

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE)
SEAPORT APPLICANT WAIVER PROCESS**

**GUIDELINES
FOR FDLE WAIVER PROCESS
RE: DISQUALIFYING CRIMINAL HISTORY RECORD(S)**

Version: May 2010

**Waiver Process for Obtaining Unescorted Access to
Secure or Restricted areas of a Florida Seaport.
Pursuant to Section 311.12(7)(e), Florida Statutes (2009)
By Persons Disqualified under Section 311.12(7)(a), Florida Statutes (2009)
For Disqualifying Criminal History Record(s)**

A. Eligibility

To be eligible to participate in this FDLE waiver process, an individual must have been found by a seaport, on or after July 1, 2009, to be unqualified for and denied regular, unescorted access to a secure or restricted area of that seaport, based upon the criteria in F.S. 311.12 (7)(a) – a disqualifying criminal history record under Florida law for which the individual was not “grandfathered”¹ and for which the individual did not receive a previous FDLE waiver².

To be eligible, an individual must also be a United States citizen or have valid immigration status in the United States, the latter meaning that the individual must possess a valid work visa and not be challenging a deportation order or other federal determination that the person is illegally within the United States.

An individual who is denied access to a seaport for reasons other than, or in addition to, those described above is not eligible to participate in this waiver process. Examples of other or additional reasons why an individual may be denied access to or employment within a seaport include, but are not limited to, the following: 1) the port has determined that the individual does not have a valid business reason for port access; 2) the port has withdrawn, revoked, or cancelled the individual’s seaport credential or has refused to issue the individual a credential based on administrative action by the port related to the individual’s violations of the port security plan; or 3) another government regulatory authority with jurisdiction over the seaport has refused, or requires the seaport to refuse, the individual access to the seaport.

If an individual has been disqualified by a seaport based on the criteria in F.S. 311.12(7)(a), and believes the disqualification was based upon procedural inaccuracies or discrepancies regarding criminal history factors, the individual must appeal to the seaport which determined the

¹ Individual whose access was renewed on or after January 1, 2002, based on the former “grandfather provision in Florida law – s. 311.12(3)(b), FS (2001), and whose access remained valid thereafter.

² Individual whose access was granted or renewed on or after July 1, 2006, based on an FDLE waiver provided under s. 311.12, FS, and whose access remained valid thereafter.

individual was disqualified, in order to address those concerns, pursuant to the provisions in F.S. 311.12(7)(f). An individual is not eligible to participate in this waiver process to address such inaccuracies or discrepancies. Any such procedural inaccuracies or discrepancies must be resolved before the individual may apply for a waiver under this process for the related, or any other, disqualifying offense(s).

An individual is not eligible to apply for a waiver request under this process if another application for a waiver under this process is already pending for the same individual, regardless of which seaport(s) denied the individual access.

If FDLE denies an individual's waiver request under this process, the individual is not eligible to re-apply for a waiver as to the same disqualifying offense(s) within one (1) year after the date of FDLE's denial as to such offense(s). After the one (1) year has passed, the applicant will only be eligible to re-apply for a waiver related to the same disqualifying offense(s) **if the applicant is able to provide sufficient information which reflects a material change in circumstances** and which supports the required findings regarding a determination of risk as reflected in F.S. 311.12 and as explained herein.

To be eligible to participate in this waiver process and/or to avoid an automatic denial of a waiver request, an individual must meet the criteria and provide the information and documents required in these guidelines.

B. Application for Waiver due to disqualifying criminal offenses under Section 311.12 (7)(a), Florida Statutes (2009)

An eligible individual may apply for a waiver only by submitting an application for a waiver to FDLE at the following address:

Florida Department of Law Enforcement
ATTN: Seaport Credential Waiver Request Program (7a)
2331 Phillips Road Tallahassee, Florida 32308

If forms for the application process or supporting documentation are provided by FDLE, the Florida Parole Commission, or the ports, an individual applying for a waiver must use those forms to provide the information required or referenced in these guidelines. If the documents and information required by these guidelines are not included in the waiver application, the application will be incomplete and may be rejected by FDLE prior to disposition of the waiver request OR may lead to a denial of the waiver request.

The applicant must provide an original (or certified copy) of every document submitted.

APPLICANT'S BURDEN RE: NO-RISK DETERMINATION

An eligible applicant for a waiver under this process has been denied access to a seaport based upon disqualifying criminal history factors which are associated with unacceptable risk to the seaports. Therefore, an applicant seeking a waiver of his/her disqualifying criminal history criteria carries the burden of overcoming this determination of or association with risk, and of

providing sufficient justification to support a determination that he or she does not pose a risk of engaging in any act within the seaports that would pose a risk to or threaten the security of the seaport and the public's health, safety, or welfare.

FDLE will consider granting an approval of a waiver request only if, based on the findings of facts presented to FDLE by the report from the staff of the Florida Parole Commission, FDLE believes, with reasonable certainty, that the applicant does not pose any such risk. The burden is not on FDLE, the seaport(s), or the Florida Parole Commission, to make an affirmative finding or determination that the applicant poses a risk, in order to support a denial of a waiver request.

REQUIRED INFORMATION

1. *APPLICATION FOR WAIVER (FDLE Form SPW-1)*: All of the following identification information must be provided by the applicant: Full name; every alias, maiden name, former name(s) if name changed; date of birth; race; sex; physical address; mailing address; day, evening, and other (if any) phone numbers; drivers license number, or if none, other state identification card number; and last four digits of social security number, if any. Applicant must answer yes or no to all questions on the application.

2. *SWORN STATEMENT OF EMPLOYER/UNION (FDLE Form SPW-2)*: This statement must be made under oath and notarized or an affidavit from the applicant's employer or union representative in relation to the applicant and the waiver requested.

3. *SWORN STATEMENT OF APPLICANT (FDLE Form SPW-3)*: Based upon the nature of the required declarations, the applicant should complete this document only after obtaining and reviewing all information and documents which the applicant is required to submit or plans to submit as part of his/her application for a waiver.

As noted in Section A above, an individual is not eligible to participate in this waiver process if the individual cannot or does not provide all information and documents required in these guidelines, including all of the information and every declaration included in the affidavit.

RELEVANT INFORMATION

Based upon the above discussion regarding a no-risk determination, the applicant for a waiver should also include documents which reflect information known to others which is relevant to and which might impact such a determination. If submitted, all such information shall be in the form of originals or certified copies, documents notarized under oath, or affidavits, except as to federal income tax records. As indicated above, the applicant must provide original documents or a certified copy no documents will be returned to the applicant.

In addition to the above information, the Florida Parole Commission and FDLE will make consent forms available to the applicant for signature and enclosure with the application for a waiver request. When properly completed and signed, the consent forms will authorize the Florida Parole Commission, FDLE, and the port to access, receive copies of, review, verify, and/or disclose, as provided therein, information and records about the applicant which may be

confidential or restricted, but which are relevant to the required no-risk determination in this waiver process and an access determination by the port, whether such information is private or public.

Failure to submit the above information or consent forms will not make the applicant ineligible to submit a waiver request under this process. However, it may result in an inability of the Florida Parole Commission to make required findings of fact and/or an inability of FDLE to make a determination that the applicant does not pose the risks specified in F.S. 311.12(7)(e), which, therefore, will result in a denial of the waiver request.

None of the governmental entities involved in the waiver review process, including the Florida Parole Commission, FDLE, and the seaports, is required to affirmatively seek and obtain information or documents, on behalf of the applicant, for the purpose of supporting an applicant's reasons for requesting a waiver under this process, or for the purpose of supporting an applicant's assertions that he or she no longer poses an unacceptable risk, although any such entity may choose to do so. The staff of the Florida Parole Commission may request from the Department of Law Enforcement, or any other law enforcement agency, supplemental information which the staff believes is relevant to its fact-finding process and which may be of value to FDLE in making its final disposition of waiver request.

C. Receipt and Processing by FDLE of the Application for Waiver

Upon receipt of an application for a waiver, to the applicant and will review all of the information submitted by the applicant. If the applicant is not eligible to participate in this waiver process, as required under Section A above, FDLE will reject and return the application to the applicant.

If the applicant fails to submit any of the required items or information identified in Section B above, FDLE will return the application to the applicant as "incomplete", with instructions to the applicant as to what information is required for a complete application.

If FDLE determines the application meets the requirements in these guidelines, FDLE will request from the applicable seaport an original document signed by a port official regarding the port's adjudication of the individual and any outstanding appeals (FDLE Form SPW-4).

FDLE will add the documents received from the port to the application; combined, these documents will comprise the "waiver application packet" for the applicant's waiver request.

FDLE will only process one application for a waiver request for the same individual at one time and will return any additional application(s) received before final disposition is reached on any prior, pending application.

If FDLE discovers information within the waiver application packet, or otherwise, which may support a different basis for disqualification of the individual for unescorted access to or employment on a seaport than the basis for disqualification specified by the seaport, FDLE will

return the application packet to the applicant, by a secure means with verification of delivery, noting the information discovered and possible basis for disqualification. The applicant shall contact the seaport and the seaport shall promptly review the information, make a determination as to whether the individual is disqualified for a different reason than the disqualifying offense(s) which led to the waiver request, and return the packet to FDLE, indicating the port's determination in an original, notarized statement signed by a port official. If the port advises FDLE that the applicant is disqualified for a different reason, the applicant may reapply only if criminal history factors are involved.

If FDLE does not return a waiver application packet to the applicant, FDLE will forward the waiver application packet to the Florida Parole Commission (Florida Parole Commission, Attention: Seaport Waiver Application Processing, 2601 Blair Stone Road, Tallahassee, Florida 32399-2450), by a method which provides proof of receipt, with receipt signature and date.

D. Factual Review by the Parole Commission

Within 90 days after receipt of a complete waiver application packet from FDLE, the administrative staff of the Parole Commission shall conduct a factual review of the waiver application and a relevant investigation, by relevant and authorized means. The Parole Commission recognizes that the disposition by FDLE of the waiver request must be based upon the findings of fact provided by the Parole Commission, and that the waiver consideration must be based on the circumstances of any disqualifying act or offense, restitution made by the individual, and other factors from which it may be determined that the individual does not pose a risk of engaging in any act within the seaports that would pose a risk to or threaten the security of the seaport and the public's health, safety, or welfare.

The factual review of the waiver application by the staff of the Parole Commission should consist of, but not be limited to, the following, as necessary, relevant, and authorized:

1. Independently verify by investigation the truth and accuracy of all factual information, contained in the submission by the applicant, including the affidavit statements of the applicant;
2. Review the FCIC/NCIC criminal history records of the applicant, to ensure the information is current and complete, and obtain information from the records which is relevant to the fact-finding and risk determination processes;
3. Obtain applicable local arrest and conviction records that may not be within the FCIC/NCIC records, for any arrests of the applicant that have occurred since the date of the earliest disqualifying offense;
4. Conduct a driver's license history check on the applicant and obtain associated arrest records subsequent to the date of the earliest disqualifying offense;
5. Thoroughly review the documents submitted in the application packet and take other investigative actions as necessary to determine the circumstances of the disqualifying offense(s);
6. Determine the nature and extent of restitution (related to the disqualifying offenses) made by the applicant and the satisfaction of all pecuniary penalties by the applicant, including

- payment of costs of investigation, if such was required by court order, and any mitigating factors provided by the applicant, if full restitution was not made;
7. Conduct interviews with the applicant (under oath), representatives of the applicant's employer and/or union, and others who have submitted information in the application packet, relevant to information provided in the application packet;
 8. If the applicant discloses information related to drug tests conducted on the applicant, or if the Florida Parole Commission discovers such information in its factual review and investigation, report the results of all such drug tests;
 9. Verify existing detainers;
 10. Solicit input and supporting documentation from interested parties to include sentencing judge, state attorney, defense attorney, law enforcement officers, and others who may have knowledge of the offense or character of the applicant and the circumstances of the disqualifying offense(s);
 11. Inquire of FDLE and other relevant law enforcement agencies information related to the person seeking the waiver and/or his or her associates.
 12. Solicit input from supervision probations officers, past or present and review DOC probation/parole supervision files to determine compliance and conduct while under supervision, and to verify whether the applicant's prospective access and employment on the port will violate the terms of the applicant's supervision;
 13. Verify or solicit further input regarding information provided by the applicant or others during the investigation as to the mental condition and related treatment of the applicant, as to the time period since the date of the earliest disqualifying offense;
 14. Confirm and obtain information regarding substance abuse treatment as to the time period since the date of the earliest disqualifying offense;
 15. Verify information provided by the applicant as to professional licenses and solicit information related to disciplinary records; and
 16. Review the prison record for the disqualifying offense to include program participation, disciplinary history, and mental health history.

If the Parole Commission discovers information within the packet or during its investigation which may support a different basis for disqualification of the individual for unescorted access to or employment on a seaport than the basis for disqualification, the Parole Commission will contact FDLE for further direction. If it is determined that the packet should be returned to the applicant, the Parole Commission shall send the waiver application packet to FDLE (Florida Department of Law Enforcement, ATTN: Seaport Credential Waiver Request Program -Mailing address: P.O. Box 1489, Tallahassee, Florida 32302-1489, or physical address: 2331 Phillips Road, Tallahassee, Florida 32308), noting the basis for possible disqualification on different grounds. FDLE will return the packet to the applicant who shall contact the seaport and the seaport will respond, as provided in Section C above.

On completion of its review and findings of fact, the administrative staff of the Parole Commission shall transmit to FDLE the complete waiver application packet for the applicant, the records and information obtained and/or used by the staff of the Parole Commission, and the findings of fact of the Parole Commission, by secure method with acknowledgement of receipt. (Please note that neither the staff of the Parole Commission nor the Parole Commission will

conduct formal or informal hearings as part of the factual review and investigative process under these guidelines.)

E. Disposition of the Waiver Request by FDLE

After receipt of the complete waiver application packet, other documents and information, and the findings of fact from the Parole Commission, FDLE will mail a copy of the findings of fact to the applicant's mailing address (as designated in the application packet), by U.S. Mail - certified mail/return receipt requested, or by a mail courier service with request for a record of verification of delivery.

FDLE will make a final disposition of the waiver request based on the factual findings of the investigation by the Florida Parole Commission, including any modified findings as provided for above, applying the statutory requirements. For most applicants, FDLE will make a final disposition of a waiver request within 90 days of its receipt of the waiver application packet and findings of fact from the Florida Parole Commission. Some dispositions may take longer, depending on the circumstances.

As part of the final disposition of the waiver request, FDLE will consider whether the applicant was able to overcome the risks already associated with his or her disqualifying criminal history factors. See Section B above.

FDLE will grant an approval of a waiver request only if, based on the findings of facts presented to FDLE by the report from the staff of the Florida Parole Commission, FDLE is satisfied, with reasonable certainty, that the applicant does not pose a risk of engaging in any act within the seaports that would pose a risk to or threaten the security of the seaport and the public's health, safety, or welfare, pursuant to F.S. 311.12(7)(e).

FDLE will notify the waiver applicant and the applicable seaport that denied port access to the applicant of the final disposition of the waiver request. The disposition will indicate whether the request for a waiver has been denied or approved.

REQUEST FOR WAIVER DENIED – Based upon the findings of fact of the staff of the Florida Parole Commission which were provided to FDLE, FDLE cannot reasonably conclude that the individual seeking a waiver does not pose a risk of engaging in any act within the seaports that would pose a risk to or threaten the security of the seaport and the public's health, safety, or welfare. There is no appeal process within these Guidelines for this disposition. The seaports are not authorized to override, change, or ignore this disposition.

REQUEST FOR WAIVER APPROVED – Based upon the findings of fact of the staff of the Florida Parole Commission which were provided to FDLE, FDLE approves the individual's request for a waiver as to the disqualifying condition(s) designated in the waiver application packet. The effect of FDLE's approval of this waiver request is limited and subject to cancellation or revocation, as provided in the FDLE guidelines for this waiver process and by law. The granting of a waiver request by FDLE does not mandate access approval by any

seaport. The seaports retain their statutory authority to determine who will or will not have access to port facilities. This waiver relates only to requirements in state law and does not by itself grant any right of access to areas also subject to federal regulation.

An approval by FDLE of a waiver request applies only to the port involved in that particular waiver process, except as provided below, and only to the specific applicant for that waiver request. An approval applies only as to the status of the information related to the applicant's eligibility for port access on the date of his or her application for port access which was related to the waiver process. An approval does not provide an automatic approval to or by the seaport for the applicant to obtain access to or employment within the secure or restricted area(s) of the seaport. The port is the entity with the statutory authority to grant or deny the individual unescorted access to or employment on the port. The port must apply an approval of a waiver request with other authorized and required criteria, as of the date of the port's receipt of the approval, to specifically grant or deny the applicant access to or employment with that port. The port is not mandated or authorized to simply accept an approval of a waiver request, without ensuring that all other requirements have been met.

Any waiver of a disqualifying factor in F.S. 311.12(7)(a), any related unrestricted access, and/or any seaport credential which is/are granted or provided by a seaport, which is/are in part based upon an approval by FDLE of a waiver request, is/are subject to immediate cancellation or revocation should information come to the attention of FDLE or the seaport that leads to the conclusion that the applicant is, or has become, an unacceptable risk, pursuant to law, or that the waiver or approval was based in part on false or fraudulent information or process.

Other seaports are required to accept and apply a current, verified, unrevoked FDLE waiver approval in their respective determinations of the same individual's eligibility for access to those seaports, but only as to the same disqualifying offense(s) to which the waiver applies. The ports are not mandated or authorized to simply accept an approval of a waiver request, without ensuring that all other requirements for access have been met. The individual who received a waiver approval as to one seaport is still required to complete the application process required by each and every other seaport to which the individual seeks access.

Neither an approval of a waiver request by FDLE nor a seaport credential provided as a result of such approval guarantees an individual any automatic, continuing, unrestricted right to seaport access or employment on a seaport. Any seaport credential provided as a result of an approval of a waiver request is subject to revocation or modification for a variety of reasons, including but not limited to the following: 1) other disqualifying criminal history factors; 2) other processes, restrictions, requirements, or factors in an approved seaport security plan; 3) by and through the authority granted to each seaport; and/or 4) as provided by law.

F. Revisions to this process

FDLE may revise this process at any time, to comply with the law, to integrate new seaport access credentialing processes, to make necessary adjustments as the process is implemented, and to address other applicable factors.

G. Section 311.12 (7), Florida Statutes (2009)

(7) CRIMINAL HISTORY SCREENING.--A fingerprint-based criminal history check must be performed on employee applicants, current employees, and other persons authorized to regularly enter a secure or restricted area, or the entire seaport if the seaport security plan does not designate one or more secure or restricted areas.

(a) A person is disqualified from employment or unescorted access if the person:

1. Was convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the offenses listed in paragraph (b) in any jurisdiction, civilian or military, including courts-martial conducted by the Armed Forces of the United States, during the 7 years before the date of the person's application for access; or
2. Was released from incarceration, or any supervision imposed as a result of sentencing, for committing any of the disqualifying crimes listed in paragraph (b) in any jurisdiction, civilian or military, during the 5 years before the date of the person's application for access.

(b) Disqualifying offenses include:

1. An act of terrorism as defined in s. [775.30](#).
2. A violation involving a weapon of mass destruction or a hoax weapon of mass destruction as provided in s. [790.166](#).
3. Planting of a hoax bomb as provided in s. [790.165](#).
4. A violation of s. [876.02](#) or s. [876.36](#).
5. A violation of s. [860.065](#).
6. Trafficking as provided in s. [893.135](#).
7. Racketeering activity as provided in s. [895.03](#).
8. Dealing in stolen property as provided in s. [812.019](#).
9. Money laundering as provided in s. [896.101](#).
10. Criminal use of personal identification as provided in s. [817.568](#).
11. Bribery as provided in s. [838.015](#).
12. A violation of s. [316.302](#), relating to the transport of hazardous materials.
13. A forcible felony as defined in s. [776.08](#).
14. A violation of s. [790.07](#).
15. Any crime that includes the use or possession of a firearm.
16. A felony violation for theft as provided in s. [812.014](#).
17. Robbery as provided in s. [812.13](#).
18. Burglary as provided in s. [810.02](#).
19. Any violation involving the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance.
20. Any offense under the laws of another jurisdiction that is similar to an offense listed in this paragraph.
21. Conspiracy or attempt to commit any of the offenses listed in this paragraph.