



TEXAS FUNERAL SERVICE COMMISSION

Policy on Criminal History Review

These guidelines are issued by the Texas Funeral Service Commission (Commission) pursuant to Chapter 53, Occupations Code. The guidelines describe the process by which the Commission determines whether a criminal conviction renders an applicant an unsuitable candidate for the license or whether a criminal conviction warrants revocation or suspension of a license previously granted. These guidelines present the general factors that are considered in all cases.

Pursuant to Texas Occupations Code Chapter 53 Subchapter D, a person may request the Commission review his/her criminal background before applying for a license. The Commission uses the same process for the evaluation as the process described below.

The Commission delegates authority to the Executive Director to review and/or approve criminal misdemeanor convictions. A denial by the Executive Director will be automatically appealed to the Commission. The Commission retains its authority to review all felony convictions.

The Commission may suspend, revoke or deny a license or may disqualify a person from receiving a license if the person has been convicted of:

1. an offense that directly relates to the duties and responsibilities of being a funeral director and/or embalmer (see list below) or
2. an offense that does not directly relate to the duties and responsibilities of being a funeral director and/or embalmer that was committed less than five years before the person applies for the license.

The Commission may not consider a person to be convicted of an offense if the judge deferred further proceedings without entering an adjudication of guilt, placed the person on community supervision, and dismissed the proceedings at the end of the community supervision.

However, if the Commission determines that the employment of the person as a funeral director and/or embalmer would create a situation in which the person has the opportunity to repeat the prohibited conduct, the Commission shall consider a person to have been convicted regardless of whether the proceedings were dismissed after a period of deferred adjudication (see paragraph above), if:

1. the person was charged with any offense described by Article 62.001(5) Code of Criminal Procedure;
2. the person has not completed the term of community supervision or the person completed the period of supervision less than five years before the date of application; OR
3. a conviction of the offense would make the person ineligible for the license by operation of law.

The Commission may issue a license on a probationary basis through the execution of an Agreed Order signed by both the applicant and the Executive Director. Per Tex. Occ. Code §53.0211(c)

the probation may not exceed a term of six months. The Agreed Order shall state why the probationary license could be revoked as outlined by Tex. Occ. Code §53.0211(d).

If the Commission suspends, revokes or denies a license because of a person's conviction of a crime, the Commission shall notify the person in writing the reason for the decision and the person's right to appeal the decision to the State Office of Administrative Hearings and finally, district court.

General Factors Used to Determine Whether a Criminal Conviction Should be Grounds to Deny, Suspend or Revoke a License

In determining whether a criminal conviction should be grounds to deny a license the following factors are considered in all cases:

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 occupations of funeral directing and/or embalming;
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.

Additional Factors Used to Determine the Fitness to Perform the Duties and Discharge the Responsibilities of the Licensed Occupation of a Person Who Has Been Convicted of a Crime

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 Commission shall 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 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.

The applicant will be asked to furnish proof that the applicant has:

- a. maintained a record of steady employment (submit resume);
- b. supported his/her dependents (if applicable);
- c. maintained a record of good conduct; and
- d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal or civil case in which the applicant has been convicted, plead guilty or plead no contest (court documents).

Crimes Related to the Occupations of Funeral Directing and/or Embalming

The following crimes are related to the occupations of funeral directing and/or embalming:

1. Class B misdemeanors listed in Tex. Occ. Code §651.602:
 - a. acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;
 - b. making a first call in a manner that violates Occupations Code §651.401;
 - c. engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or
 - d. violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Commission of Banking or another governmental agency takes action relating to the violation.
2. The commission of acts within the definition of abuse of corpse under Penal Code §42.08 because those acts indicate a lack of respect for the dead.
3. An offense listed in Article 42A.054, Code of Criminal Procedure as provided by Occupations Code §53.021(3).
4. A sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure as provided by Occupations Code §53.021(4).
5. The following crimes because those acts indicate a lack of respect for human life and dignity:
 - a. Murder
 - b. Assault
 - c. Sexual Assault
 - d. Kidnapping
 - e. Injury to a Child
 - f. Injury to an Elderly Person
 - g. Child Abuse/Neglect
 - h. Harassment
 - i. Arson
6. The following crimes because those acts indicate a lack of principles needed to practice funeral directing and/or embalming:
 - a. Robbery
 - b. Theft
 - c. Burglary
 - d. Forgery
 - e. Perjury
 - f. Bribery
 - g. Tampering with a governmental record
 - h. Insurance claim fraud
7. The following crimes because those acts indicate a lack of fitness to practice funeral directing and/or embalming:
 - a. Delivery, possession, manufacture, or the illegal dispensing of a controlled substance, dangerous drug, or narcotic.
 - b. Multiple (more than two) convictions for driving while intoxicated or under the influence.

In addition to the specific crimes listed above, multiple violations of any criminal statute shall be reviewed because multiple violations may reflect a pattern of behavior that renders the applicant unfit to hold a funeral directors and/or embalmers license.

Adopted: September 11, 2018