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Private Investigator Licensing in Oklahoma

By Spencer Cadavero

Private investigators (PIs) are employed to gather information for their clients. To gather this information, they perform surveillance and conduct interviews. While PIs are often employed to aid in legal matters, they are not officers of the law. They have no power to make arrests beyond what an ordinary citizen has or to hand out fines.

Current Law

Private investigator licenses are regulated by the Oklahoma Security Guard and Private Investigator Act, which has *no sunset date*. The act gives the Council on Law Enforcement Education and Training (CLEET) the power to set licensing requirements for PIs and security guards, which is done with advice from the Private Security Advisory Committee.¹ The committee's membership includes executives of security and private investigation firms and one from the Oklahoma Private Investigators Association.² Oklahoma requires unarmed PIs to undergo 55 hours of training and take a licensing exam. Armed PIs must undergo 87 hours of training prior to taking an exam. PIs must obtain 16 hours of continuing education per year to maintain their license.³ Additionally, armed PIs must pass a psychological evaluation before being granted a license.⁴ PIs who wish to open their own agency must hold general liability insurance or a surety bond; \$100,000 for an agency, \$10,000 for an armed PI, and \$5,000 for an unarmed PI.⁵ The penalty for violating any of the terms of the Oklahoma Security Guard and Private Investigator Act is 60 days in prison and/or a \$2,000 fine.⁶

Numerous technical schools offer PI training, with classes costing between \$250 and \$400, and an additional \$150 to \$400 for the armed PI class.⁷ In addition to fees for training courses, prospective PIs must pay a \$35 testing fee for the licensing exam. The exam can only be taken at an Oklahoma Career Tech.⁸ For continuing education, PIs have the option of taking college courses, receiving training from established entities, or attending schools, seminars, and conferences accredited by CLEET.⁹

Given that training for PIs is relatively inexpensive and short, the needed skills could easily be obtained by apprenticing with an established PI. Licensing discourages people from doing this part-time or as a side job, however. The projected growth of PIs in Oklahoma for 2016-2026 is 12.8 percent, indicating no expected

shortage of demand.¹⁰ While the licensing demands on PIs are not the most burdensome of licensing regimes, they put potential new entrants at the mercy of their future competitors since those competitors dominate the advising committee.

Evaluating the Need for Licensing

Private investigation mainly involves surveillance, for which one needs only a camera or recording device and knowledge of what the law allows in practice. For cases involving the legal system, a PI must also have an understanding of applicable laws and what constitutes admissible evidence in a trial. The other common function of a private investigator is information gathering.

The 1889 Institute has published *Policy Maker's Guide to Evaluating Proposed and Existing Professional Licensing Laws*, which sets forth two preconditions to licensing an occupation.¹¹ These questions, with respect to PI licensing, are discussed below. If the answer to both questions is "Yes", licensing may be a valid option if no less-restrictive means can achieve the same ends. However, the answer to both of these questions is "No," so the occupation should not be licensed.

Does private investigation have a real and highly probable risk of harm to patrons?

No. The biggest risk to the public posed by PIs is a legal one if they attempt to fabricate evidence or otherwise act unlawfully in their investigations. However, a license cannot ensure that no one breaks the law or that every licensed individual's work is of high quality. Armed PIs may present an extra risk of shooting someone unintentionally compared to an unarmed PI, but that risk is likely no greater than that posed by the average citizen. In fact, some states with PI licensing only require PIs to hold the same conceal carry permit as other citizens.¹² PIs are likely to be more careful since they face not only the legal consequences but heightened professional pitfalls for discharging their weapon in an unsafe manner.

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Does a civil law or market failure impede patrons from accurately judging the competency of private investigator practitioners?

Not at all. While the use of PIs is not ubiquitous, there are websites dedicated specifically to PIs. Moreover, PIs are often referred to customers by the attorney representing the customer in a legal matter. PIs therefore have an incentive to perform well to maintain their working relationship with the attorney, and are more likely to be vetted. Civil and criminal law remedies exist that can deal with PIs who falsify evidence or harass and stalk those they are investigating. In addition, clients are likely to insist on bonding or other forms of insurance of investigators. A misbehaving PI is likely to lose such protection, so PIs have an incentive not to misbehave.

In states without licensing of PIs, private investigator agencies are required to abide by applicable business and criminal laws. These states have strong professional associations that set the standards of practice and have bylaws for their members.¹³ While joining these associations is not required, most PIs opt to do so, finding membership beneficial. This is a profession that would benefit from a version of the *21st Century Consumer Protection & Private Certification Act*, available as an appendix to *The Need to Review and Reform Occupational Licensing in Oklahoma*.¹⁴ It would give private certifying associations policing power to enforce their bylaws and codes of conduct through criminal fraud enforcements, rather than taking costly civil actions. There is already one such professional society in Oklahoma and multiple others that operate nationwide can compete for members.

Licensed armed PIs in Oklahoma gain extra privileges with

their license endorsement, namely the ability to carry in public places such as schools, college campuses, and courthouses.¹⁵ PI licensing is not necessary for this kind of privilege to continue. Oklahoma offers a concealed carry permit with a required curriculum and instructors available statewide. The best solution is to create another tier of concealed carry permit that grants the aforementioned privileges and allows for current concealed carry instructors to teach these courses. This would allow PIs who feel they need these privileges to get them without the necessity of a licensing regime.

Simple registration with the state is an option. Requiring PIs to register with the state, and an additional requirement of being bonded to have their own agency or be self-employed is far less onerous than requiring state permission to operate. Registration and bonding would ensure that any victims of malfeasance can be duly compensated. Registration would provide an additional benefit to PIs, who could prove that they are working as a PI if approached by law enforcement.

Conclusion

The public threat of unlicensed PIs is non-existent. Licensing has only decreased the opportunity for Oklahomans to be gainfully employed by requiring needless, costly, and time-robbing educational requirements that benefit those who provide the education more than the general public. We recommend that the Oklahoma Security Guard and Private Investigator Act be amended to remove all mentions of private investigators. At most, PIs should be privately certified and bonded as mentioned above.

References

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- 4 Oklahoma Security Guard and Private Investigator Act, 59 OK Stat § 59-1750.3A (2014)
- 5 Oklahoma Security Guard and Private Investigator Act, 59 OK Stat § 59-1750.5v2 (2014)
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- 7 "Approved Private Security Guard, Investigator & Bail Enforcer Training Programs", Council on Law Enforcement and Education, accessed January 13, 2020, <https://www.ok.gov/cleet/documents/Approved%20Private%20Security%20Guard.pdf>
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- 10 Oklahoma, Oklahoma Security Commission, *Oklahoma Long-Term Occupational Outlook, 2016 And Projected 2026*, <https://www.ok.gov/oesc/documents/lmstatewideocproj.pdf>
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- 15 Manufacture, Sale, and Wearing of Weapons, 21 OK Stat § 21-1277 (2014)