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CENTER FOR EFFECTIVE JUSTICE

February 5, 2008

Ms. Amy Trost  
Project Manager, DPS Review  
Sunset Advisory Commission  
1501 North Congress Ave.  
6th Floor, Robert E. Johnson Building  
Austin, TX 78701

Dear Ms. Trost,

As you may know, the Center for Effective Justice at the Texas Public Policy Foundation has, since March 2005, provided research and information to Texas policymakers on ways to improve our criminal justice system. The Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets and limited government.

I am writing to highlight some issues that we hope the Commission will examine as part of the sunset review of the Department of Public Safety, particularly the Private Security Board.

First, we would urge the Commission study the Private Security Board's disqualification of many otherwise qualified professionals from occupations such as locksmith and alarm salesperson solely because of a minor criminal offense that occurred many years ago – sometimes even decades ago. The issue is discussed in considerable detail in our attached paper "Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas."

In the last several years, thousands of Texans have lost their licenses as locksmiths as a result of these policies. The automatic disqualification statute that applies to occupations regulated by the Private Security Board is much more stringent than Chapter 53 of the Occupations Code which applies to most state agencies, enabling them to take into account whether the offense directly relates to the occupation and whether the evidence indicates that the offender has been rehabilitated.

We would like the Commission to examine whether the statutes governing the occupations controlled by the Private Security Board should be modified to provide a similar level of discretion to the Board to consider these factors. Also, we would like the Commission to consider whether, if some offenses are to remain automatically disqualifying, sensible distinctions can be drawn between property crimes which would implicate the work of a locksmith or alarm salesperson and those that have little or no relationship to these occupations.

We would also urge the Commission to consider whether policies for excluding individuals for criminal offenses should necessarily be the same for all occupations regulated by the Private Security Board. While all occupations regulated by the Board, and many that are not, involve a degree of trust, it may be appropriate to have different standards for someone who simply works at an alarm sales company and a uniformed security guard.

Furthermore, we hope the Commission examines the possibility of creating a streamlined process for professionals in these fields whose licenses were revoked for minor and old convictions to regain their licenses and their livelihoods, provided they have continued to be law-abiding citizens. Additionally, we would like the Commission to consider as a possible solution a provisional or probationary license, which would have been created by SB1750, a bill that unanimously passed the Senate during the 80<sup>th</sup> Legislature but was not considered in time by the full House.

On a broader level, we would urge the Commission to study whether occupations regulated by the Board other than security guards, such as alarm sales personnel and guard dog trainers, should in fact be regulated and, if they are regulated, should be under another agency. The Texas Department of Licensing and Regulation (TDLR), has increasingly become the umbrella agency for licensing and formerly licensed locksmiths. One approach we would suggest looking at as an alternative to the licensing of alarm sales companies, is simply requiring the company to post a bond. This provides a safeguard for consumers as it assures the company is financially stable and will continue to be able to service their systems, while at the same time reducing the burden of government regulation.

According to the DPS self-evaluation, regulated entities such as alarm sales companies and locksmiths have their businesses searched by state troopers. Routine inspections where there is not a reason to suspect criminal conduct is occurring might be more efficiently performed by TDLR personnel while state troopers, who have unique and valuable training as law enforcement officers, could be redeployed in their traditional public safety roles.

With regard to security guard licensing, we hope the Commission will examine whether there should be more than one type of license available. For example, there could be a master security guard license that would confer enhanced legal protections and/or authority on license holders but, at the same time, involve stronger qualifications, including training in law enforcement practices similar to what peace officers must obtain, as specified by the Texas Commission on Law Enforcement Standards and Education. As documented in the attached *Washington Post* article, states such as North Carolina, Maryland, and Virginia have created voluntary mechanisms whereby appropriately vetted private security guards can be designated as “special police” with enhanced powers and protections. This is a promising way of enhancing public safety within the framework of the limited budgets that government entities can devote to policing.

Of course, such approaches must take into account appropriate limitations and safeguards to prevent abuses. For example, enhanced powers and protections conferred upon qualified private security personnel may be limited to the property they are hired to protect and require disclosure of this arrangement through a sign or other means. This reflects the crucial distinction between public and private property and the legitimate, traditional role of private property owners in setting and enforcing the rules for conduct on their property.

The need for empowering the private sector to provide security solutions is clear. There are nearly 2 million security guards in the U.S. – compared with 677,000 police – and they protect 75% of assets that have been identified as potential targets for terrorists. Just as importantly, businesses and apartment complex owners increasingly rely on private security on a daily basis to provide a safe environment for residents and customers, as city police departments face challenges in maintaining sufficient staffing. At a time when the Houston Police Department solves 6 percent of all home burglaries, the Houston City Council recently passed an ordinance that will hold apartment owners accountable for the crime rate on their property. Many of these apartment owners hire private security as one solution, but under current law, despite going through the licensing process, private security guards in Texas have no authority or protection beyond that of a regular citizen, except for the procedures whereby some can obtain authorization to carry a handgun. Their powers and protections

stand in sharp contrast to off-duty police officers who are often hired by business and apartment complexes to fill the same role, but the hourly rates of these off-duty police officers are significantly higher and the demand for their services far outstrips the supply.

Furthermore, private security guards, and their employers, face potential legal liability for false arrest, intentional infliction of emotional distress, and other torts, including possible punitive damages, if the guard makes a mistake, even if no one is injured as a result. This is one reason major retailers often have private security on duty but no longer enforce laws against shoplifting for items under a certain threshold, usually \$50 or \$100. As discussed in the enclosed *New York Times* article, Wal-Mart, the last major holdout without an amnesty threshold, adopted a \$25 threshold in 2006. The crime literature on the “broken windows” theory has demonstrated that when relatively minor offenses are ignored, it encourages further lawbreaking. If private security guards had clearer authority and protections to handle offenses such as shoplifting, that might encourage retailers to implement voluntary private sector dispute resolution mechanisms such as mediation that would allow the person apprehended to return the item and perform community service as an alternative to being referred for prosecution.

In addition to empowering highly qualified private security personnel, state policies can facilitate the exchange of homeland security and crime information between public law enforcement and qualified security guards. I am attaching a September 2005 U.S. Department of Justice report that highlights initiatives for enhancing collaboration and information sharing between law enforcement and private security. Given that Texas has many vital homeland security assets from ports to nuclear power plants that are likely protected by private security, we think it would be worthwhile to study ways to promote the seamless sharing of information between law enforcement and the security guards at such a facility that could enhance the ability of these guards on site to act rapidly when local or state authorities obtain information that indicates a potential threat. The attached *Washington Post* article notes:

In one of the country’s most ambitious collaborations, the Minneapolis Police Department three years ago started a project called “SafeZone” with private security officers downtown, estimated to outnumber the police there 13 to 1. Target Corp. and other local companies paid for a wireless video camera system in downtown office buildings that is shared with the police. The police department created a shared radio frequency. So far, the department has trained 600 security officers on elements of an arrest, how to write incident reports and how to testify in court. When a bank was robbed in the fall, a police dispatcher broadcast the suspect’s description over the radio. Within five minutes, a security officer spotted the man, bag of cash in hand, and helped arrest him.

This incident demonstrates the benefits of both private sector solutions to prevent and solve crime and greater collaboration between public law enforcement authorities and private security.

I would be most appreciative if you could share this letter with your colleagues and the appointed members of the Commission. Thank you for your consideration and please don’t hesitate to let me know if we can provide further information to assist the Commission on these issues.

Best Regards,



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