

Minutes
Seaport Security Standards Council Meeting
The Capitol, Tallahassee Florida
The Capitol-Room 2103
June 13, 2007
10:00-4:00

Note: Agenda Items in Bold

Attended

Chris Kauffman for Fredrick R. Fern	Jackson Port Authority
Stanley Payne	Canaveral Port Authority
Kenneth L. Hern	Palm Beach County Port Authority
Frank L. Holden	Manatee County Port Authority
Mark Zadra	Florida Department of Law Enforcement
Bill Stewart	Office of the Attorney General
Darrell Liford	Office of Agriculture Law Enforcement
William Janes	Florida Office of Drug Control
Captain Suzanne Englebert	United States Coast Guard

Absent

Pamella Dana

Dave Binder - Attended as a non-voting member

I) Welcome and Introductions

The meeting was opened by Chairman Bill Janes, Director of the Office of Drug Control at 10:00 AM. All council members and guests were introduced. Director Janes reviewed the agenda and the participants were instructed that the points of discussion would be agenda items only. Chairman Janes also told the council that the review of standards should be completed in the fall of 2007.

Transportation Worker Identification Credential and Florida Uniform port Access Credential

- The council continued the discussion for having one credential for both and reducing the cost of background investigations.

II) Waiver Process

a) Review of FDLE Guidelines, pages 1-16

Chairman Janes instructed the council to review pages 1-3 of the FDLE Guidelines for Seaport Applicant Waiver process. There was discussion.

The council related concerns regarding pages 2 of 16; paragraph D, which directs the applicant via the seaport in which the applicant was originally denied. There was a consensus among the seaports that F.S. 311.12 does not direct the

seaport to be involved in the waiver process; that the applicant for the waiver is to put all of the enclosures together and forwarded to Tallahassee. The port is the entity that has made the denial based upon the review of the criminal history. As long as that is the determination of the port, the waiver should be from the individual directly to the parole office. The ports stated that this was an administrative burden and counterproductive.

Motion I: The current field process is modified by removing the seaports as a party to the appeal and removing any administrative burden on the seaport authority outside the scope of Section 311.12.

The motion was seconded. There was discussion.

Discussion I:

The ports discussed the official process of denial including:

- Verification of documentation
- Applicants understanding of the process
- Appeals & decision processes
- Process of delivery (certified mail) to the individual announcing why they have been denied
- Strict denials of the court; specifically a felony as listed in the statute
- Acknowledgement of extenuating circumstances

Review of Neil Flaxman's letter to Commissioner Bailey

- Recommended of what should be changed in the waiver process
- The possibility there may be information beyond the criminal charge that may be overlooked

The group discussed the reasons for applicants' denials:

- Background check
 - Mr. Mica objected to the motion by stating there would be an interruption in commerce due to government regulations and geographical situation
 - Lack of help to the individual who has followed the law and shown consistency & effort in his employment

Summary: Ports have the authority to deny an individual based on a factual determination. The ports authority to deny an individual restricted access under the statute is only pertaining to criminal actions. The port has no authority to make another determination, to deny an individual based on anything but a criminal history check.

- Employer Union Statement
- Circumstances of Disqualifying Offense
 - Mr. Kaufman reminded the ports of the credential process of all seaports:

- The individual has to demonstrate that he needs access to the port and has to have already overcome that first hurdle.
- There are measures in the security programs that can deny access based on past history, but those refer to access and are not directly linked to the credential.
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- Credit report

Comment by Peter Miller, Port of Tampa: We have gone through the waiver process and it was an extraordinary difficult task, administratively it was a burden to the port and it was very expensive. If the language remains as is, that the port is involved in this process, we assume too much responsibility. One of the requirements in here is that we review the package, retain a copy of the package and then send it to the parole commission or FDLE. I think that is an administrative burden that should not be placed on the ports. The other factor is it too much sensitive information for us to be holding on that individual in a file. We want out of that administrative process, but we would still in the evaluation process once the package is in Tallahassee we would play a part in supporting the request, but we do not want to be burdened with the administrative part of that.

Vote on Motion 1: The current field process is modified by removing the seaports as a party to the appeal process and removing any administrative burden on the port authority outside the scope of Section 311.12.

The motion failed as worded.

Modification of Motion I:

This council continue to review the process and FDLE will look at reducing the administrative burden on the ports and come back with recommendations for the final report?

The council agreed that the motion should be changed, that administrative relief be reviewed and the new process be made unified for each port.

Director Janes asked the council if there was any other discussion between pages 1-3 and there was no other discussion.

Item # 1 FDLE Input

The council reviewed Page 3 item #1. Mr. Flaxman's letter, it eliminates a, b, c, d, e, f, and g on pages 3 and 4 and will be replaced with Exhibit A. The Director asked for FDLE for input; regarding a new form.

Motion II: Do not change the waiver process as it is written and FDLE consider using Exhibit A as an attachment form that would facilitate presentation of this material in the application or in the waiver process.

The motion was seconded and approved.

Item # 2 Restitution:

The council was directed to Page 4; “if the applicant could not make restitution, the reason why restitution was not made including mitigated circumstances” was added to the end of sentence 2. A motion was presented to adopt that recommendation. There was no comment on motion.

Item # 3 Credit Report

The council discussed the purpose of credit reports as indicators to an individual’s stature. It was suggested that there may be other indicators that are valid that can be put in place.

Motion III: The credit report is discriminatory and should be deleted because it is not applicable to the waiver process

The motion was approved and seconded. There was discussion.

Discussion 1: The group discussed that the credit report is not used to determine whether someone is economically disadvantaged, but as a tool to determine whether someone is a risk to the port for potential theft. It was suggested that other indicators that would likewise be valid in considering a persons stature be explored. The ports were cautioned of going beyond what was written in the original statutes, and the fact there was no credit report asked for in the original document. The ports were reminded that the law defines certain felons and gives time periods the individual should be without incident after incarceration, after punishment and after they have paid their debt to society. They are denied because the law says they must be. FDLE, statutorily, has the burden to say you have been denied.

Ms. Holmes read the nature of the original statute which says, “this waiver consideration shall include and be based upon circumstances of any disqualifying act or offense, restitution made by the person and other factors from which it may be determined that the person is not a risk for the things listed”. It broadens the scope and it also says, “Of harming any persons”, all of those crimes and all of those factors are not included in 311.12 3c. The ports do not sit and consider whether someone made restitution, but we have to because it says that. Restitution involves money.

Director Janes introduced Senator Tony Hill who joined the meeting.

Item # 4: Supervising Authority Statement

The council discussed creative ways to have security, through the technology of cameras, procedures and other things that won’t bankrupt a port and their security operations. Council discussed the introduction of legislation regarding security procedures. The Chairman emphasized to the council that they are part of the Regional

Domestic Security Task Force and at any time when a regulation is being applied to the port and the interpretation is too stringent, the RDSTF does a local security assessment. Chairman Janes reiterated that the economic liability of the port is a very important issue and has to be balanced.

Recommendation: The commissions consider including Exhibit A as a way to expedite the process of interpreting paragraph 2. This recommendation changes nothing in the waiver process.

Item #5 Applicant's Notarized Statement

The applicant is required to attach an affidavit to the applicant as Exhibit C. This will make the process easier and accomplish the same purpose intended by FDLE.

Summary: Commissioner Zadra suggested the separation in the application distinguishing what pertains to the applicant and what pertains to FDLE

Item 7- Eg: Factual Review by the Parole Commission

The council reviewed the changes on page 13 and recommended that Part D be amended to reflect the burden of the application packet be the responsibility of the applicant. The applicant will seek clarification from the employer or seaport in the completion of the packet.

Motion IV: To adopt the change of wording that FDLE will consider the finding of facts presented to the parole commission as to whether or not the applicant does not pose a risk.

The motion was seconded and approved

Item #8-Eh: Factual Review by the Parole Commission

No motion. No change

Motion IV: The motion and the second were withdrawn

Item #9-Ei: Factual Review by the Parole Commission

No Discussion

Item #10-Ej: Factual Review by the Parole Commission

Delete sentence # 12

Item # 11- Ek: Factual Review by the Parole Commission

Delete sentence # 13

Item #12-El: Factual Review by the Parole Commission; Reviewing of Tax Records

Delete sentence # 19

Item #13: Fm1- Disposition of the Waiver requires by FDLE. Amend paragraph as noted. Point of Clarification: Are all the 19 items required? There was discussion.

Item # 14 Part Fm2: Disposition of the Waiver requires by FDLE
There was discussion. Outcome same as 13

Item #15 Part Fn: Disposition of the Waiver requires by FDLE, Automatic denials

Recommendation: The council recommends clarification of the language regarding automatic denial of applicants, stating "automatic denial" to be changed to "other considerations". There should be a caveat indicating there is something in addition to the other disqualifying offenses, less the applicant misinterpret was has been listed.

- Sexual Predator

Review of items:

1. Property Crime
Recommendation: FDLE review and clarify the language of the list
2. Drug Trafficking
No change.
3. Offense related to crime
No change.
4. Illegal assembly
Remove-Approved

Within 3 years and offense has occurred

1. Consumption
No change
2. Protective order issued by the court
Status?
3. Illegal Drugs
Status ?
4. Child Support
Removed
5. Default Judgment
Removed
6. Failure to maintain full-time employment
Removed

The council was instructed to read the 2 paragraphs before going on the Item 16 and asked if there was a discussion or concerns.

Item # 16: Request for Waiver Denied

The council agreed to disregard the changes made on item # 16. No motion. No change.

Item # 17

The council considered the change of wording on the second page from “must” to “may”. No Motion. No change.

Item # 18

No Motion. No change.

End of Discussion of Flaxman Letter

There was discussion from the council member Hern regarding the waiver process and relating that the suggestions second guess a judge. Mr. Hern asked that the council refer to F. S. 311.12.

The ports will submit other recommendations to the council for consideration.

The council suggested that FDLE and the commission provider other recommendations.

The next meeting will be July 28, 2007. There was conflict with dates for the next meeting. Chairman Janes wants a review of documents a week before the meeting.

The council reviewed the minutes of the previous meeting. There were corrections noted. Gil Barnes will receive corrections and revise minutes.

The meeting adjourned at 3:00 p.m.

Follow-up

1. Mr. Rubin will help the ports of Florida determine what administrative duties they find burdensome and what administrative relief they deem necessary.
2. FDLE will look at reducing the administration burden of the waiver process.
3. FDLE come back to the council at the next meeting with recommendations of how that the waiver administrative workload can be reduced for consideration.
4. The commission will look at the suggestions and come back with additional recommendations. The new recommendations will produce a new process that may be made uniform for every port.

Other Questions to Commissioner Zadra: Are you saying that the credit report is not used to further disqualify the applicant; that it is a mechanism for them to display that they have rehabilitated themselves and it can work in their favor?

Zadra: The individual applicant must overcome the hurdles and is allowed by statute to do that. The statute also requires FDLE to make a final determination whether or not that individual is considered a risk. As was pointed out by Ms. Homes, we look at the disqualifying felony offense; however we have to look at the spectrum and all that is available to us. The credit report could very well should an improved sense of responsibility on payments. The credit report could show us information where an individual has left off of an application where they had bad employment, where they had been fired due to negative behavior. The credit report shows the past employments and it may provider us with a lead to look at the other indications in making our decisions. When you look at anything contained in here, the information can be used by the applicant to assist them as well as provider FDLE with another view that they are a continued risk

Response: (Commissioner Zadra) As you look at who can seek a waiver, some individual are people who may come to the port for the first time and never have been at the port before. Mr. Flaxman represents people who have worked on the port for long period of time. But some of these people who have a right to this waiver may have shown up today had a background check run and be an independent trucker and be denied a seaport application and then want to take advantage of the waiver process. The only information known about that individual by anyone at that point is that which we can gather in order to overcome the burden which Mr. Zadra is describing and then we make a determination. If we know no more about them than they applied and a court found them a felon, then we have no way to make a prediction about them in relationship to their future behaviors.