentices, Installers, Maintenance Providers and Site Evaluators have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

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The OSSF Designated Representatives are in a position to pass OSSF systems during inspections that may have code or safety violations in exchange for an inducement offered by the individual or entity requesting the inspection.

OSSF licensees have continual access to:

- private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.
- business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in additional sexually violent offenses.
- private residences and businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.
- persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

E. WATER TREATMENT SPECIALIST (WTS)

WTS licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

WTS licensees have continual access to:

- private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.
- business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in additional sexually violent offenses.
- private residences and businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.
- persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

F. LEAKING PETROLEUM STORAGE TANK (LPST) CORRECTIVE ACTION PROJECT MANAGERS AND SPECIALIST

LPST licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

LPST licensees have direct access to business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in additional sexually violent offenses.
LPST licensees have regular access to:

- businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.

- individuals at businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

G. UNDERGROUND STORAGE TANK (UST) ON-SITE SUPERVISORS AND CONTRACTORS

UST licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

UST licensees have regular access to:

- private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.

- business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in sexually violent offenses.

- private residences or businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.

- persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

H. MUNICIPAL SOLID WASTE FACILITY (MSW) SUPERVISORS

These licensees have occasional access to:

- individuals which could allow the opportunity to engage in additional sexually violent offenses.

- persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

I. PUBLIC WATER SYSTEM OPERATORS

These licensees have occasional access to:

- private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.
• business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in sexually violent offenses.

• private residences or businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.

• persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.

J. WASTEWATER OPERATORS

These licensees have occasional access to:

• private residences and deal directly with the general public which could allow the opportunity to engage in additional sexually violent offenses.

• business facilities and deal directly with the owners of the businesses and business personnel which could allow the opportunity to engage in sexually violent offenses.

• private residences or businesses, where they may come into direct contact with unattended property which could allow the opportunity to engage in additional crimes against property.

• persons at residences and businesses in situations that could have a potential for confrontational behavior related to crimes against persons.