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State Auditor

An Audit Report on

State Agencies' Use of Criminal History Records

July 2006

Report No. 06-049



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Overall Conclusion

According to the results of a State Auditor's Office survey, the majority of the 54 state agencies that are authorized by law to access criminal history records use this access to perform criminal history background checks on their employees, licensees, and contractors. Specifically: ¹

- Thirty-eight agencies (70 percent) reported that they perform criminal history background checks on applicants for new licenses, permits, or certificates. ²
- Twenty-one agencies (39 percent) reported that they perform criminal history background checks when individuals renew licenses, permits, or certificates.
- Thirty-three agencies (61 percent) reported that they perform criminal history background checks on employees and contractors.

**The Texas Government Code
Authorizes Certain Agencies to
Access Criminal History Records**

Chapter 411 of the Texas Government Code authorizes 55 state agencies to access criminal history records. We excluded the State Auditor's Office from our survey and, therefore, surveyed the remaining 54 agencies. Appendix 2 contains detailed results from the survey.

The level of access authorized varies depending on the agency. Agencies can access records on arrests, convictions, warrants, or juvenile records, or some combination of these records.

Agencies can access criminal history records in a variety of ways. For example, agencies can perform name-based criminal history background checks using state criminal history records. (Although these checks are referred to as "name-based" checks, they can be performed using an individual's name, Social Security number, race, gender, and date of birth.) The agencies can also perform more thorough checks by obtaining an individual's fingerprints and checking them against state or national criminal history records. Using fingerprints is the most expensive method, but it is also the most accurate.

¹ Agencies reported that they use their access to criminal history records for multiple purposes; therefore, the sum of the percentages presented exceeds 100 percent.

² Not all agencies surveyed issue licenses, permits, or certificates. Therefore, it is reasonable that the percentage of agencies that perform these checks would be less than 100 percent.

We audited six state agencies and determined that five of them should improve their processes for performing criminal history background checks and following up on the results of those checks to identify individuals who are prohibited from receiving licenses or becoming employed (see text box for a list of those agencies). These agencies should also strengthen the processes they use to identify individuals convicted of offenses after they have already received a license or become employed. During our audit, the sixth agency audited--the Department of Licensing and Regulation--identified and prevented individuals who had serious criminal convictions from obtaining licenses as electricians and air conditioning and refrigeration contractors. However, the Department changed its process after the conclusion of this audit and now performs criminal history background checks on a sample of renewal applicants. This change increases the risk that licensees with criminal convictions that would prohibit them from licensure could maintain their licenses.

Five Agencies Audited Should Improve Their Processes for Performing Criminal History Background Checks

- The Commission on Law Enforcement Officer Standards and Education
- The Texas Education Agency and State Board for Educator Certification
- The Department of Aging and Disability Services
- The Department of State Health Services
- The Department of Criminal Justice

While we could not definitively conclude that the individuals for whom we performed criminal background checks during this audit had been convicted of an offense, we provided the results of the checks we obtained from the Department of Public Safety to the agencies we audited. We recommended that the agencies investigate these results. The agencies should continue the investigations and take disciplinary action and/or possibly revoke licenses or employment in accordance with state laws and regulations.

State agencies do not always consider deferred adjudications during their licensing or employment processes, in part because they are not required by statute to do so. In addition, when the dispositions of arrests are not reflected in the Department of Public Safety's Computerized Criminal History system, agencies do not always follow up to determine the dispositions. Not determining the dispositions of arrests could allow an individual who has committed a serious criminal offense to obtain a license or a job for which he or she would not otherwise be eligible under the law or agency rules. The Department of Public Safety is a resource for identifying the disposition of arrests.

Key Points

The Commission on Law Enforcement Officer Standards and Education should ensure that criminal history background checks are performed on license applicants and that it receives notification of subsequent arrests.

The Commission on Law Enforcement Officer Standards and Education (Commission) relies on local appointing agencies (such as police departments or county jails) to (1) perform criminal history background checks using fingerprints of applicants for peace officer and county jailer licenses and (2) submit applicants' fingerprints to the Department of Public Safety so that these individuals can be identified in the Department of Public Safety's Computerized Criminal History system and the Commission can be notified of any subsequent arrests.

Only 56,941 (63.9 percent) of the 89,103 Commission licensees and certificate holders are correctly identified as Commission licensees and certificate holders in the Department of Public Safety's records. This is significant because the Commission relies on the Department of Public Safety to notify the Commission of the arrest of a licensed peace officer or county jailer. The Commission is responsible for following up on subsequent convictions to ensure that licensees are still eligible to maintain their licenses.

The Texas Education Agency and State Board for Educator Certification should prevent individuals with serious criminal convictions from maintaining educator certifications.

The fingerprints of new applicants for educator certifications have been collected since October 2003. These fingerprints are submitted to the Department of Public Safety so that the Agency can be notified of any subsequent arrests.

For individuals who obtained certifications prior to October 2003, the Texas Education Agency (Agency) and State Board for Educator Certification do not have an effective process to identify certified educators who have criminal convictions that could result in revocation of their certificates. We performed name-based criminal history background checks on a sample of 538 individuals who obtained

Limitations on the Criminal History Background Checks Performed During This Audit

On our behalf, the Department of Public Safety performed name-based criminal history background checks on the individuals in the samples selected during this audit.

The Department of Public Safety matched the name, race, gender, date of birth, and Social Security number of each individual sampled with state criminal records in its Computerized Criminal History system.

Because we were not able to perform more precise checks using fingerprints, two qualifications are necessary:

- Some of the individuals we identified as possibly having a criminal history (arrests, convictions, or deferred adjudications) may not actually have a criminal history.
- Some of the individuals for whom we found no criminal history may actually have a criminal history.

In addition, the name-based criminal history background checks performed during this audit identified criminal history only in Texas (and not elsewhere).

We provided each agency audited with information regarding the individuals identified as possibly having criminal histories so that they could conduct further research.

certifications prior to October 2003 and found that seven of them may have criminal convictions that could result in revocation of their certification.

We tested 23,923 of the 71,151 individuals certified after October 2003 and verified that 23,679 (99 percent) of these certified educators were correctly identified in the Department of Public Safety's records as having an educator certification. This is significant because the Agency relies on the Department of Public Safety to notify the Agency of the arrest of a certified educator.

The Department of Aging and Disability Services should prevent individuals with serious criminal convictions from obtaining employment in state schools or the facilities it regulates.

The Department of Aging and Disability Services (Department) requires the facilities it regulates (such as nursing facilities) to perform name-based criminal history background checks on the certified nurse aides (CNA) and certified medication aides (CMA) they employ. We performed name-based criminal history background checks for a random sample of 73 CNAs and 72 CMAs and found 1 CNA and 1 CMA that may have been convicted of offenses that could prohibit them from employment as a CNA or CMA.

The Department performs name-based criminal history background checks on applicants for positions in state schools. However, the Department does not perform post-employment criminal history background checks to ensure that employees are not subsequently convicted of any offenses that would prohibit continued employment. We performed name-based criminal history background checks for a random sample of 803 state school employees and found that 2 of them may have convictions that could prohibit them from continued employment.

The Department of State Health Services should identify current licensees and state hospital employees who have criminal convictions that prohibit them from licensure or employment.

The Department of State Health Services (Department) performs criminal history background checks using the fingerprints of licensed chemical dependency counselors and sex offender treatment providers. It performs name-based criminal history background checks for all other applicants for other types of new professional licenses and applicants for employment at state hospitals. However, the Department conducts only random criminal history background checks when individuals renew their licenses. The Department does not routinely perform any criminal history background checks on state hospital employees after they are hired.

We performed name-based criminal history background checks for random samples of 194 licensees for 3 of the 21 professional licenses the Department issues and identified the following:

- The Department was not aware of six possible convictions of massage therapists.
- The Department was not aware of one possible conviction of a midwife.
- None of the 73 licensed professional counselors sampled had any convictions.

We also performed name-based criminal history background checks for a random sample of 640 state hospital employees and found that 20 may have convictions or deferred adjudications.

The Department of Criminal Justice should consider retaining employees' fingerprints and using the Department of Public Safety's arrest notification service to ensure that it receives prompt notification when an employee is arrested.

The Department of Criminal Justice (Department) conducts criminal history background checks using the fingerprints of job applicants. It also performs annual name-based criminal history background checks on current employees. The Department requires employees to self-report any subsequent arrests to their immediate supervisor.

We performed name-based criminal history background checks for random samples of 51 employees of the Board of Pardons and Paroles, 69 employees of the Windham Independent School District, 73 correctional officers, and 72 administrative employees. We did not find any employees that have been convicted of an offense that would prohibit employment.

The Department of Licensing and Regulation identifies and prevents individuals with serious criminal convictions from obtaining professional licenses.

The Department of Licensing and Regulation (Department) performs name-based criminal history background checks on applicants for 22 of its 23 licenses. It also performs criminal history background checks using fingerprints of applicants for staff leasing services licenses. As part of its license renewal process, the Department's former policy required it to perform criminal history background checks of all licensees every two years. However, as discussed above, the Department changed this process after the conclusion of this audit. The Department now performs criminal history background checks on a sample of renewal applicants. This change increases the risk that licensees with criminal convictions that would prohibit them from licensure could maintain their licenses.

We performed name-based criminal history background checks for a random sample of 72 licensed electricians and 72 licensed air conditioning and refrigeration contractors.

Summary of Management's Response

The six agencies that we audited agreed with the recommendations in this report.

Summary of Information Technology Review

To conduct this audit, auditors used data from automated systems at the agencies audited and from the Department of Public Safety's Computerized Criminal History system. A prior State Auditor's Office audit (*An Audit Report on the Criminal Justice Information System*, State Auditor's Office Report No. 06-022, February 2006) concluded that controls over the Computerized Criminal History system were adequate to ensure the completeness and accuracy of the data in that system. We performed a limited verification of the accuracy of the agencies' data for state employees by comparing it to data in the State's Uniform State Payroll System. We also evaluated the data input processes at selected agencies. We did not perform any other tests of the completeness or accuracy of the data or of the controls over the audited agencies' automated systems.

The Department of Public Safety ran name-based criminal history background checks on the individuals in the samples we selected at the six agencies audited. In addition, the Department of Public Safety compared the populations of current licensees provided to us by the Commission on Law Enforcement Officer Standards and Education and the Texas Education Agency to the records in its Computerized Criminal History system.

Summary of Objectives, Scope, and Methodology

The audit objectives were to:

- Determine whether criminal history background check requests submitted by state agencies and processed by the Department of Public Safety permit those agencies to correctly identify individuals who do not meet standards for activities such as licensing or employment.
- Determine the extent to which state agencies with authorized access to state and national criminal history records for licensing or permitting rely on this data for these activities.

The audit scope covered six agencies: the Commission on Law Enforcement Officer Standards and Education, the Texas Education Agency and State Board for Educator Certification, the Department of Aging and Disability Services, the Department of State Health Services, the Department of Criminal Justice, and the Department of Licensing and Regulation.

The audit methodology included conducting interviews, reviewing policies and procedures, observing operations, and comparing information for licensees and state employees to the Department of Public Safety's records.

Acknowledgements

We appreciate the assistance of the Department of Public Safety's Crime Records Service in performing the criminal history background checks necessary to conduct this audit.

Recent SAO Work		
Number	Product Name	Release Date
06-022	An Audit Report on the Criminal Justice Information System	February 2006

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Detailed Results

Chapter 1

Background Information on the Use of Criminal History Records

State agencies have multiple options for performing criminal history background checks.

Types of Criminal Background Checks

Federal Bureau of Investigation Fingerprint Check (Cost is \$24 per check)

This check is performed using the Integrated Automated Fingerprint Identification System (IAFIS), a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation. The IAFIS contains the largest biometric database in the world and includes fingerprints and corresponding criminal history information for more than 47 million subjects.

State Fingerprint Check (Cost is \$15 per check)

This check is performed using the Automated Fingerprint Identification System (AFIS), a biometric identification system that automates the processing of arrest and applicant fingerprint card reporting to the Department of Public Safety. It contains a fingerprint database of individuals arrested in Texas.

State Name-Based Check (Cost is \$1 per check)

This check is performed using the Computerized Criminal History (CCH) system, a statewide repository of criminal history data reported to the Department of Public Safety by local criminal justice agencies. CCH includes information on arrests, prosecutions, and case dispositions for individuals arrested for Class B misdemeanors or greater violations of Texas criminal statutes.

Source: Department of Public Safety

Agencies that are authorized by Texas Government Code, Chapter 411, to access criminal history information can (1) conduct fingerprint checks using information maintained by the Federal Bureau of Investigation (FBI) and the Department of Public Safety or (2) conduct name-based checks using information maintained by the Department of Public Safety (see text box for additional details). Using fingerprints is the most expensive method, but it is also the most accurate.³

The Department of Public Safety's Computerized Criminal History system contains data on arrests and dispositions, and its Automated Fingerprint Identification System contains fingerprints collected through arrests or non-criminal background checks. The Automated Fingerprint Identification System is connected to the FBI's Integrated Automated Fingerprint Identification System. Most agencies have access to criminal convictions and deferred adjudication information; some agencies also have access to information on arrests and outstanding warrants.

Arrest and conviction records are maintained in the Computerized Criminal History system for all felonies, Class A misdemeanors (such as unlawful carrying of a weapon), and Class B misdemeanors (such as driving while intoxicated). Individual counties have discretion in entering Class C misdemeanors (which are punishable by a fine only; for example, public intoxication) into the system.

The Department of Public Safety also provides a free service through which it retains fingerprint cards and notifies state agencies when an employee,

³ According to a report to the U.S. Attorney General by the National Task Force on Interstate Identification Index Name Check Efficacy, "Criminal history background checks based on fingerprints are considered by criminal justice officials to be extremely accurate. Searches of newer Automated Fingerprinted Identification Systems are thought to result in error rates of only a small fraction of one percent of all searches. By contrast, criminal history background checks based solely on non-unique identifiers, such as name, sex, race and date of birth, are known to result in significant numbers of...errors." *Interstate Identification Index Name Check Efficacy*, National Task Force on Interstate Identification Index Name Check Efficacy, July 1999.

licensee, or contractor is arrested. Agencies should consider the benefits and costs of using fingerprints as the primary method to conduct criminal history background checks.

The Department of Public Safety performed criminal history background checks on the individuals in samples selected during this audit. Information for the individuals in the samples was matched to criminal records based on name, race, gender, date of birth, and Social Security number. Because we did not perform more precise checks based on fingerprints, some of the individuals we identified as possibly having a criminal history may not actually have a criminal history. Conversely, some of the individuals for whom we found no criminal history may actually have a criminal history. In addition, the name-based criminal history background checks performed during this audit identified criminal history only in Texas (and not elsewhere). We provided each agency audited with information regarding the individuals identified as possibly having criminal histories so that they could conduct further research.

State agencies do not always consider deferred adjudications during their licensing or employment processes, and they do not always follow up to determine the disposition of arrests.

Deferred Adjudication

An individual may receive a deferred adjudication if he or she pleads guilty to an offense and is placed under community supervision for a period of time.

Texas Government Code, Section 411.135(2), states that deferred adjudications and convictions are treated the same for purposes of public information. Specifically, that statute states that the public can obtain "criminal history record information maintained by the [Department of Public Safety] that relates to the conviction of or a grant of deferred adjudication to a person for any criminal offense, including arrest information that relates to the conviction or grant of deferred adjudication."

If agencies do not consider deferred adjudication in making licensing and employment decisions, this could allow an individual who has committed a serious criminal offense to obtain a license or a job for which he or she would not otherwise be eligible. For example, one agency reports that some individuals who are certified educators have received sentences of deferred adjudication that would prohibit them from obtaining educator certification. Agencies should consider seeking rule or statutory changes to consider deferred adjudications in the same manner as convictions when making licensing and employment decisions.

Not determining the disposition of arrests also could allow an individual who has committed a serious criminal offense to obtain a license or a job for which he or she would not otherwise be eligible. Following up to determine the disposition of arrests is necessary because arrest records in the Department of Public Safety's Computerized Criminal History system do not always have corresponding disposition records. A February 2006 State Auditor's Office audit report found that, as of calendar year 2005, there were matching disposition records for only 73 percent of the records for arrests that occurred in calendar year 2003.⁴ Because the Department of Public Safety must rely on local prosecutors' offices to submit arrest dispositions, there is sometimes a delay between the resolution of a case

⁴ See *An Audit Report on the Criminal Justice Information System*, State Auditor's Office Report No. 06-022, February 2006.

and the time that the disposition is entered into the Computerized Criminal History system.

During this audit, at the Department of Aging and Disability Services we identified three examples of individuals with arrests for offenses that, if the individuals had been convicted, possibly may prohibit them from employment. We followed up on these arrest records with the Department of Public Safety and determined that all three of these individuals were convicted of the offenses, but the conviction records were not yet in the Computerized Criminal History system.

We provided the agencies we audited with information regarding (1) the deferred adjudications that were associated with their licensees or employees and (2) arrest records with unknown dispositions that were associated with their licensees or employees. We asked the agencies to initiate efforts to follow up on this matter.

Agencies That Are Authorized to Access State Criminal History Records Use That Information for a Variety of Purposes

Chapter 411 of the Texas Government Code authorizes 55 state agencies to access state criminal history records at the Department of Public Safety. Only one of those 55 agencies--the Department of Family and Protective Services--is required by the Texas Government Code to perform criminal history background checks on certain individuals.

To determine the extent to which state agencies use criminal history information, the State Auditor's Office surveyed the agencies (other than the State Auditor's Office) that are authorized to access state criminal history records. Of the 54 agencies that responded to the survey:⁵

- Thirty-eight agencies (70 percent) reported that they perform criminal history background checks on applicants for new licenses, permits, or certificates.⁶ Of those 38 agencies, 20 run applicants' fingerprints through the Department of Public Safety's and/or FBI's fingerprint databases. The other 18 agencies perform name-based background checks using state criminal history information available from the Department of Public Safety or perform background checks through an independent data broker.
- Twenty-one agencies (39 percent) reported that they perform criminal history background checks when individuals renew licenses, permits, or certificates. Of those 21 agencies, 8 run applicants' fingerprints through Department of Public Safety and/or FBI fingerprint databases. The other 13 agencies perform name-based background checks using state criminal history information available from the Department of Public Safety or perform background checks through an independent data broker.
- Twenty-three agencies (43 percent) reported that they perform criminal history background checks on current holders of licenses, permits, or certificates. These agencies perform criminal history background checks for purposes such as complaint investigation or as part of periodic checks.
- Thirty-three agencies (61 percent) reported that they perform criminal history background checks on employees and contractors. Of those 33 agencies, 10 run applicants' fingerprints through the Department of Public Safety and/or FBI fingerprint databases. The other 23 agencies perform name-based background checks using state criminal history information available from the Department of Public Safety.

⁵ Agencies reported that they use their access to criminal history records for multiple purposes; therefore, the sum of the percentages presented exceeds 100 percent.

⁶ Not all agencies surveyed issue licenses, permits, or certificates. Therefore, it is reasonable that the percentage of agencies that perform these checks would be less than 100 percent.

- Seventeen (32 percent) reported that they perform criminal history background checks for other purposes. For example, agencies reported that they perform criminal history background checks on volunteers or individuals who have applied to take certain exams.

Appendix 2 contains detailed survey results for each agency that responded to the survey.

The Commission on Law Enforcement Officer Standards and Education Should Ensure that Criminal History Background Checks Are Performed on License Applicants and that It Receives Notification of Subsequent Arrests

Background Information Regarding Commission on Law Enforcement Officer Standards and Education Licensees

The Commission on Law Enforcement Officer Standards and Education (Commission) issues licenses for peace officers, county jailers, and public security officers. It also issues certificates for investigative hypnosis, telecommunicators, and officers for mental health assignments.

The Commission is not required by statute to conduct criminal history background checks on individuals who apply for licenses as peace officers or county jailers; however, it has established rules in the Texas Administrative Code for background checks. The Commission relies on the local appointing agencies to submit the applicant's fingerprints to the Department of Public Safety for a search of local, state, and national fingerprint records. As part of the application process, the appointing agency is required to submit an affidavit that certifies that a criminal history background check was performed.

Title 37, Texas Administrative Code Section 217.1

This rule prohibits individuals from being licensed by the Commission as a peace officer or county jailer if they have been convicted or received a sentence of deferred adjudication for a felony, a Class A misdemeanor offense, or a Class B misdemeanor offense (with some exceptions based on date of conviction and mitigating circumstances).

Texas Occupations Code Section 1701.303b

Requires the appointing agency (such as a police department or a county jail) to file an application with the Commission and to notify the Commission of the appointment of a peace officer or county jailer within 30 days.

The Commission on Law Enforcement Officer Standards and Education (Commission) does not have an effective process to ensure that state and federal background checks are performed on applicants for peace officer or county jailer licenses. In addition, the Commission does not have a sufficient process to ensure that it receives notification when a licensee is arrested.

Auditors sampled individuals licensed or certified by the Commission and performed name-based criminal history background checks. That process identified 367 individuals who may not meet the standards specified in the Texas Administrative Code (see text box).

Auditors provided information for these 367 licensed peace officers, licensed county jailers, and certified telecommunicators to the Commission for further review. According to the Commission, of these 367 individuals:

- Ninety-two licensed peace officers and county jailers had possible Class B misdemeanor convictions that could have prohibited them from receiving a license (see text box for details).
- Twenty-four telecommunicators had possible Class B misdemeanor convictions.
- Two hundred twenty-six licensed peace officers and county jailers may have Class A misdemeanors, felony convictions, or deferred adjudications that would prohibit them from being licensed as peace

officers or county jailers according to the Commission's rules.

- Twenty-five telecommunicators had possible Class A misdemeanors, felony convictions, or deferred adjudications.

The Commission relies on the Department of Public Safety to notify the Commission of the arrest of a licensed peace officer or county jailer. When

applicants for peace officer or county jailer positions are fingerprinted by the local “appointing agency” (such as a police department or a county jail), the fingerprints are sent to the Department of Public Safety for criminal history background checks. The Department retains those fingerprints, and the individuals associated with those fingerprints are also identified in its Computerized Criminal History system as licensees of the Commission. If the individual is subsequently arrested, the Department of Public Safety will notify the Commission. However, this process is not working as intended. Specifically:

- Only 56,941 (64 percent) of the 89,103 Commission licensees and certificate holders were correctly identified in the Department of Public Safety’s records.
- Auditors identified 21,718 Commission licensees and certificate holders (24 percent of the Commission’s 89,103 licensees and certificate holders) who did not have a fingerprint maintained on file in the Department of Public Safety’s Computerized Criminal History system. According to the Commission, 17,767 of these individuals are licensed peace officers and county jailers.

This indicates that either these individuals’ fingerprints have not been retained for arrest notification purposes or that the local appointing agencies have not performed criminal history background checks on these individuals.

In addition, the Commission’s process for auditing the local appointing agencies is not adequate to mitigate the risks associated with relying on local appointing agencies to perform criminal history background checks. Part of the audit process includes reviewing personnel files to verify that criminal history background checks were performed and that applicants for peace officer and county jailer positions were fingerprinted. The Commission audits an agency if the agency requests an audit or if a complaint is issued against an officer or an agency. The Commission’s goal is to audit each local appointing agency every five years.

Recommendations

The Commission should:

- Review the criminal history records of the 367 peace officers, county jailers, and telecommunicators who may have convictions or deferred adjudications and determine whether further investigation is appropriate.
- Require all current licensees who are not identified as peace officers or county jailers in the Department of Public Safety’s Computerized

Criminal History system to submit a new fingerprint card to the Commission so that their information can be entered into the Department of Public Safety's system.

- Ensure that all licensed peace officers' and county jailers' fingerprints are identified as Commission licensees in the Department of Public Safety's Computerized Criminal History system by doing either of the following:
 - Require local appointing agencies to submit a copy of each new applicant's fingerprint card to the Commission so that the Commission can verify that the individual is identified in the Department of Public Safety's Computerized Criminal History system as a Commission licensee before it issues a license.
 - Reconcile the current licensee population with the list of individuals identified as Commission licensees in the Department of Public Safety's Computerized Criminal History system on a quarterly basis and follow up on those who are misidentified or unidentified.

Management's Response

This auditor's report contains meaningful recommendations that will be integrated into our internal auditing procedures and our business practices. There are three major bullet recommendations and management will respond to each bullet.

I. TCLEOSE agrees with this recommendation of the State Auditor's Office. The first bullet makes reference to 367 licensed peace officers and county jailers who may have convictions or deferred adjudications. The recommendation suggests that TCLEOSE review the records and following is our review.

A. Addressing the 116 licensees with possible Class B misdemeanor convictions:

1. The data run provided by TCLEOSE to the State Auditor's office was supposed to be, "for...current and active peace officers and county jailers certified by the Commission." TCLEOSE incorrectly submitted a database which included telecommunicators (911 operators) who are certified, but not licensed and not required to have fingerprint cards submitted nor do they come under the criminal record prohibitions that peace officers and county jailers must satisfy.

Twenty-four (24) telecommunicators were included in the 116 and should not have been included. The 116 licensed peace officers and county jailers with Class B misdemeanor convictions needs to be reduced to 92.

2. Of the remaining 92 licensees, who are listed as having a Class B misdemeanor conviction, 34 were hired by agencies and licensed under earlier rules which allowed persons to be licensed with a Class B misdemeanor conviction.⁷

3. Of the remaining 58 licensees, 26 have open complaint investigations at the time this audit was performed. This leaves 32 licensees. One (1) of the remaining 32 had the charges dropped by the local justice system and one (1) received a waiver from the Commission at the September 26, 2004 meeting. This leaves thirty (30) licensees.

4. As a result of this audit by the State Auditor's Office and the resultant follow-up by TCLEOSE personnel, TCLEOSE will open thirty (30) new complaint investigations into these licensees. Complaint investigations will be opened and initiated by July 1, 2006.

5. TCLEOSE will further initiate reprimands for any and all licensees who did not notify TCLEOSE of their arrest, as required by TCLEOSE rule 211.27. The reprimands will be mailed by September 1, 2006.

B. Addressing the 251 licensees who may have Class A misdemeanors or felony convictions or deferred adjudications, which would prohibit them from being licensed as peace officers or county jailers according to the rules that existed at the time of the audit.⁸ The 251 licensees breakdown as follows:

1. The database provided by TCLEOSE to the State Auditor's Office incorrectly included telecommunicators who are certified by the commission but not licensed and do not have the criminal record prohibition. As such, 25 telecommunicators need to be removed from the 251 number.

2. Of the remaining 226 licensees believed to have Class A misdemeanor or felony convictions or deferred adjudications, one hundred and two (102) were within the rules which existed at the time of licensure or

⁷ *The Texas Commission on Law Enforcement Officer Standards and Education has experienced several rule revisions as the rules relate to criminal convictions. The Commission rules as they relate to criminal records have been tightened and changed in 1976, 1981, 1994, 1995, 1996, 1998, 2001 and 2003. People who were licensed before the rules were revised are grandfathered, however they remain in the database.*

⁸ *At the time of the audit, licensees could not have been convicted of a Class B misdemeanor in the last ten years prior to licensing or arrested for a Class B misdemeanor while licensed. Likewise, the higher offenses of a Class A misdemeanor or felony also apply. However, both of these are lifetime prohibitions either prior to licensing or while licensed. All previous rules were more lenient.*

at the time of arrest and/or conviction. (See footnotes 7 and 8 for additional information.)

3. Of the remaining 124 licensees, fifty-one (51) have open complaint investigations ongoing at the time of this audit. This leaves seventy three (73), six (6) of which the computerized criminal history does not match the licensee, two (2) who have had their licenses revoked, two (2) who were cleared by legal action, and one (1) is a constitutionally elected official who is exempt from revocation of his license for this offense.

4. As a result of the audit by the State Auditor's Office and the follow-up recommended in this bullet, sixty-two (62) new complaints are being opened and action will be determined at the conclusion of these investigations. Complaint investigations will be opened and initiated by July 15, 2006.

5. TCLEOSE will further initiate reprimands for any and all licensees who did not notify TCLEOSE of their arrest, as required by rule 211.27. Reprimands will be mailed by October 1, 2006.

II. TCLEOSE agrees with this recommendation of the State Auditor's Office. The second bullet is in reference to an audit finding of 21,718 persons, identified in the database provided by TCLEOSE to the State Auditor's Office, who have licenses but do not have fingerprint cards on file at DPS.

Fingerprint cards are an important element in the monitoring process of TCLEOSE. Commission rules require licensees to notify TCLEOSE of any arrest. This rule is critical such that TCLEOSE investigators can now monitor the court case and take the necessary action, once due process is afforded. TCLEOSE also relies upon employing agencies to notify TCLEOSE as well as letters, newspaper articles and TCLEOSE's own network. The final and critical check in this notification process is the DPS Computerized Criminal History files.

Whenever a person is arrested and DPS is notified of the arrest, TCLEOSE will be notified so long as there is a TCLEOSE applicant fingerprint card on file.

Unfortunately, preliminary findings indicated that 21, 718 licensees were not in the DPS database. The same database, which included telecommunicators, gave the incorrect impression to the State Auditor's Office and 3,951 of the 21,718 persons identified are telecommunicators, who are not required to submit a fingerprint card nor are they subject to the same prohibition against prior or present sanctions for criminal convictions. Thus, the actual number of fingerprint cards of licensed peace officers or county jailers not found in the DPS database is 17,767.

A. Between 1994/1995 and until 2001, all applicant fingerprint cards submitted to TCLEOSE were verified at the TCLEOSE office and transported to DPS. Since May of 2001, fingerprint cards, both the electronic version and the paper card version, are submitted directly to DPS by the employing agency.

Prior to 1994/1995, TCLEOSE filed fingerprint cards in the master file at TCLEOSE. The past practice with these pre-1994/1995 file folders has been that when the file is examined for whatever reason, the fingerprint cards are removed and the cards are sent to DPS for inclusion into the DPS database. It is estimated that 5,000 to 8,000 fingerprint cards still remain in the approximately 70,000 file folders at the TCLEOSE office. TCLEOSE will begin to examine all 70,000 file folders using the 17,767 license database generated from this audit and remove the fingerprint cards found in these files. It is estimated that 5,000 to 8,000 of these 17,767 have fingerprint cards in the TCLEOSE files. This process has begun and will be completed by August 1, 2006. TCLEOSE personnel will transport the cards to DPS for inclusion into the existing databases.

B. Next, with a reduced database, TCLEOSE will work with DPS to determine whether police/jailer applicant fingerprint cards already on file at DPS may have been submitted without the required TCLEOSE ORI number or with incorrect ORI numbers. As we match databases, we hope to reduce the numbers even further. This database and data match will be accomplished by September 15, 2006.

C. Lastly, with a reduced database, TCLEOSE will obtain the requisite fingerprint cards from licensees and have them submitted to DPS. Letters to all licensees without fingerprint cards on file at DPS will be sent by November 1, 2006.

III. TCLEOSE agrees with the State Auditor's recommendation number 2 in the third bullet and will reconcile as recommended. In the third bullet response, TCLEOSE will prevent future occurrences of the problems expressed in bullets one and two.

A. TCLEOSE will design and implement a quarterly reconciliation which will ensure that employing agencies are submitting required fingerprint cards to DPS and that they are submitting these cards with the correct ORI number. Quarterly reconciliations for quarters beginning the first of September, December, March and June will be completed within 45 days of the end of the quarter.

B. During the third quarter of every fiscal year TCLEOSE staff will reconcile using a database match, all active licenses with the DPS files to make sure TCLEOSE is being notified of a licensee's arrest and/or conviction.

In conclusion, on behalf of TCLEOSE, I want to apologize to the State Auditor's Staff and particularly to Mr. Wei Wang for including telecommunicators in our database. This mistake created unnecessary work and this waste of time is inexcusable.

Auditor Follow-Up Comment

The State Auditor's Office did not audit the numbers in management responses. Therefore, we do not attest to the accuracy or completeness of these analyses.

The Texas Education Agency and State Board for Educator Certification Should Prevent Individuals with Serious Criminal Convictions from Maintaining Educator Certifications

Prior to October 2003, the State Board for Educator Certification performed name-based criminal history background checks on applicants for education certification. Educators were not subject to further criminal history

background checks unless they applied for new certifications, were under investigation, or changed credentials on their current certificates.

Beginning in October 2003, the State Board for Educator Certification started performing state and national fingerprint criminal history background checks for all new applicants for educator certifications. Effective September 1, 2005, the Texas Education Agency (Agency) assumed administrative functions and services for educator certification.

Background Information Regarding Texas Education Agency Educator Certificate Holders

The Texas Education Agency (Agency) oversees ten educator certificate programs.

A total of 888,018 individuals received certifications prior to October 2003 (the date fingerprint criminal background checks started being performed for educator certification).

For individuals who obtained certifications prior to October 2003, the Agency does not have an effective process to identify certified educators who may have criminal convictions that occurred after their original certification and that would result in revocation of their certificates. We performed criminal history background checks on a sample of 538 certified educators who had received certifications prior to October 2003 and identified 19 (4 percent) who may have criminal convictions. We provided information for these individuals to the Agency for further review. Of these 19 individuals, 12 (63 percent) have 16 criminal convictions that would not result in revocation of their certification.

Educators' fingerprints have been retained by the Department of Public Safety, and the Department of Public Safety notifies the Agency of the arrests of any certified educators that occurred after certification. We tested 23,923 of the 71,151 individuals certified after October 2003 and verified that 23,679 (99 percent) of these certified educators were correctly identified in the Department of Public Safety's records as having an educator certification; 244 (1 percent) were not identified as certified educators in that system. Identifying these individuals as certified educators allows the Department of Public Safety to notify the Agency of the arrest of a certified educator.

Recommendations

The Agency should:

- Consider changing management procedures to perform post-certification name-based criminal history background checks on individuals who were certified prior to October 2003.
- Review the criminal history records of the 19 certified educators with possible convictions and determine whether an investigation is appropriate. It should also notify the employers of these individuals as required by Texas Education Code, Section 21.058
- Coordinate with the Department of Public Safety to ensure the fingerprints of certified educators have been correctly identified in the Department of Public Safety's Computerized Criminal History system. It should also ensure that the Department of Public Safety corrects the information for the 244 individuals not designated as certified educators in that system.

Management's Response

Recommendation #1

Management agrees with the recommendation that TEA should perform criminal history background checks on individuals who were certified prior to October 2003; however, due to the large number of licensed educators that this would involve it would require legislation to provide funding for the undertaking. Management is unable to take further steps towards addressing this recommendation.

Recommendation #2

Management agrees with the recommendation that TEA review the criminal history records of the nineteen certified educators provided by the SAO. As follow up the nineteen records were reviewed and two of those records were found to warrant further investigation and will be recommended for possible revocation of their educator credentials based on that criminal history. As to the recommendation that the employers of the individuals be notified, we determined that the individuals have not been employed by a school district for several years, making this requirement unnecessary. The Director of Investigations and Fingerprinting, Doug Phillips, completed the review of the records and initiated the investigations as described above. No follow up required.

Recommendation #3

Management agrees with the recommendation that TEA should coordinate with the Department of Public Safety to ensure that fingerprints of certified educators have been correctly identified in the Department of Public Safety's Computerized Criminal History System. We have been in contact with DPS regarding the list of 244 individuals not designated as certified educators in the CCH system and will be sending the list to DPS so that they can ensure that the individuals are correctly identified. The Director of Investigations and Fingerprinting, Doug Phillips, forwarded the above information to Angie Klein, AFIS/CJIS Manager at DPS, for review and comparison on June 12, 2006. A follow up contact will be made to ensure that Ms. Klein received the information by June 23, 2006.

**Management acknowledges that the Agency inadvertently provided the SAO with a subset of the data requested rather than the entire range of data due to a database that had not been updated. This resulted in the SAO receiving a significantly lower number of educators who were fingerprinted after October 1, 2003 then were actually processed by the Agency. The database has since been updated and the correct number of unique certified educators whom have been fingerprinted is 71,151 .*

Auditor Follow-Up Comment

The Agency should verify that the certified educators it inadvertently did not provide to the State Auditor's Office have been correctly identified in the Department of Public Safety's Computerized Criminal History system.

The Department of Aging and Disability Services Should Prevent Individuals with Serious Criminal Convictions from Obtaining Employment in State Schools or the Facilities It Regulates

Background Information Regarding Department of Aging and Disability Services Licensees and Employees

The Department oversees three types of licenses and occupation registries: Nurse Aide Registry, Medication Aide Registry and Employee Misconduct Registry.

At the time of this audit, the Department also employed 11,297 individuals to work in its 12 state schools. These employees provide residential services and support to people with mental retardation or development disabilities.

Texas Health and Safety Code Section 250.003

VERIFICATION OF EMPLOYABILITY; DISCHARGE. (a) A facility may not employ a person if the facility determines, as a result of a criminal history check, that a person has been convicted of an offense listed in this chapter that bars employment (these offences are found in Sec. 250.006) or that a conviction is a contraindication to employment with the consumers the facility serves, and if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property.

(c) A facility shall immediately discharge any employee who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, or whose criminal history check reveals conviction of a crime that bars employment or that the facility determines is a contraindication to employment as provided by this chapter.

The Department of Aging and Disability Services (Department) is not required by statute to perform criminal history background checks on certified nurse aides (CNA) and certified medication aides (CMA). However, the Department requires facilities (such as nursing facilities) that employ the CNAs and CMAs to perform criminal history background checks.

The Department maintains the state nurse aide and medication aide registries. As of March 2006, these registries contained information for 117,655 CNAs and 9,217 CMAs. The Department also maintains an Employee Misconduct Registry that records information regarding individuals who have committed acts of abuse, neglect, exploitation, misappropriation, or misconduct against a resident or consumer. The Department does not, however, record information regarding employees who have been convicted of employment-prohibiting offenses in these registries.

The Department performs name-based criminal history background checks using the Department of Public Safety's Computerized Criminal History system for individuals who have been offered a position at a state school. It also performs state and federal criminal history background checks using fingerprints of individuals who have lived outside of Texas in the previous two years.

The Department does not follow up on employees who have had an arrest for which there is not a disposition on record. The Department does not perform any post-employment criminal history background checks to ensure that state school employees have not been convicted of any offenses prohibiting continued employment.

CNAs and CMAs

Because CNAs and CMAs provide direct care to residents at facilities serving the elderly or persons with disabilities, we performed name-based criminal history background checks for 73 CNAs and 72 CMAs. The results were as follows:

- Ten (14 percent) of the 73 CNAs tested may have a total of 24 criminal convictions. Of these, only one may have a conviction that would prohibit the individual from working as a CNA in a facility regulated by the Department.
- One (1 percent) of the 72 CMAs tested may have a recent criminal conviction that prohibits employment at a facility regulated by the Department.

Employees of State Schools

Fifty-eight (7 percent) of the 803 state school employees for whom auditors performed criminal history background checks may have criminal convictions. Of these, only two may have convictions that would have prohibited them from employment. One of these possible convictions occurred prior to the individual's date of employment.

The Department's survey process is not necessarily sufficient to ensure that criminal history background checks are performed.

The Department uses an annual survey process to verify that the facilities it regulates and state schools have performed criminal history background checks on CNAs, CMAs, and state school employees prior to employment. However, at the facilities the Department regulates, its surveyors review the personnel files for only five employees hired within the prior four-month period. At state schools, surveyors review 25 percent of new hires and rehires. This survey process does not necessarily ensure that all required criminal history background checks have been performed on all employees.

Recommendations

The Department should:

- Review the possible criminal conviction records of the CNAs, CMAs, and state school employees auditors identified and determine whether an investigation is appropriate.
- Perform annual criminal history background checks on employees of state schools to identify employees who have been convicted of employment-prohibiting offenses after they became employed.

Management's Responses

Recommendation:

The Department should:

Review the possible criminal conviction records of the CNAs, CMAs and state school employees auditors identified and determine whether an investigation is appropriate.

Corrective Action:

The Director of Enforcement for Regulatory Services has reviewed the CNAs and CMAs identified, evaluated the circumstances and requirements, and has determined that no further investigation is required. We will continue to enforce procedures prescribed by the Centers for Medicare and Medicaid Services to ensure facilities are conducting pre-employment screening of applicants.

The Superintendent of each state school has received a copy of the audit findings for employees of their school. These findings are being reviewed and compared to current employment files to determine if the arrest or conviction was previously reported. All arrests and convictions that were not previously reported and reviewed either by a pre-employment check or by an employee self-report are being investigated to validate the arrest and disposition. Each finding will be reviewed in conjunction with the facility Operations Coordinator to determine what action, if any, is required.

Target Implementation date:

The findings have been distributed to Superintendents. Findings will be reviewed and appropriate action identified by July 5, 2006.

Responsible Management:

The Director of State School Operations will be responsible for coordinating the completion.

Recommendation:

The Department should:

Perform annual criminal history background checks on employees of state schools to identify employees who have been convicted of employment-prohibiting offenses after they became employed.

Corrective Action:

State Schools will implement annual criminal history background checks on all employees.

Target Implementation Date:

The process for annual criminal history checks will be completed for implementation effective September 1 , 2006. All State School employees will have a criminal history check completed in FY 2007.

Responsible Management:

The Director of State School Operations will be responsible for process implementation.

The Department of State Health Services Should Identify Current Licensees and State Hospital Employees Who Have Criminal Convictions that Prohibit Them from Licensure or Employment

Background Information Regarding Department of State Health Services Licensees

The Department oversees 21 professional licensing programs, 9 emergency medical service licenses, and 10 state hospitals.

The Department of State Health Services (Department) performs criminal history background checks on applicants for new licenses and applicants for employment at state hospitals. However, the Department conducts only random criminal history background checks when individuals renew licenses, and it does not routinely perform any background checks on state hospital employees after they are hired. Therefore, the Department would not be able to identify all subsequent criminal convictions or deferred adjudications that would prohibit licensure or employment.

Licensees

Beginning in January 2004, the Department began performing name-based criminal history background checks for new applicants for 19 of its 21 licensing programs. Prior to January 2004, it performed criminal history background checks on a random basis or if an applicant indicated on an application that he or she had a prior criminal history.

For its other two licensing programs—Licensed Chemical Dependency Counselor and Council on Sex Offender Treatment providers—the Department performs Federal Bureau of Investigation and Department of Public Safety criminal history background checks using fingerprints of new applicants for licenses and licensees seeking renewals.

Employees at State Hospitals

The Department performs name-based criminal history background checks on all applicants for employment at state hospitals. It also conducts fingerprint checks using Federal Bureau of Investigation and Department of Public Safety information for applicants who have lived out of state any time during the last two years. The Department requires employees of state hospitals to self-report any arrests; however, it does not perform routine criminal history background checks after an individual becomes employed at a state hospital.

The Department's criminal history background check process does not identify all licensees' criminal convictions.

We tested the Department's criminal history background check process for three professional licensing programs. Results of testing were as follows:

Statutory Requirements for Massage Therapist Licenses

**Texas Occupations Code
Section 455.152**

(a) A person is not eligible for a license as a massage therapist [and other related titles] if the individual has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense involving prostitution or another sexual offense. The individual is ineligible until the fifth anniversary of the date of the conviction.

**Texas Occupations Code
Section 455.1525**

(a) On receipt of an application for a license under this chapter, the department shall conduct a criminal background check on the applicant.

(b) An applicant is not eligible for a license under this chapter if the applicant, in the five years preceding the date of the application, has been finally convicted of a misdemeanor involving moral turpitude or a felony.

Statutory Requirements for Midwife Licenses

**Texas Occupations Code
Section 203.1515 (b)**

In its proposed rules under this section, the midwifery board shall list the specific offenses for which a conviction would constitute grounds for the midwifery board to take action under Section 53.021.

**Texas Occupations Code
Section 203.404 (a) (3)**

The midwifery board may discipline a licensed midwife, refuse to renew a midwife's license, or refuse to issue a license to an applicant if the person is convicted of a misdemeanor involving moral turpitude or a felony.

- Licenses for Massage Therapists. The Texas Occupations Code requires the Department to perform criminal history background checks and prohibits individuals with certain convictions from obtaining a massage therapist license (see text box for additional details). Auditors randomly selected 73 of the 23,133 licensed massage therapists and performed named-based background checks on these individuals using the Department of Public Safety's Computerized Criminal History system. The Department was not aware of six possible convictions we identified. (The Department considers deferred adjudications in making licensing decisions for massage therapists. See Chapter 1 for more information on deferred adjudications.)
- Licenses for Midwives. The Department has not adopted rules that list the specific convictions that would require the midwifery board to take disciplinary action against a licensee (see text box for additional details). We conducted named-based criminal history background checks on 48 of the 140 current licensees. The Department was not aware of one possible conviction we identified.

**Statutory Requirements for
Licensed Professional Counselors**

**Texas Occupations Code
Section 503.2045**

- (a) The board shall adopt rules necessary to comply with Chapter 53.
- (b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

**Requirements for Employees of
State Hospitals**

**Title 25, Texas Administrative Code,
Section 414.504 (a)**

Each facility, local authority, community center, and provider must conduct:

- (1) a pre-employment criminal history and registry clearance of all applicants (as defined) for employment; and
- (2) a pre-assignment criminal history and registry clearance of all applicants for volunteer status.

**Title 25, Texas Administrative Code,
Section 414.504 (d)**

The following individuals may not be employed by, assigned volunteer status at, or serve as a professional clinical intern at, a facility, local authority, community center, or provider:

- (1) an individual who has been convicted of any of the criminal offenses listed in subsection (g) of this section;
- (2) an individual who has been convicted of a criminal offense that the facility, local authority, community center, or provider has determined to be a contraindication to employment or volunteer status at that entity.

**Title 25, Texas Administrative Code,
Section 414.504 (g)**

This rule specifies convictions of criminal offenses that prohibit employment.

- Licenses for Professional Counselors. The Department has complied with Texas Occupations Code, Section 503.2045, which requires it to specify convictions that would prohibit an individual from obtaining a professional counselor license (see text box for additional details). We conducted named-based criminal history background checks on 73 of the 11,752 licensed professional counselors. None of these 73 licensees had criminal convictions.

The Department's criminal history background check process does not identify all state hospital employees' criminal convictions.

Auditors conducted name-based criminal history background checks using the Department of Public Safety's Computerized Criminal History system for 640 of the 7,320 state hospital employees. We found that 20 (3 percent) of these 640 employees may have convictions or deferred adjudications. Eighteen of these possible convictions and deferred adjudications occurred subsequent to the individuals' employment.

Recommendations

The Department should:

- Review the possible criminal conviction records of the licensees and state hospital employees we identified and determine whether further investigation is appropriate.
 - Develop a risk-based methodology to perform post-licensure criminal history background checks.
 - Perform annual criminal history background checks for all employees of state hospitals.
- Complete its adoption of rules that list the specific convictions for offenses that would require the midwifery board to take disciplinary action against a licensee.

Management's Response

Criminal Conviction Records - The department agrees with the SAO recommendation for further investigation.

The department reviewed all of the criminal offenses for each of the licensees in conjunction with statutory and rule provisions governing the particular profession and corresponding disciplinary action. The department determined that none of the offenses identified warranted disciplinary action against licensees. Regarding the offenses identified for Licensed Massage Therapists, the department was not aware of the convictions identified as these licenses were initially issued during the time period between 1993 and 2003. Beginning in January 2004, the Department began performing criminal history background checks for all new applicants. Regarding the offense identified for the licensed midwife, the class B misdemeanor conviction of theft of property by check occurring in 2003, was actually reduced to a Class C misdemeanor conviction, and thus did not warrant disciplinary action.

The department has reviewed the criminal conviction records of state hospital employees supplied by the SAO and has determined that in all but two cases the hospitals were aware of the post employment employee convictions/deferred adjudications through the agency's self-reporting requirements. In the two cases where employees did not self-report, appropriate disciplinary action is being taken.

Implementation Date: June 30, 2006

Responsible Person: Office of General Counsel

Risk-Based Methodology - The department agrees with the SAO recommendation that a risk-based methodology for performing post-licensure criminal history background checks be developed. The Department notes that both random and risk-based methodologies are in place for post licensure checks within the Professional Licensing and Certification Unit. Criminal history background checks are currently run upon receipt of a consumer complaint against a license holder. The Department plans to expand risk-based post licensure criminal history checks for new applicants with criminal history, for license holders who have been disciplined for violations of statute or rule, and will increase the random population to be selected for post licensure criminal history background checks.

Implementation Date: December 31, 2006

Responsible Person: Professional Licensing and Certification Unit Manager

Annual Criminal History Background Checks - The department agrees with the SAO recommendation regarding background checks for all state hospital employees. The department has already initiated discussions with the Department of Public Safety (DPS) and Health and Human Services Commission (HHSC) to determine available methods for systematic review of all state hospital employee's criminal history records. It is anticipated that these reviews of current state hospital employees will be done on a rolling campus by campus basis.

Implementation Date: September 1, 2006

Responsible Person: Office of General Counsel

Adoption of Rules - The Department agrees with SAO regarding the adoption of rules, which was completed effective June 6, 2006. These rules were in the process of being promulgated at the time of the audit. The language of Section 203.1515(b) did not go into effect until September 1, 2005. This language was added to the statute as part of the Sunset bill for this Board, under HB 1535 (79th R.S. 2005). This requirement to list the offenses for midwives, did not exist prior to its effective date of September 1, 2005. In compliance with these provisions, and laws and procedures for promulgation of rules, the Texas Midwifery Board immediately began developing the rules required under this section, to include stakeholder input and proposed rules for publication in the Texas Register for public comment in December 2005. The final rules, which comply with the provisions of 203.1515(b), were approved by the HHSC Executive Commissioner after adoption by the Texas Midwifery Board, and went into effect June 6, 2006. These rules are located at 22 T.A.C. Sec. 831.21.

Implementation Date: June 6, 2006

Responsible Person: Office of General Counsel

The Department of Criminal Justice Should Consider Retaining Employee Fingerprints and Using the Department of Public Safety's Arrest Notification Service to Ensure that It Receives Prompt Notification When an Employee is Arrested

The Department of Criminal Justice (Department) is not required by statute to conduct criminal history background checks on its employees. However, the Department's policies and procedures require that (1) all new employees undergo criminal history background checks using fingerprints and (2) all current employees undergo an annual name-based criminal history background checks. The Department does not retain employees' fingerprints after they are hired, which is why the annual checks are name-based.

Background Information Regarding the Department of Criminal Justice

The Department operates 104 prisons and state jail units and 8 parole facilities.

As of May 1, 2006:

- The Department employed 29,545 correctional officers and 9,919 administrative staff.
- The Windham Independent School District, which provides educational services for inmates, employed 1,212 individuals.
- The Board of Pardons and Paroles employed 170 individuals.

Additionally, the Department requires employees to self-report any subsequent arrests to their immediate supervisor. This information is not tracked by the Department's Human Resources Division. As a result, there is a risk that the Department may not be aware of an employee's arrest and, therefore, may not take appropriate action.

We performed name-based criminal history background checks using the Department of Public Safety's Computerized Criminal History system for four random samples of Department employees and found the following:

- Four (6 percent) of the 72 administrative employees sampled may have a total of 6 convictions or deferred adjudications. None of these would prohibit employment.
- Three (4 percent) of the 73 correctional officers sampled may have a total of three convictions. None of these convictions would prohibit employment.
- Two (3 percent) of the 69 employees of the Windham Independent School District sampled may have had a total of two conviction each. Neither of the convictions would prohibit employment.
- One (2 percent) of the 51 employees of the Board of Pardons and Paroles sampled had a conviction; however, it would not prohibit employment.

Recommendations

The Department should consider:

- Coordinating with the Department of Public Safety to (1) retain the fingerprints of all new employees and (2) identify these employees in its Computerized Criminal History system so that the Department can receive timely notification when an employee is arrested.
- Re-submitting the fingerprints of all current employees to the Department of Public Safety so that the Department can (1) receive timely notification when an employee is arrested and (2) discontinue its annual name-based criminal history background checks for current employees.
- Designating its Human Resources Division as the recipient of arrest notifications and making that division responsible for following up on those arrests to ensure compliance with Department policy.

Management's Response

Recommendation # 1

The Agency agrees to submit and retain the fingerprints of all new and current employees and to develop a system in conjunction with DPS for fingerprint based criminal history checks to ensure timely notification of employee arrests.

Target date: March 1, 2007

Recommendation # 2

The Agency agrees to submit and retain the fingerprints of all new and current employees for implementation of the new fingerprint based system. Our Agency will continue criminal history checks for employees until the fingerprint based arrest notification system is implemented and we will consider the need to continue the annual check to obtain conviction information.

Target date: September 1, 2007

Recommendation # 3

Human Resources will maintain employee self-reported and DPS arrest notifications and track that related actions are in compliance with Agency policy.

Target date: March 1, 2007

The Department of Licensing and Regulation Identifies and Prevents Individuals with Serious Criminal Convictions from Obtaining Professional Licenses

Background Information Regarding Department of Licensing and Regulation Licensees

The Department oversees 23 professional licenses, industries, trades, and occupations. At the time of this audit, the Department had 257,079 licensees.

The Department Changed the License Renewal Process after the Conclusion of Audit Work

On April 24, 2006, the Department changed its license renewal process to perform criminal history background checks on a sample of renewal applicants. This change occurred after the State Auditor's Office concluded audit work at the Department.

Texas Occupations Code Section 53.025(a)

Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Texas Occupations Code Section 53.022

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;
- (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.

The Department of Licensing and Regulation (Department) identifies and prevents individuals with serious criminal convictions from obtaining professional licenses. Until April 2006, the Department's policy required it to perform criminal history background checks on applicants for new licenses and applicants for license renewal (this process changed after the conclusion of our audit work at the Department, see text box for details). Specifically:

- The Department's Staff Leasing Services Program performs state and federal criminal background checks using fingerprints.
- All other Department programs conduct name-based criminal history background checks on licensees.

The Department also complies with certain statutory requirements related to licensing:

- In accordance with the requirements of Texas Occupations Code, Section 53.025(a), the Department implemented criminal conviction guidelines in 2003 to establish its standards for making licensing decisions. These guidelines describe the process the Department uses to determine whether having a criminal conviction may prevent an individual from obtaining a license, or whether having a criminal conviction warrants revocation or suspension of a license previously granted.
- The Department considers the factors specified in Texas Occupations Code, Section 53.022, when it determines whether a criminal conviction directly relates to a particular occupation (see text box for additional details).

Audit tests did not identify significant issues related to the Department's criminal history background checks.

Auditors tested the Department's criminal history background check processes for two of the Department's 23 types of licenses: electrician licenses and air conditioning and refrigeration contractor licenses. Results of that testing were as follows:

- Electrician licenses. Auditors randomly selected 72 of the 92,020 electrician licensees (as of March 2006) for testing. According to criminal history records auditors obtained from the Department of Public Safety, 13 (18 percent) of the 72 licensees sampled may have at least one criminal conviction, and an additional 6 may have deferred adjudications. (See Chapter 1 for more information on deferred adjudications.) The Department was aware of and considered these convictions and deferred adjudications during its licensing processes.
- Air conditioning and refrigeration contractor licenses. Auditors randomly selected 72 of the 12,403 air conditioning and refrigeration contractor licensees (as of March 2006) for testing. According to criminal history records auditors obtained from the Department of Public Safety, 10 (14 percent) of the 72 licensees sampled may have at least one criminal conviction. Of these, one may have a recent criminal conviction of which the Department was not aware. The Department was not aware of this conviction because it occurred after the Department processed the annual renewal of the individual's license.

The Department should implement a record retention plan to retain the results of criminal history background checks.

The Department does not have a record retention plan for the results of the criminal history background checks it performs for licensees. The Department also accidentally deleted the results of criminal history background checks performed during about a six-week time period. This occurred because the Department does not have a designated e-mail account to receive those results from the Department of Public Safety, which causes difficulties in maintaining, safeguarding, and tracking the results of criminal history background checks.

Recommendations

The Department should:

- Implement a record retention plan for the results of the criminal history background checks it performs. This plan should detail:
 - ♦ How and where the results should be stored.

- ♦ How long the results should be kept on file so that they can be considered when the Department renews licenses.
- ♦ Transit and destruction policies and procedures.
- Designate an e-mail account for the sole purpose of receiving the results of criminal history background checks. Access to this account should be restricted only to authorized employees. Supervisory approval should be required for deletion of those results.

Management's Responses

Management Response No. 1

Management agrees that there is a need for a record retention policy regarding the electronic criminal history records downloaded from DPS. We will establish a record type for electronic criminal history records, and add it to TDLR's formal records retention schedule.

Management Response No. 2

Management agrees that there is a need for a centralized, controlled system of storage and access to the electronic files downloaded from DPS. We have created a centralized location on TDLR's server for storage of all electronic criminal history files for the Electricians program, and we will move all other DPS results to this location. Access to this location is restricted to authorized employees who are involved in the criminal history review process, and supervisory approval is required for deletion of those results.

Criminal history results are no longer emailed to TDLR from DPS. Instead, the results are generated daily and stored on the DPS website until such time as a TDLR employee is prepared to download them to a TDLR computer. Given this change in DPS' procedure, there is no need to designate an email account for the purpose of receiving DPS results. We believe the centralized system of storage and access to the downloaded files will be sufficient to address the auditor's concerns for safeguarding the results and avoiding accidental deletion of records.

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The audit objectives were to:

- Determine whether criminal history background check requests submitted by state agencies and processed by the Department of Public Safety permit those agencies to correctly identify individuals who do not meet standards for activities such as licensing or employment.
- Determine the extent to which state agencies with authorized access to state and national criminal history records for licensing or permitting rely on this data for these activities.

Scope

The scope included the following:

- At the Commission on Law Enforcement Officer Standards and Education, we reviewed criminal history records for 7,239 Commission licensees and certificate holders, and evaluated whether the 89,103 Commission licensees and certificate holders were correctly identified in the Department of Public Safety's Computerized Criminal History system.
- At the Texas Education Agency and State Board for Educator Certification, we reviewed criminal history records for a sample of 538 certified educators, and evaluated whether 23,923 certified educators were correctly identified in the Department of Public Safety's Computerized Criminal History system.
- At the Department of Aging and Disability Services, we reviewed criminal history records for a random sample of 73 Certified Nurses Aids and 72 Certified Medication Aids and 803 state school employees to determine whether these individuals had criminal convictions that could prohibit licensure or employment.
- At the Department of State Health Services, we reviewed criminal history records for a random sample of 73 massage therapists, 48 midwives, 73 licensed professional counselors, and 640 State Hospital employees to determine whether these individuals had criminal convictions that could prohibit licensure or employment.

- At the Department of Criminal Justice, we reviewed criminal history records for a random sample of 72 administrative employees, 73 correctional officers, 51 Board of Pardons and Paroles employees, and 69 Windham Independent School District employees to determine whether these individuals had criminal convictions that could prohibit employment.
- At the Department of Licensing and Regulation, we reviewed criminal history records for a random sample of 72 licensed electricians and 72 licensed air conditioning and refrigeration contractors to determine whether these individuals had criminal convictions that could prohibit licensure.

Individuals evaluated were sampled from current active licensee or employee databases provided to us by agencies at the time of the audit.

Methodology

The audit methodology consisted of conducting interviews; collecting and reviewing information; and performing tests, procedures, and analyses against predetermined criteria for the six agencies we audited. In addition, we conducted an online survey of the state agencies with access to criminal history data.

Information collected and reviewed included the following:

- Interviews with management and staff of the six agencies we audited.
- Documentary evidence such as:
 - Policies and procedures
 - Applicable state statutes and rules
 - Prior reports from the State Auditor's Office
 - Internal audit reports
 - Licensee or employee files

Procedures, tests, and analyses conducted included the following:

- Requested the population of current licensees and/or employees for the audited agencies.
- Tested the entire population of current licensed peace officers and county jailers to determine whether these individuals' fingerprints were correctly identified as such in the Computerized Criminal History system.

- Tested certified educators who have undergone criminal history background checks using fingerprints in order to determine whether these individuals' fingerprints were correctly identified as such in the Computerized Criminal History system.
- Conducted name-based criminal history background checks on samples of licensees and/or employees to determine whether these individuals have any criminal convictions and whether any of these convictions would prohibit licensure or employment.

Criteria used included the following:

- Texas Education Code, Section 21.058
- Texas Government Code, Chapter 411
- Texas Health and Safety Code, Chapter 250
- Texas Occupations Code, Chapters 53, 203, and 455
- Texas Occupations Code, Sections 1701.303b and 503.2045
- Title 19, Texas Administrative Code, Section 249.16
- Title 25, Texas Administrative Code, Section 414.504
- Title 37, Texas Administrative Code, Section 217.1
- Internal policies and procedures for the six agencies audited

Project Information

Audit fieldwork was conducted from March 2006 through May 2006. This audit was conducted in accordance with generally accepted government auditing standards.

The following members of the State Auditor's staff performed the audit:

- Wei Wang, MSAS, MSCS, CIA, CPA (Project Manager)
- Sandra Q. Donoho, MPA, CISA, CIA, CFE (Assistant Project Manager)
- Darrel Edgar
- Nicole Elizondo
- Christine Henderson
- Tracy L. Jarratt, MAcy

- Stephen Randall, MBA
- Juan Sanchez, MPA, CGAP
- Sherry Sewell, CGAP
- Phatsavinh B. Somsith, CFE
- Leslie Ashton, CPA (Quality Control Reviewer)
- Nicole Guerrero, MBA, CGAP (Audit Manager)

Results of the Survey of Agencies That Are Authorized to Access State Criminal History Records

Chapter 411 of the Texas Government Code authorizes 55 state agencies to access state criminal history records at the Department of Public Safety. One of those 55 agencies--the Department of Family and Protective Services--is required by Chapter 411 of the Texas Government Code to perform criminal history background checks on certain individuals.

In February 2006, the State Auditor’s Office surveyed the agencies (excluding the State Auditor’s Office) that are authorized to access state criminal history records. The survey asked agencies to report how and for what purposes they use these records; what types of criminal history background checks they perform; and what offenses may prevent an individual from obtaining licenses, permits, or certificates or from gaining employment. All information was self-reported by the agencies and, except for the agencies we audited, was not verified by the State Auditor’s Office.

Table 1 presents the responses submitted by the agencies surveyed.

Table 1

Survey of Agencies Authorized to Access State Criminal History Records																		
Agency	Individuals for Whom Criminal Background Checks Are Performed					Types of Background Checks Performed					Offenses That May Prevent Individuals from Obtaining Licenses, Certifications, or Permits or from Gaining Employment							
	Applicants for New Licenses, Permits, or Certificates	Current Holders of Licenses, Permits, or Certificates	Individuals Who Are Renewing Licenses, Permits, or Certificates	Employees/Contractors	Other	None	FBI - Fingerprint Check	State - Fingerprint Check	State Name-Based Check	Other	Class-C Misdemeanors	Class-B Misdemeanors	Class-A Misdemeanors	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony	No Specific Offenses
Adjutant General's Department				X				X						X	X	X		
Banking Commissioner	X						X	X					X	X	X	X		
Board of Law Examiners	X						X	X	X									X
Board of Nurse Examiners	X		X				X	X						X	X	X		
Board of Tax Professional Examiners				X				X										X

Survey of Agencies Authorized to Access State Criminal History Records

Agency	Individuals for Whom Criminal Background Checks Are Performed					Types of Background Checks Performed					Offenses That May Prevent Individuals from Obtaining Licenses, Certifications, or Permits or from Gaining Employment							
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Commission on Law Enforcement Officer Standards and Education	X	X	X	X		X					X	X	X	X	X	X	X	
Comptroller of Public Accounts	X	X	X		X		X	X						X	X	X	X	
Office of Consumer Credit Commissioner	X	X		X			X	X	X									X
Department of Aging and Disability Services ^a	X			X	X			X	X	X								X
Department of Agriculture				X					X									X
Department of Assistive and Rehabilitative Services				X					X									X
Department of Family and Protective Services ^b	X	X		X					X				X	X	X	X	X	
Department of Public Safety	X	X	X	X			X	X			X	X	X	X	X	X	X	
Executive Council of Physical and Occupational Therapy Examiners	X	X							X		X	X	X	X	X	X	X	
Savings and Loan Commissioner	X	X	X	X	X		X	X	X									X
Secretary of State	X	X	X	X					X			X	X	X	X	X	X	

Survey of Agencies Authorized to Access State Criminal History Records

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State Bar of Texas				X				X										X
State Board of Dental Examiners	X	X	X	X				X										X
State Board of Veterinary Medical Examiners	X			X				X					X	X	X	X		
State Commission on Judicial Conduct					X						X	X	X	X	X	X		
State Preservation Board ^c					X													
State Securities Board	X	X	X	X			X	X					X	X	X	X		
Texas Alcoholic Beverage Commission ^d	X	X	X	X	X			X										X
Texas Board of Architectural Examiners				X				X										X
Texas Board of Chiropractic Examiners	X	X		X			X	X			X	X	X	X	X	X	X	
Texas Board of Professional Engineers ^e				X	X			X										X
Texas Board of Professional Geoscientists	X		X					X			X	X	X	X	X	X	X	
Texas Board of Professional Land Surveying	X	X	X					X					X	X				
Texas Commission on	X	X	X	X	X			X										X

Survey of Agencies Authorized to Access State Criminal History Records

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Environmental Quality ^f																		
Texas Commission on Fire Protection	X						X				X	X	X	X	X	X	X	
Texas Department of Housing and Community Affairs	Does not use criminal history records.																	
Texas Department of Insurance	X	X					X	X										X
Texas Department of Licensing and Regulation	X		X				X		X			X	X	X	X	X	X	
Texas Department of State Health Services	X		X	X	X		X	X	X									X
Texas Department of Transportation ^g					X													
Texas Education Agency	X		X				X	X	X		X	X	X	X	X	X	X	X
Texas Funeral Service Commission	X	X		X	X			X	X		X	X	X	X	X	X	X	
Texas Juvenile Probation Commission				X					X			X	X	X	X	X	X	
Texas Lottery Commission	X	X	X	X	X		X	X	X				X	X	X	X	X	
Texas Medical Board	X	X						X			X	X	X	X	X	X	X	

Survey of Agencies Authorized to Access State Criminal History Records

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Texas Optometry Board	X							X			X	X	X	X	X	X		
Texas Racing Commission	X		X	X	X		X	X			X	X	X	X	X	X	X	
Texas Real Estate Commission	X								X									X
Texas School for the Blind and Visually Impaired ^h				X	X				X				X	X	X	X		
Texas School for the Deaf				X					X									X
Texas State Board of Examiners of Psychologists	X	X	X	X					X		X	X	X	X	X	X	X	
Texas State Board of Pharmacy ⁱ	X	X		X					X									X
Texas State Board of Plumbing Examiners	X	X	X	X					X		X	X	X	X	X	X	X	
Texas State Board of Podiatric Medical Examiners ^j	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	
Texas State Board of Public Accountancy ^k	X				X		X	X			X	X	X	X	X	X	X	
Texas State Library and Archives Commission	Does not use criminal history records.																	

Survey of Agencies Authorized to Access State Criminal History Records

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	Applicants for New Licenses, Permits, or Certificates	Current Holders of Licenses, Permits, or Certificates	Individuals Who Are Renewing Licenses, Permits, or Certificates	Employees/Contractors	Other	None	FBI - Fingerprint Check	State - Fingerprint Check	State Name-Based Check	Other	Class-C Misdemeanors	Class-B Misdemeanors	Class-A Misdemeanors	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony	No Specific Offenses
Texas Structural Pest Control Board ^l	X	X	X		X				X			X	X	X	X	X	X	
Texas Workforce Commission				X					X									X
Texas Youth Commission ^m	X			X					X		X	X	X	X	X	X	X	

- ^a Conducts background checks on volunteers, uses a data broker for name searches.
- ^b FBI check if applicant lived out of state the previous three years.
- ^c Checks new hires and promotions for sensitive positions.
- ^d Checks are run during investigations.
- ^e For enforcement cases.
- ^f Special Investigations Unit - used in compliance, national and state criminal records are considered when developing compliance history.
- ^g Conducts background checks on certain employees upon hire.
- ^h Checks volunteers.
- ⁱ Fingerprinting program to be set up in next 12 months.
- ^j Conducts investigations.
- ^k For initial exam candidates.
- ^l Only for employees.
- ^m Requests fingerprints as needed, all prohibiting offenses are for employment.

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