



DATE: February 14, 2012

TO: The Task Force on Inventorying Employment Restrictions

FROM: William Barnes

RE: OSFM Report

This memorandum consists of the Office of the State Fire Marshal's report to The Task Force on Inventorying Employment Restrictions Act. The Office's responses to the specific questions posed by Section 15(c) of the Act are detailed below. Attached to this memorandum is a second report, as required by 20 ILCS 5000/15(d), for your consideration.

20 ILCS 5000/15(c)

(c) On or before November 1, 2011, all State agencies shall produce a report for the Task Force that describes the employment restrictions that are based on criminal records for each occupation under the agency's jurisdiction and that of its boards, if any, including, but not limited to, employment within the agency; employment in facilities licensed, regulated, supervised, or funded by the agency; employment pursuant to contracts with the agency; and employment in occupations that the agency licenses or provides certifications to practice. For each occupation subject to a criminal records-based restriction, the agency shall set forth the following:

(1) the job title, occupation, job classification, or restricted place of employment, including the range of occupations affected in such places;

- **All potential OSFM employees are required to complete a CMS Examining/Employment Application (CMS 100) in which the applicant must disclose whether or not s/he has "ever pled guilty to or been convicted of any criminal offense other than a minor traffic violation." At the time of hire, every new employee is required to sign a CMS Request for Release of Information form.**
- **All new OSFM employees are subject to a computer criminal background check performed by Public Safety Shared Services. This process began as early as 2008 when the OSFM's human resources functions were outsourced to Public Safety Shared Services. For every new employee the Shared Services Public Safety Center sends a background authorization form (each employee signs an acknowledgement/release) to the Illinois State Police (ISP). ISP completes a computer criminal background check and we have never had an employee disqualified as a result of this background check.**
- **All applicants for an elevator contractor license are required to disclose criminal history without the need for a criminal history**



background check. (225 ILCS 312/40(b)(8)).

- Applicants for licensure as a Pyrotechnic Distributor, Production Company or Operator are required to undergo a criminal history background check prior to licensure. (41 IL. Admin. Code 230.100(a)(9), (b)(8), (c)(8), and (d)(9); 225 ILCS 227/40). The ISP is used to perform the necessary background checks.
- All applicants for the position of Arson Investigator, including Arson Investigator Trainee, I and II are subjected to a background check owing to their status as sworn peace officers. For example, the Illinois Peace Officer Training Act, 50 ILCS 705/6(e), precludes individuals with prior felony convictions from becoming police officers. Traditionally, the ISP has been tasked with performing the necessary background checks.
- Individuals licensed as Fire Equipment Distributors by the OSFM may have their licenses subject to revocation, suspension or may have their request for licensure be refused for the following reasons: conviction of any crime by a licensee that has a substantial relationship to his or her practice or an essential element of which is misstatement, fraud or dishonesty, or conviction in this or another state of any crime that is a felony under the laws of Illinois or conviction of a felony in a federal court, unless the person demonstrates that he or she has been sufficiently rehabilitated to warrant the public trust (225 ILCS 217/75(1)); and habitual drunkenness or habitual addiction to the use of morphine, cocaine, controlled substances, or other habit forming drugs (225 ILCS 217/75(6)). The Applications for these positions do not require the disclosure of prior criminal acts/convictions.

(2) the statute, regulation, policy, and procedure that authorizes the restriction of applicants for employment and licensure, current employees, and current licenses;

- All potential OSFM employees are required to complete a CMS Examining/Employment Application (CMS 100) in which the applicant must disclose whether or not s/he has “ever pled guilty to or been convicted of any criminal offense other than a minor traffic violation.” At the time of hire, every new employee is required to sign a CMS Request for Release of Information form.
- All new OSFM employees are subject to a computer criminal background check performed by Public Safety Shared Services. This process began as early as 2008 when the OSFM’s human resources functions were outsourced to Public Safety Shared Services. For every new employee the Shared Services Public Safety Center sends a background authorization form (each employee signs an acknowledgement/release) to the ISP. ISP completes a computer criminal background check and we have never had an employee disqualified as a result of this background check.
- All applicants for an elevator contractor license are required to disclose criminal history without the need for a criminal history background check. (225 ILCS 312/40(b)(8)).
- Applicants for licensure as a Pyrotechnic Distributor, Production Company or Operator are required to undergo a criminal history background check prior to licensure. (41 IL. Admin. Code 230.100(a)(9), (b)(8), (c)(8), and (d)(9)).



- All applicants for the position of Arson Investigator, including Arson Investigator Trainee, I and II are subjected to a background check owing to their status as sworn peace officers. For example, the Illinois Peace Officer Training Act, 50 ILCS 705/6(e), precludes individuals with prior felony convictions from becoming police officers.
- Individuals licensed as Fire Equipment Distributors by the OSFM may have their licenses subject to revocation, suspension or may have their request for licensure be refused for the following reasons: conviction of any crime by a licensee that has a substantial relationship to his or her practice or an essential element of which is misstatement, fraud or dishonesty, or conviction in this or another state of any crime that is a felony under the laws of Illinois or conviction of a felony in a federal court, unless the person demonstrates that he or she has been sufficiently rehabilitated to warrant the public trust (225 ILCS 217/75(1)); and habitual drunkenness or habitual addiction to the use of morphine, cocaine, controlled substances, or other habit forming drugs (225 ILCS 217/75(6)). The Applications for these positions do not require the disclosure of prior criminal acts/convictions.

(3) the substance and terms of the restriction, and

(A) if the statute, regulation, policy or practice enumerates disqualifying offenses, a list of each disqualifying offense, the time limits for each offense, and the point in time when the time limit begins;

(B) if the statute, regulation, policy or practice does not enumerate disqualifying offenses and instead provides for agency discretion in determining disqualifying offenses, the criteria the agency has adopted to apply the disqualification to individual cases. Restrictions based on agency discretion include, but are not limited to, restrictions based on an offense "related to" the practice of a given profession; an offense or act of "moral turpitude"; and an offense evincing a lack of "good moral character".

- **Pyrotechnic Distributors and Operators cannot be convicted "in any jurisdiction of any felony within the prior 5 years."** 225 ILCS 227/35.
- Individuals licensed as Fire Equipment Distributors by the OSFM may have their licenses subject to revocation, suspension or may have their request for licensure be refused for the following reasons: conviction of any crime by a licensee that has a substantial relationship to his or her practice or an essential element of which is misstatement, fraud or dishonesty, or conviction in this or another state of any crime that is a felony under the laws of Illinois or conviction of a felony in a federal court, unless the person demonstrates that he or she has been sufficiently rehabilitated to warrant the public trust (225 ILCS 217/75(1)); and habitual drunkenness or habitual addiction to the use of morphine, cocaine, controlled substances, or other habit forming drugs (225 ILCS 217/75(6)). The Applications for these positions do not require the disclosure of prior criminal acts/convictions.
- While applicants for an elevator contractor license are required to disclose criminal history without the need for a criminal history background check, (225 ILCS 312/40(b)(8)), the OSFM Elevator Safety



Division has never received an application disclosing such a history. As such, no criteria has been formally adopted, and would have to be applied on a case-by-case basis depending on the specific criminal history divulged.

- Sworn peace officers (i.e., arson investigators) cannot be convicted of any felony.
- All new OSFM employees are subject to a computer criminal background check performed by Public Safety Shared Services. This process began as early as 2008 when the OSFM's human resources functions were outsourced to Public Safety Shared Services. For every new employee the Shared Services Public Safety Center sends a background authorization form (each employee signs an acknowledgement/release) to the ISP. ISP completes a computer criminal background check and we have never had an employee disqualified as a result of this background check. As such, no criteria have been developed to determine disqualification. OSFM will investigate this matter further and develop the necessary criteria.
- All potential OSFM employees are required to complete a CMS Examining/Employment Application (CMS 100) in which the applicant must disclose whether or not s/he has "ever pled guilty to or been convicted of any criminal offense other than a minor traffic violation." At the time of hire, every new employee is required to sign a CMS Request for Release of Information form.

(4) the procedures used by the agency to identify an individual's criminal history, including but not limited to disclosures on applications and background checks conducted by law enforcement or private entities;

- Applicants for licensure as a Pyrotechnic Distributor, Production Company or Operator are required to undergo a criminal history background check prior to licensure. (41 IL. Admin. Code 230.100(a)(9), (b)(8), (c)(8), and (d)(9); 225 ILCS 227/40). The ISP is used to perform the necessary background checks.
- Individuals licensed as Fire Equipment Distributors by the OSFM may have their licenses subject to revocation, suspension or may have their request for licensure be refused for the following reasons: conviction of any crime by a licensee that has a substantial relationship to his or her practice or an essential element of which is misstatement, fraud or dishonesty, or conviction in this or another state of any crime that is a felony under the laws of Illinois or conviction of a felony in a federal court, unless the person demonstrates that he or she has been sufficiently rehabilitated to warrant the public trust (225 ILCS 217/75(1)); and habitual drunkenness or habitual addiction to the use of morphine, cocaine, controlled substances, or other habit forming drugs (225 ILCS 217/75(6)). The Applications for these positions do not require the disclosure of prior criminal acts/convictions. As such, the OSFM relies upon word of mouth or other notification.
- All applicants for the position of Arson Investigator, including Arson Investigator Trainee, I and II are subjected to a background check owing to their status as sworn peace officers. For example, the Illinois Peace Officer Training Act, 50 ILCS 705/6(e), precludes individuals with



prior felony convictions from becoming police officers. Such verification is typically performed by the ISP.

- All applicants for an elevator contractor license are required to disclose criminal history without the need for a criminal history background check. (225 ILCS 312/40(b)(8)). As such, the OSFM relies upon word of mouth or other notification.
- Prior to hiring, OSFM employees are required to complete a CMS Examining/Employment Application (CMS 100) in which the applicant must disclose whether or not s/he has “ever pled guilty to or been convicted of any criminal offense other than a minor traffic violation.” For new employees, the Request for Release of Information form authorizes the ISP to release information relative to the existence or non-existence of any criminal record to determine suitability for employment or continued employment with the State of Illinois. If there are findings, the agency has the option of requesting a more complete and accurate records check by submitting the applicant’s fingerprints to the ISP.
- All new OSFM employees are subject to a computer criminal background check performed by Public Safety Shared Services. This process began as early as 2008 when the OSFM’s human resources functions were outsourced to Public Safety Shared Services. For every new employee the Shared Services Public Safety Center sends a background authorization form (each employee signs an acknowledgement/release) to the ISP. ISP completes a computer criminal background check and we have never had an employee disqualified as a result of this background check.

(5) the procedures used by the agency to determine and review whether an individual's criminal history disqualifies that individual;

- Pyrotechnic Distributors and Operators cannot be convicted “in any jurisdiction of any felony within the prior 5 years.” 225 ILCS 227/35.
- Individuals licensed as Fire Equipment Distributors by the OSFM may have their licenses subject to revocation, suspension or may have their request for licensure be refused for the following reasons: conviction of any crime by a licensee that has a substantial relationship to his or her practice or an essential element of which is misstatement, fraud or dishonesty, or conviction in this or another state of any crime that is a felony under the laws of Illinois or conviction of a felony in a federal court, unless the person demonstrates that he or she has been sufficiently rehabilitated to warrant the public trust (225 ILCS 217/75(1)); and habitual drunkenness or habitual addiction to the use of morphine, cocaine, controlled substances, or other habit forming drugs (225 ILCS 217/75(6)). No formal procedures have been adopted by the OSFM to screen for crimes with “substantial relationship” to the practice as a Fire Equipment Distributor or issues related to “sufficient rehabilitation” because of the rarity that any such instances arise. Current Department management cannot recall the last time such instances arose. As such, it is anticipated that future occurrences (if any) will be dealt with on a case-by-case basis.
- While applicants for an elevator contractor license are required to



disclose criminal history without the need for a criminal history background check, (225 ILCS 312/40(b)(8)), the OSFM Elevator Safety Division has never received an application disclosing such a history. As such, no formal criteria has been adopted, and would have to be applied on a case-by-case basis depending on specific criminal history divulged in the future.

- Sworn peace officers (i.e., arson investigators) cannot be convicted of any felony.
- All new OSFM employees are subject to a computer criminal background check performed by Public Safety Shared Services. This process began as early as 2008 when the OSFM's human resources functions were outsourced to Public Safety Shared Services. For every new employee the Shared Services Public Safety Center sends a background authorization form (each employee signs an acknowledgement/release) to the Illinois State Police (ISP). ISP completes a computer criminal background check and we have never had an employee disqualified as a result of this background check. As such, no criteria have been developed to determine disqualification. OSFM will investigate this matter further and develop the necessary criteria.
- All potential OSFM employees are required to complete a CMS Examining/Employment Application (CMS 100) in which the applicant must disclose whether or not s/he has "ever pled guilty to or been convicted of any criminal offense other than a minor traffic violation." At the time of hire, every new employee is required to sign a CMS Request for Release of Information form. To date, the OSFM has not received any negative results from a background check performed on a new employee.

(6) the year the restriction was adopted, and its rationale;

- The requirement that Pyrotechnic Distributors and Operators cannot be convicted "in any jurisdiction of any felony within the prior 5 years," 225 ILCS 227/35, was implemented with the advent of the Act, on January 1, 2006.
- Limitations on individuals licensed as Fire Equipment Distributors may have been included in the original legislation, effective July 1, 1989.
- The requirement that an elevator contractor seeking a license to disclose criminal history without the need for a criminal history background check, (225 ILCS 312/40(b)(8)), was included in the text of the original Act, effective January 3, 2003.
- The requirement that sworn peace officers (i.e., arson investigators) cannot be convicted of any felony has been applied by the OSFM Arson Division since its creation in 1982.
- All new OSFM employees are subject to a computer criminal background check performed by Public Safety Shared Services. This process began as early as 2008 when the OSFM's human resources functions were outsourced to Public Safety Shared Services.

(7) any exemption, waiver, or review mechanisms available to seek relief from the disqualification based on a showing of rehabilitation or otherwise, including the terms of



the mechanism, the nature of the relief it affords, and whether an administrative and judicial appeal is authorized;

- **There are no formal exemption, waiver or review mechanisms in place for any of the programs/professions discussed herein. Largely, this lack of review mechanisms is driven by a lack of applicants with criminal history.**

(8) any statute, rule, policy and practice that requires an individual convicted of a felony to have his civil rights restored to become qualified for the job; and 9 copies of the following documents:

- (A) forms, applications, and instructions provided to applicants and those denied or terminated from jobs or licenses based on their criminal record;
- (B) forms, rules, and procedures that the agency employs to provide notice of disqualification, to review applications subject to disqualification, and to provide for exemptions and appeals of disqualification;
- (C) memos, guidance, instructions to staff, scoring criteria and other materials used by the agency to evaluate the criminal histories of applicants, licensees, and employees; and
- (D) forms and notices used to explain waiver, exemption and appeals procedures for denial, suspensions and terminations of employment or licensure based on criminal history.

- **None.**

(d) Each State agency shall participate in a review to determine the impact of the employment restrictions based on criminal records and the effectiveness of existing case-by-case review mechanisms. The information required under this subsection (d) shall be limited to the data and information in the possession of the State agency on the effective date of this amendatory Act of the 97th General Assembly. With respect to compliance with the requirements of this subsection (d), a State agency is under no obligation to collect additional data or information. For each occupation under the agency's jurisdiction for which there are employment restrictions based on criminal records, each State agency must provide the Task Force with a report, on or before February 1, 2012, for the previous 2-year period, setting forth:

- (1) the total number of people currently employed in the occupation whose employment or licensure required criminal history disclosure, background checks or restrictions;
- (2) the number and percentage of individuals who underwent a criminal history background check;
- (3) the number and percentage of individuals who were merely required to disclose their criminal history without a criminal history background check;
- (4) the number and percentage of individuals who were found disqualified based on criminal history disclosure by the



applicant;

(5) the number and percentage of individuals who were found disqualified based on a criminal history background check;

(6) the number and percentage of individuals who sought an exemption or waiver from the disqualification;

(7) the number and percentage of individuals who sought an exemption or waiver who were subsequently granted the exemption or waiver at the first level of agency review (if multiple levels of review are available);

(8) the number and percentage of individuals who sought an exemption or waiver who were subsequently granted the exemption or waiver at the next level of agency review (if multiple levels of review are available);

(9) the number and percentage of individuals who were denied an exemption or waiver at the final level of agency review, and then sought review through an administrative appeal;

(10) the number and percentage of individuals who were denied an exemption or waiver at the final level of agency review, and then sought review through an administrative appeal and were then found qualified after such a review;

(11) the number and percentage of individuals who were found disqualified where no waiver or exemption process is available;

(12) the number and percentage of individuals who were found disqualified where no waiver or exemption process is available and who sought administrative review and then were found qualified; and

(13) if the agency maintains records of active licenses or certifications, the executive agency shall provide the total number of employees in occupations subject to criminal history restrictions.

(e) (Blank).

(f) The Task Force shall report to the Governor and the General Assembly its findings, including recommendations as to any employment restrictions that are not reasonably related to public safety, by September 1, 2012.

- **See Attached.**

Should you require additional information, please do not hesitate to ask.

Thank you,

William Barnes  
General Counsel  
Office of the State Fire Marshal