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Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Private Security Companies and Private Security Guards



March 31, 2006

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

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Bill Owens
Governor

March 31, 2006

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the sunrise application for regulation of private security companies and private security guards and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,



Tambor Williams
Executive Director

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The Sunrise Process

Background

Colorado law, section 24-34-104.1, Colorado Revised Statutes, requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by July 1 must have a review completed by DORA by October 15 of the year following the year of submission.

Methodology

DORA has completed its evaluation of the proposal for regulation of private security companies and private security guards. During the sunrise review process, DORA performed a literature search; contacted and interviewed representatives of the National Association of Security Companies (Applicant), representatives of private security companies, individual private security guards, and representatives of related professional associations and law enforcement; and reviewed licensure laws of local governments in Colorado and other states and interviewed administrators of those programs.

Proposal for Regulation

The National Association of Security Companies (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes. The application identifies state licensure of private security companies and private security guards as the appropriate level of regulation to protect the public.

In describing its proposal for regulation, the Applicant declined DORA's requests for draft legislation. Rather, the Applicant submitted a rough outline of what features the Applicant's ideal regulatory program would contain.

It must first be noted that the Applicant's proposal is limited to private, or contract, security services. The Applicant would specifically exclude proprietary security personnel from regulation. Proprietary security personnel are generally considered to be those who are directly employed by the owner of the property to be protected.

The Applicant expressed no preference between a policy autonomous board, where all licensing and disciplinary authority is vested in a board, and a program where all such authority is vested in an administrator with the assistance of an advisory committee. However, the Applicant steadfastly advocated for a program where there would be some built-in industry input. Thus, the Applicant rejected an administrative program without an advisory committee.

The Applicant's proposal envisions three categories of license types: private unarmed security guards, private armed security guards and private security companies. Additionally, the Applicant proposes registering armored vehicles.

Private Security Guards – Licensure Requirements

Private security guards, presumably both unarmed and armed, would be required to obtain training, pass an examination and pass a criminal history background check.

The following training topics would be required prior to allowing a candidate to sit for the licensing examination:

- **Nature and Role of Private Security Officers**
 - Security Awareness
 - Private Security Guards and the Criminal Justice System
 - Crime and Loss Prevention
 - Legal Aspects of Private Security
 - Use of Force and Force Continuum
 - State and Local Laws
 - Security Guard Conduct
 - Ethics
 - Honesty
 - Professional Image

- **Observation and Incident Reporting**
 - Observation Techniques
 - Note Taking
 - Report Writing
 - Patrol Techniques

- **Principals of Communication**
 - Interpersonal Skills
 - Verbal Communication Skills

- **Principals of Access Control**
 - Ingress and Egress Control Procedures

- **Principals of Safeguarding Information**
 - Proprietary and Confidential

- **Emergency Response Procedures**
 - Critical Incident Response
 - Evacuation Processes

- **Life Safety Awareness**
 - Safety Hazards in the Workplace/Surroundings
 - Emergency Equipment Placement
 - Fire Prevention Skills

- **Job Assignment and Post Orders**

- **Workplace Violence**

- **Conflict Resolution**

Although the application for regulation does not provide a specific number of hours during which such training must be completed, conversations between DORA, the Applicant and other industry representatives generally focused on a curriculum of between 8 and 20 clock hours.

At the conclusion of such training, a candidate would be eligible to sit for the examination. No national examination exists for entry-level security guards. Therefore, the state, through the board or the administrator with the assistance of the advisory committee, would need to develop and administer the examination.

In addition to obtaining the enumerated training and passing the examination, the Applicant would also require candidates to pass two types of criminal history background checks: one for initial issuance of a temporary license and one for issuance of a permanent license.

Many types of criminal history background checks can be performed. Each type has its advantages and disadvantages in terms of cost, timeliness and accuracy:

- **Commercial Services.** Many commercial firms exist to perform criminal history background checks based, primarily, on the name and date of birth of the individual, Social Security number of the individual, and all addresses at which that individual has ever resided. The cost and timeliness of such services depend upon the number of names utilized by the individual and the number of addresses at which that individual has resided. Accuracy is generally considered poor because a great deal of self-disclosure is required and the background check consists of checking the records of individual counties and municipalities, some of which are more accessible than others.
- **Colorado Bureau of Investigation (CBI) Name Check.** CBI can also perform a criminal history background check using its own databases based on the name, date of birth and Social Security number of the individual. This type of search can be completed two ways. Anyone can access CBI's database via the Internet and receive instantaneous, real-time results for \$6.85. If a response is needed on CBI letterhead, a written request must be submitted along with payment of \$13. Results are typically available within three to five business days.

The accuracy of this service, however, is limited to criminal activity within the state of Colorado. Any crimes committed, or warrants issued, outside Colorado would likely not be detected. The accuracy of this service also depends upon truthful self-disclosure on the part of the individual of all names, all dates of birth and all Social Security numbers ever used.

- **Fingerprint Checks.** Finally, fingerprints can be submitted to CBI to be run through CBI's databases as well as the Federal Bureau of Investigation's (FBI's) national database, the National Crime Information Center (NCIC). The cost for this service is approximately \$39.50, and includes a \$1-fee for CBI to provide alerts regarding subsequent criminal activity. Timeliness can often be a factor when running a CBI/FBI criminal history background check, however. As of the time of this writing, CBI reported a backlog of cases waiting processing. As a result, it can take up to six weeks for results to be obtained. Under normal circumstances, however, CBI's goal is to obtain results within three business days.

While generally considered to be the most comprehensive type of criminal history background check available, the CBI/FBI system is not perfect. The NCIC contains information as it is reported by various jurisdictions across the United States. Not all jurisdictions report the same types of information or are necessarily timely in their reporting to NCIC. For example, some jurisdictions report all crimes to NCIC, while others report only violent crimes or only arrests with no indication of final disposition. Notably, NCIC does not necessarily include information on criminal activity perpetrated outside of the United States.

With respect to private security guards, the Applicant proposes that the state issue a temporary license to candidates who have obtained the required training, as discussed above, passed the state-developed and -administered examination, and who have passed the CBI name-based criminal history background check.

Only upon passage of a CBI/FBI fingerprint-based criminal history background check would a permanent license be issued.

The Applicant did not provide specific examples of the types or severity of offenses that should serve as grounds for denial. However, in conversations with representatives of the Applicant and other industry representatives, crimes involving theft, violence or both, as well as sex-related crimes, were often discussed.

Within 100 days of the issuance of a temporary license, the Applicant's proposal would require licensees to obtain additional training:

- **Nature and Role of Private Security Guards**
 - Security Awareness
 - Information Sharing
 - Legal Aspects of Private Security
 - Evidence and Evidence Handling
 - Court Testimony
 - Incident Scene Preservation
 - Equal Employment Opportunity and Diversity
- **Principals of Communication**
 - Customer Service and Public Relations
- **Principals of Access Control**
 - Electronic Security Systems
- **Life Safety Awareness**
 - Hazardous Materials
 - Occupational Safety and Health Requirements
- **Employer Orientation and Policies**
 - Substance Abuse
 - Communications Modes (i.e., telephones, pagers, radios, computers, etc.)
- **Procedures for First Aid, Cardiopulmonary Resuscitation and Automatic External Defibrillators**
- **Crisis Management**
- **Labor Relations**
 - Strikes, Lockouts, etc.

As with the pre-licensure training requirements, no specific number of clock hours is identified as desirable for the post-licensure training.

The Applicant's proposal is silent as to how either pre- or post-licensure training would be provided. Private security companies could provide such training during the course of employment or outside contractors could provide the training.

In addition to the immediate post-licensure training enumerated above, the Applicant proposes requiring site-specific training for private security guards that would include traffic and crowd control, and parking lot security.

Additionally, the Applicant proposes that any private security guard that carries a baton receive training on the proper usage of batons.

Private security guard licenses would be valid for two years. CBI/FBI fingerprint-based criminal history background checks would be required upon renewal.

Although the Applicant envisions separate licenses for unarmed and armed private security guards, no specific training requirements were proposed for armed private security guards. Peace Officer Standards and Training (POST) certification seems logical, but it is generally considered to be inappropriate for armed private security guards because POST courses are expensive, require a substantial time commitment and address issues that go well beyond the duties of a private security guard.

Thus, any state-imposed training requirements for armed private security guards would likely need to be developed by the board or the administrator with the assistance of the advisory committee. Alternatively, the private market could develop and provide such courses.

Private Security Companies – Licensure Requirements

Private security companies would be required to either post a bond in an unspecified amount or obtain insurance in a minimum amount of \$1 million. The Applicant's proposal contains no additional licensing requirements for private security companies, although the Applicant's proposal would require off-duty law enforcement personnel to obtain licenses as private security companies if they employ more than one person.

It should be noted here that, in general, bonds and liability insurance are not interchangeable. Whereas bonds generally provide for restitution for actions involving intentional acts, insurance is typically restricted to covering negligent acts. Thus, the Applicant's proposal would require one or the other.

Armored Vehicles – Registration Requirements

The Applicant proposes registering armored vehicles, but does not propose any requirements for registration.

Profile of the Profession

The security industry can be broken down into two, main categories: proprietary and private/contract security. The Applicant's proposal is confined to the private/contract segment of the industry.

However, regardless of whether an individual security guard works on the private side or proprietary side of the industry, there are four, basic functions performed by all security guards: access control; emergency response; property control and general customer service.

The primary mission of a security guard is to observe and report. Some have even described the private security industry as the eyes and ears of law enforcement. Since law enforcement cannot be everywhere at once, proponents of this theory argue, the private security industry serves as its eyes and ears, summoning law enforcement when it is needed.

More specific duties depend upon the posting of the individual security guard. Security guards may be called upon to operate emergency equipment, perform first aid, summon law enforcement or emergency responders, take notes, write reports, interview witnesses or victims, prepare case reports, testify in court, control access at building entrances and vehicle gates, respond to minor crises and many other site-specific tasks.

The work settings of security guards vary considerably. Private security guard postings can include everything from working at the front desk of a downtown office tower to controlling access to a nuclear reactor.

When discussing private security guards and their duties, it is crucial to keep in mind that the duties a security guard is expected to perform are defined by the contract between the client whose property is being protected and the private security company that employs the private security guard. This contract delineates what the security guards may and may not do, as well as any specific training requirements or criminal history background checks the client may deem appropriate.

Since Colorado lacks a regulatory system, most training, if any, that is provided is provided by the private security company employing the private security guard. Many larger private security companies have formal training programs that encompass basic company policies, general training similar to the pre-licensure training proposed by the Applicant, post-specific training and on-going/continuous training. While some smaller private security companies may have formal training programs, it is more common for these entities to focus on post-specific requirements.

Similarly, many security companies, both large and small, perform criminal history background checks on candidates for employment. However, due to legal constraints, these background checks are typically limited to background checks performed by commercial operations or to CBI name-based checks. Importantly, however, absent regulation or a legal mandate to do so, criminal history background checks are not required for private security guards in Colorado.

On average, the starting hourly wage for a private security guard in Colorado is between \$9 and \$12. Of course, some private security guards may earn considerably more or less, depending upon experience, the specific posting, geographical region, employer, and other factors.

Perhaps because of the relatively low wages, or perhaps due to other circumstances, such as a realization that private security work is not the ideal calling for a particular individual, turnover among private security guards is reportedly high. Some individuals interviewed during the course of this sunrise review reported turnover rates as high as 70 percent, meaning that 70 percent of security guards leave a specific employer within a year of starting.

Not surprisingly, private security guard positions are generally considered to be entry-level.

For those seeking to make private security a career, advanced training and certifications are available.

ASIS International (ASIS), formerly the American Society for Industrial Security, offers three levels of private certification: Certified Protection Professional (CPP); Professional Certified Investigator (PCI); and Physical Security Professional (PSP). Notably, ASIS does not require criminal history background checks of its certificate holders.

Although the CPP is the ASIS entry-level certification, it is designed and intended for those individuals involved in security management, not entry-level security guards. Information is provided here simply as a reference as to the types of private certifications available.

Candidates for the CPP must possess at least nine years of security experience, or a bachelor's degree and seven years of security experience. At least three of the years of experience must have been in positions of responsible charge of a security function.

The CPP examination consists of 200 multiple-choice items, administered via computer, covering eight domains:

- Security Principles and Practices
- Business Principles and Practices
- Personnel Security
- Physical Security
- Information Security
- Emergency Practices
- Investigations
- Legal Aspects

The cost of the examination is \$300 for ASIS members and \$450 for non-members. There is also a \$200-fee for retesting. ASIS has contracted with Thomson Prometric for the administration of the CPP examination. Thomson Prometric maintains four test centers in Colorado: Colorado Springs; Grand Junction; Greenwood Village and Longmont. Test centers are generally open Monday through Saturday.

In addition to paying for administration of the examination, candidates typically must purchase study materials, which industry representatives estimate cost approximately \$1,000.

According to a representative of ASIS, there are approximately 470 ASIS members in Colorado and approximately 125 CPPs in Colorado.

The International Foundation for Protection Officers (IFPO) also offers private certifications for security guards at various levels. IFPO certification programs are either CD-ROM-based or Internet-based, where students complete lessons on a computer.

The eight-hour Entry Level Protection Officer (ELPO) course topics include:

- Introduction to Duties and Responsibilities
- Professionalism and Ethics
- Report Writing
- Patrol Techniques
- Traffic and Crowd Control

The cost of the ELPO program is \$34 for the CD-ROM-based program and \$29 for the Internet-based program. Additionally, the program can be administered at a site with an unlimited number of students for \$108. Students completing the ELPO and desiring a certificate can purchase one for \$10.

The 40-hour Basic Protection Officer (BPO) program covers 11 units and is designed for those just entering the protection industry, individual training to enhance professional expertise, employer-sponsored group training and refresher training for protection officers.

The on-line course costs \$98 and the CD-ROM course costs \$105. Certificates of completion are available for \$10.

The final IFPO course deemed suitable for examination in this sunrise review is the Certified Protection Officer (CPO) program. Units of study include:

- Physical Security
- Crime Scenes
- Emergency Procedures
- Safety Procedures
- Physical Fitness
- Use of Force
- Workplace Violence
- Environmental Crime Control Theory
- Defensive Tactics and Officer Safety
- Investigations
- Traffic and Crowd Control
- Legal Aspects
- Report Writing
- Hazardous Materials
- Public Relations
- Effective Communications
- Weapons of Mass Destruction
- Apprehension and Detention Procedures
- Fire Prevention
- Strikes/Labor Relations
- Crisis Intervention
- Bomb Threats
- Professionalism and Ethics
- Police Security Liaison
- Operational Risk Management
- Foundations for Surveillance

The CPO program includes both course materials and a final examination. The on-line program, on-line final examination and accompanying course textbook cost \$230. The on-line program and on-line examination without course textbook cost \$205. To take the final examination on paper, candidates must pay an additional fee of \$20.

Telephonic and electronic mail inquiries to the IFPO by DORA went unanswered, so it is not possible to report the number of IFPO graduates at each level who currently reside in Colorado.

Finally, the Applicant estimates that there are between 6,000 and 8,000 private security guards currently working in Colorado.

Summary of Current Regulation

The Federal Regulatory Environment

In the Private Security Officer Employment Authorization Act of 2004¹ (Federal Act), Congress found:

The threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities and institutions; [] the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and private security officers and applicants for private security officer positions should be thoroughly screened and trained.²

The Federal Act permits, but does not require, “authorized employers” of security guards to submit fingerprints to a state identification bureau, which is then authorized to submit the fingerprints to the Federal Bureau of Investigation (FBI), for purposes of conducting a criminal history background check. For Colorado, the Colorado Bureau of Investigation (CBI) is the state identification bureau.

In an interim final rule, issued January 11, 2006, the U.S. Attorney General defines “authorized employer” as:

any person that employs private security officers and is authorized by the regulations in this subpart to request a criminal history record information search of an employee through a state identification bureau.³

To obtain a fingerprint-based criminal history background check of an employee or potential employee, the employer must execute a certification declaring that:

- The employer employs private security guards;
- All fingerprints and requests for criminal history background checks are being submitted for private security guards;

¹ Pub. L. 108-458 § 6402, codified as a note to 28 U.S.C. § 534.

² Pub. L. 108-458 § 6402(b)(5), (7) – (9).

³ 71 Fed. Reg. 1693, promulgating 28 C.F.R. §105.22(a).

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- The employer will use the information obtained as a result of the state and national criminal history record checks solely for the purpose of screening its private security guards; and
 - The employer will abide by other regulatory obligations.⁴

The manner in which the results of the criminal history background check are disseminated, however, depends on whether the state has “standards for qualification to be a private security officer,” or, in other words, whether the state regulates security guards.

In states that regulate security guards, the results of the criminal history background check are forwarded to the regulating entity for a determination as to whether the individual complies with state licensing requirements.

In states that do not regulate security guards, such as Colorado, fingerprints may be submitted only by “authorized employers.” In such states, the results of the criminal history background check are filtered by the state identification bureau, i.e, CBI, so that the employer is informed whether the individual has been:

- Convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or
- Charged with a criminal felony for which there has been no resolution during the preceding 365 days.⁵

Despite the Congressional finding that the Federal Act is necessary to protect against terrorism, the Federal Act imposes no training or examination requirements. Indeed, the implementing regulations specifically state, “A state retains the right to impose its own licensing requirements upon this industry.”⁶

⁴ 71 Fed. Reg. 1694, promulgating 28 C.F.R. § 105.23(a).

⁵ 71 Fed. Reg. 1694, promulgating 28 C.F.R. § 105.23(e)(2).

⁶ 71 Fed. Reg. 1693, promulgating 28 C.F.R. § 105.21(b).

The Colorado Regulatory Environment

At the state level, Colorado does not regulate security guards in any way. However, at least eight local jurisdictions within the state have enacted regulations pertaining to private security companies, private security guards, proprietary security guards, or all three, that work or operate within their respective jurisdictions.

City of Brighton

The City of Brighton licenses private and proprietary security guards, as well as private security companies. A security guard must post a bond of \$1,000 and pay a \$75-fee for initial licensure. Annual renewals cost \$30. All security guards must pass a criminal history background check, and armed guards must obtain a weapons permit. As of January 2006, only eight guards held licenses issued by the Brighton City Clerk.

Private security companies must pay an initial license fee of \$40. Company licenses must be renewed every two years at a cost of \$7.50. As of January 2006, only one security company held a license issued by the Brighton City Clerk.

According to a representative of the Brighton City Clerk's Office, there have been no complaints involving security guards or security companies in recent memory.

Cherry Hills Village

Although Cherry Hills Village used to directly regulate security guards, it no longer does so. Rather, Cherry Hills Village requires security companies to obtain CBI name-based criminal history background checks on all employed security guards and requires that security guards be in good physical condition. An individual may not be employed as a security guard if the individual has ever been convicted of murder, first or second degree sexual assault, kidnapping, burglary, assault with a deadly weapon, armed robbery, or any crime committed within the previous 10 years that involved the infliction of violence upon another person. Additionally, armed security guards must obtain eight hours of training annually. According to a representative of the Cherry Hills Village Police Department, no complaints were received regarding security guards when they were regulated.

Cherry Hills Village licenses security companies, and any holder of a 10 percent interest or more in such a company must, like security guards, pass a criminal history background check. The initial license fee for security companies is \$100 and renewals cost \$50, plus an additional fee based on the number of security guards employed by the security company. Security companies that employ between one and nine security guards must pay an additional \$50, those that employ between 10 and 19 security guards must pay an additional \$100, and those that employ 20 or more guards must pay an additional \$150. As of January 2006, Cherry Hills Village licensed six private security companies.

According to a representative of the Cherry Hills Village Police Department, there have been no complaints involving security companies for at least three years.

City of Colorado Springs

The City of Colorado Springs licenses private security companies and private security guards, as well as armed proprietary security guards. Unarmed security guards must be at least 18 years old, and armed security guards must be at least 21 years old. Private security guards must obtain Colorado Springs-approved training and pass a fingerprint-based criminal history background check. Armed security guards must satisfy all of the requirements of unarmed security guards, plus obtain additional firearms training and pass a Colorado Springs examination. The Colorado Springs City Clerk may issue a temporary license that is valid for 90 days. The initial and annual renewal application, license and background check fees total \$130. As of January 2006, the City of Colorado Springs licensed 1,215 private security guards.

Individuals owning 10 percent or more of private security companies must also pass fingerprint-based criminal history background checks. In addition to needing to maintain and submit proof of workers' compensation and automobile liability insurance, private security companies must also maintain and submit proof of general liability insurance in an amount of at least \$1 million. The application fee for a private security company license is \$15 and the background check fee for each principal is \$20. The license fee, however, depends upon the number of private security guards employed. The license fee for private security companies that employ between 1 and 25 private security guards is \$350, \$500 for those that employ between 26 and 50 private security guards, \$750 for those that employ between 51 and 75 private security guards, and \$1,000 for those that employ 76 or more private security guards. As of January 2006, the City of Colorado Springs licensed 43 private security companies.

The Colorado Springs City Clerk's Office reportedly receives between two and three complaints each week regarding the private security industry. However, the vast majority of these complaints involve unlicensed activity, improperly marked security cars and improper security uniforms. The Colorado Springs City Clerk's Office does not receive many practice-related complaints.

City and County of Denver

The City and County of Denver licenses both private security companies and security guards. No distinction is made between private and proprietary security guards, and the City and County of Denver no longer distinguishes between armed and unarmed security guards. Applicants for security guard licenses must be at least 18 years old; pass a fingerprint-based criminal history background check; and submit a letter of hire demonstrating proof of employment, a statement signed by a licensed physician, physician assistant or nurse attesting to the applicant's physical fitness, and three letters of reference. The application fee for security guards is \$50 and the license, as well as renewal fee is \$25. Licensed security guards may carry folding knives with blades less than three and one-half inches long, single canisters of mace and nightsticks. However, those carrying nightsticks must obtain eight hours of training in the use of such weapons. The City and County of Denver may issue temporary licenses that are valid for 30 days, pending approval of the license application. As of January 2006, the City and County of Denver licensed 5,093 security guards.

A private security company seeking licensure must submit photographs of the company's uniforms and evidence of a surety bond in a minimum amount of \$5,000. Additionally, the principals of the private security company must pass fingerprint-based criminal history background checks. For private security companies with 25 or fewer security guards, the application fee is \$100 and the license and renewal fee is \$100, for a total of \$200. For private security companies with 26 or more security guards, the application fee is \$200 and the license and renewal fee is \$200, for a total of \$400. As of January 2006, the City and County of Denver licensed 89 private security companies.

The City and County of Denver receives approximately 20 complaints regarding security guards and companies each year, resulting in approximately four license revocations per year. Most complaints involve the failure of the security guard and/or security company to report incidents to the Denver Police Department within 72 hours, as they are required to do.

Problems with security guards have involved security guards discharging weapons in the air to scare people or poorly trained security guards using unjustified violence to remove patrons from bars and nightclubs.

City of Evans

The Evans City Clerk's Office licenses private security companies and security guards, making no distinction between private and proprietary security guards. Security guards must be at least 21 years old, obtain 24 hours of approved training, and disclose any criminal convictions within the previous five years. The fee for initial licensure is \$25, and it is \$10 for renewals. As of January 2006, the City of Evans licensed 23 security guards.

A private security company seeking licensure in the City of Evans must disclose any criminal convictions of its principals within the previous 10 years and submit descriptions of the private security company's uniforms and vehicles. The initial and renewal license fee for private security companies is \$50. As of January 2006, the City of Evans licensed six security companies.

The Evans Police Department reported receiving approximately eight complaints regarding security guards and private security companies, most of which consisted of failure to report incidents as required and unlicensed activity.

City of Glendale

The City of Glendale licenses both private security companies and security guards, making no distinction between private and proprietary security guards. Security guards must submit evidence of employment, three letters of reference and a certificate of physical fitness signed by a licensed physician. Additionally, applicants must disclose whether they have ever been convicted of any felony or crime involving moral turpitude, and every place they have worked during the previous five years. The annual application and license fee for security guards is \$40. As of January 2006, the Glendale Police Department licensed 41 security guards.

A private security company seeking licensure in the City of Glendale must submit credit references, business references and vehicle descriptions. The annual application and license fee for private security companies is \$40. As of January 2006, the Glendale Police Department licensed 15 private security companies.

According to a representative of the Glendale Police Department, there have not been any complaints regarding security companies or guards in recent memory.

City of Greeley

The City of Greeley licenses private security companies and private security guards. Private security guards must obtain at least 24 hours of approved training, pass a fingerprint-based criminal history background check, and disclose their employment history for the previous 10 years. If the private security guard is to be armed, the applicant must be 21 years old, obtain at least 16 hours of additional training, and present a certificate of physical fitness signed by a licensed physician. The fee for initial and renewal licensure is \$10, plus \$29.50 for the criminal history background check. As of January 2006, the Greeley City Clerk's Office licensed between 50 and 150 security guards.⁷

The principals of a private security company must also pass fingerprint-based criminal history background checks and the company must provide descriptions of its vehicles, uniforms and other equipment. The fee for initial and renewal licensure is \$25. As of January 2006, the Greeley City Clerk's Office licensed between 15 and 20 private security companies.⁸

According to representatives of the Greeley City Clerk's Office, no complaints have been received regarding private security companies or private security guards in recent memory.

City of Westminster

The City of Westminster licenses only private security companies. Each principal of the private security company must be at least 21 years old and must pass a fingerprint-based criminal history background check. Grounds for denial include a felony conviction within the previous 10 years or a misdemeanor conviction for a crime involving moral turpitude within the previous five years. Additionally, each principal must be able to speak and comprehend English. The annual license and renewal fee for private security companies is \$60. As of January 2006, the Westminster City Clerk's Office licensed 19 private security companies.

⁷ Representatives of the Greeley City Clerk's Office asserted that they were unable to provide more definitive numbers.

⁸ Representatives of the Greeley City Clerk's Office asserted that they were unable to provide more definitive numbers.

A representative of the Westminster City Clerk's office reported that there have been no complaints regarding private security companies in recent memory.

As this discussion clearly demonstrates, regulation of private security companies and private security guards by local Colorado jurisdictions is far from consistent, both in terms of licensing requirements and license fees.

However, these local Colorado jurisdictions have issued approximately 6,500 security guard licenses. Recall that the Applicant estimates that there are between 6,000 and 8,000 private security guards in all of Colorado. It is reasonable to conclude, therefore, that a high percentage of the security guards the Applicant estimates to exist are already licensed in at least one Colorado jurisdiction.

Regulation in Other States

At least 39 states regulate the security industry. Of these, 36 regulate both private security companies and private security guards, and 15 regulate proprietary security guards.

Thirty-six states, constituting 92 percent of regulating states, require criminal history background checks as a condition of licensure. Additionally, 23 states (60 percent) require candidates to take and pass licensing examinations, and 22 states (56 percent) require some level of training.

Six states require only a criminal history background check, while one state requires only passage of a licensing examination. Seven states require some level of training and passage of a licensing examination, and seven states require a criminal history background check and passage of a licensing examination. Only one state requires only training and passage of a licensing examination. No state requires training only, and only one state has no training, criminal history background check or examination requirements, making that state a registration, rather than a licensing, jurisdiction.

Not surprisingly, it is in the area of training where the greatest differences between the states becomes apparent. Only four states require both pre- and post-licensure training, as is proposed by the Applicant. General training requirements for unarmed security guards vary between 4 and 40 hours. For armed security guards, the additional training requirements vary between 4 and 47 hours.

Many states also impose some kind of financial responsibility requirements on licensees, either through the posting of bonds or by mandating minimal levels of insurance. Twenty-five states require private security companies to carry minimal levels of liability insurance. Four states require private security companies to post bonds, and 18 states require security guards to post bonds. Two states require private security companies to post bonds and maintain liability insurance.

Finally, how the security industry is regulated also varies considerably. Of the 39 states that regulate, 22 do so with boards. In 18 states, the department of public safety/state police/department of homeland security regulates the security industry. In 10 states, the department charged with professional and occupational licensing does so. Of the remaining states, four regulate through the attorney general/department of law/department of justice, three through the department of state, two through the labor department, one through the agriculture department, and one has a stand alone board with no parent agency.

Thus, the greatest commonality among the states that regulate private security guards is the requirement of criminal history background checks.

The table in Appendix A, which may be found on page 40, provides greater, state-by-state detail of the regulation of the private security industry in other states.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

This first sunrise criterion essentially posits that, absent a showing of harm, regulation is not justified. It is only logical, therefore, to determine whether Coloradans are being harmed by the unregulated practice of private security guards and private security companies.

During the course of this sunrise review, the Department of Regulatory Agencies (DORA) requested the National Association of Security Companies (Applicant) to submit specific examples of harm occurring in Colorado. In response, the Applicant submitted the following 22 cases. However, representatives of the Applicant concede that many of these examples are anecdotal. Therefore, independent verification of their accuracy and truthfulness by DORA was not possible.

The first 12 cases highlighted here involve events that occurred in Colorado. DORA comments appear in italicized text following the Applicant's presentation of each case.

Case #1⁹

A security manager had personal knowledge and experience whereof a large security company was contracted to provide armed security personnel for a holiday sidewalk sale during the Christmas season. The only security person available did not have a gun to carry on the job. The company's regional manager ordered the security supervisor to provide the guard with a company weapon that had been pulled from service because of mechanical problems. The gun would not reliably operate. The supervisor pointed out the problem and was told to issue the gun to the guard anyway because "it was only for show, and he wouldn't need to use it." The guard was issued a defective and inoperative weapon and placed on the post without instruction so the company could charge for an armed guard.

⁹ Memorandum from the Applicant to DORA dated January 23, 2006, page 1.

No actual harm is alleged in this case. This case seems to imply that regulation of the security company was necessary so as to hold the company responsible for providing an inoperable gun in the hands of a guard who may or may not have been properly trained in its use. As such, this case can only be considered a demonstration of the potential for harm in Colorado.

Case #2¹⁰

A large Colorado meat processor requested investigative services of a Colorado investigative firm to look into employee theft and dishonesty. As a result of the request, the investigation firm conducted a six-month undercover investigation wherein it placed two investigators into the business' meat packing operation. The investigation revealed that a group of not less than 12 employees had stolen meat from its employer for years. It was also learned that the theft had in part been possible because of assistance provided by two contract security guards who also worked at the plant. At the investigation's conclusion, it was learned that both security guards had recent criminal convictions for theft and were on probation at the time they were hired as security guards. It was the conclusion of the investigation firm that the absence of a Colorado law regulating the security guard industry and establishing minimum qualifications for security guards that the guards in question were unfortunately hired and provided the opportunity to steal from a business that they had been hired to protect. The amount of the loss in this case was estimated to be in excess of \$100,000.

This case is an example of harm that may have been prevented had the Applicant's proposal been in place at the time, depending upon the severity of the prior convictions of the security guards involved and the disqualifiers put into place. However, it must be noted that the harm perpetrated in this case was against the client, a corporate entity, not the public. Additionally, it is unclear whether this group of employees could have committed these crimes without the assistance of the security guards.

¹⁰ Memorandum from the Applicant to DORA dated January 23, 2006, page 1.

Case #3¹¹

A security company did not train its security guards sufficiently and assigned guards to a public facility in Denver. As a consequence, these security guards used excessive force when stopping citizens on property to determine the reason for the trespass. The client received so many complaints that the company's contract was terminated.

No specific harm is alleged in this case. The alleged use of "excessive force," while disturbing, does not logically conclude with injury to the public. Additionally, it is not clear what training the guards involved did receive, so it is impossible to determine whether the training requirements proposed by the Applicant would have addressed and prevented this type of situation. Regardless, as a result of the complaints, the private security company's contract was terminated, illustrating the effectiveness of the current, market-based system.

Case #4¹²

A then-security guard who is now a security manager was at a fast food restaurant in uniform and observed a security guard enter the facility. The other guard was dressed in a cowboy hat, boots, jeans and a shirt with a badge and logo indicating his employer. He was also carrying a pistol, evidently coming from an armed post. He told the now-security manager about an incident that had occurred a couple of days earlier. He stated that, on his post, there is a stop sign and people were always running it. He said that he almost "pulled his gun" when a driver sped up when he yelled at him to stop. When asked what kind of training he had concerning weapons, he stated he had attended the two-day training class conducted in Colorado Springs. A call to his agency was made and the incident was reported.

No specific harm is alleged in this case. Additionally, one security guard relating a work-related experience to another security guard does not indicate inadequate training or improper conduct. Members of various professions often speak of taking extreme measures in frustrating situations, but would never act on such impulses, as, it appears, this security guard did not.

¹¹ Memorandum from the Applicant to DORA dated January 23, 2006, page 2.

¹² Memorandum from the Applicant to DORA dated January 23, 2006, page 2.

Case #5¹³

When a Denver security manager first went to work for a private security company, he turned his attention to the company's performance. He found that the private security company had not given the guards any post orders. The guards did what they thought was appropriate and correct, but there was no consistency. The guards made many mistakes because of a lack of knowledge. Guard turnover was enormous. The private security company did not supply its guards with any type of health benefits and pay was substandard. The guards wore various combinations and varieties of uniforms because no standard company uniform was available.

No specific harm is alleged in this case. Harm is implied by the lack of post orders and by the lack of company-provided uniforms, but no specific examples of harm are provided, so there is no reason to believe that any harm occurred as a result of these questionable practices. The case also seems to imply that regulation would remedy the lack of employer-provided healthcare, poor pay and lack of company-provided uniforms. This is an incorrect assumption. Compensation and benefits are business decisions made by employers across the state everyday. The state has no role to play in such decisions.

Case #6¹⁴

While a private security company manager was on duty at a bank in Fort Collins, an armed courier entered the bank. The courier entered the bank with a gun in a homemade holster that was using rubber bands to secure the weapon. The private security company manager expressed concerns to the client who directed the private security company manager to take care of it. The private security company manager confronted the courier and advised him that he would not be able to enter any of the client's banks with his gun on unless he had a retention holster. The courier proceeded to tell the private security company manager that his company did not supply holsters or have requirements and that it, in fact, did not even qualify its security guards, it just handed them a gun and put them on a route. The private security company manager has since had conversations with several employees or former employees of this company who confirmed that this situation continued as recently as 2005.

¹³ Memorandum from the Applicant to DORA dated January 23, 2006, page 2.

¹⁴ Memorandum from the Applicant to DORA dated January 23, 2006, page 2.

No specific harm is alleged in this case. Additionally, if the client in this case found this situation unacceptable, the contract with the security company that employed the courier could have been terminated.

Case #7¹⁵

Security guards in Fort Collins made traffic stops, confronted people in parks and improperly identified themselves as police officers.

While alarming, no specific harm is alleged. Additionally, impersonating a peace officer constitutes a Class 6 felony under section 18-8-112, Colorado Revised Statutes (C.R.S.), and is punishable by 12 to 18 months in prison plus 12 months of mandatory parole. Regulation does not generally prevent or deter criminal behavior such as this, so it is reasonable to conclude that the Applicant's proposal would not have prevented or remedied this situation. The individuals involved should have been prosecuted under criminal statutes. Admittedly, however, absent regulation, or at a minimum, mandatory criminal history background checks for private security guards, the individuals involved in this case could have been convicted, served their sentences and, upon release from prison, sought employment as private security guards in Colorado. As such, this case can only be considered a demonstration of the potential for harm in Colorado.

Case #8¹⁶

A client reported concern about the lack of training of security guards, which occurs frequently.

No specific harm is alleged in this case. Additionally, if the client in this case found this situation unacceptable, the contract with the security company could have been terminated.

Case #9¹⁷

An instructor at a local college revealed that students often complain about a total lack of training before being placed on a post, not being paid for their services, either by shortages or receiving checks that bounced.

¹⁵ Memorandum from the Applicant to DORA dated January 23, 2006, page 2.

¹⁶ Memorandum from the Applicant to DORA dated January 23, 2006, page 3.

¹⁷ Memorandum from the Applicant to DORA dated January 23, 2006, page 3.

No specific harm is alleged in this case. Additionally, section 8-4-101, et seq., C.R.S., governs the payment of wages and provides for penalties for failure to pay wages properly owed. The Applicant's proposed regulation would neither prevent nor remedy this type of situation.

Case #10¹⁸

In 2002, 11,300 people applied for security jobs at a major Colorado airport. After federally required background checks, 8,975 of them were deemed qualified.

No specific harm is alleged in this case. In fact, this case demonstrates that current procedures are adequate to screen-out those deemed unfit for such positions.

Case #11¹⁹

A private security company was convicted of hiring convicted felons and lying about background checks. This private security company experienced complete turnover of staff at a major Colorado airport every four months.

No specific harm is alleged in this case.

Case #12²⁰

A private security guard at a major Colorado airport accidentally unplugged a metal detector, requiring approximately 10,000 passengers to be re-screened. The breach in security was noticed by another private security guard.

Aside from the inconvenience experienced by the passengers involved, this case does not allege any specific harm. Indeed, it was a private security guard who noticed the security breach, thereby enabling the private security company to rectify the situation. It is also important to note that no amount of training or regulation will serve to prevent all mistakes.

¹⁸ Memorandum from the Applicant to DORA dated January 23, 2006, page 3.

¹⁹ Memorandum from the Applicant to DORA dated January 23, 2006, page 3.

²⁰ Jerd Smith and Kevin Flynn, "DIA Security Breach Delays 10,000," *Rocky Mountain News*, p. 1B. March 16, 2002.

The following ten cases involve events that occurred outside of Colorado.

Case #13²¹

In 2003, the California Bureau of Security and Investigative Services processed over 69,000 applications for “Guard Cards.” Of those applicants, almost 18,000 had a Federal Bureau of Investigation (FBI) “rap” sheet. Over 9,000, or 51 percent, of those applicants with a rap sheet were denied a guard card, most commonly because of convictions for sex-related offenses, burglary/robbery and/or battery. In simple terms, the rejection rate for disqualifying convictions was 13 percent of the total number of applicants.

This case does not specifically address harm in Colorado and does not allege any specific harm in California. However, it does imply that a high number of security guards working or seeking work in Colorado could have criminal convictions that would, were regulation in place, as it is in California, prevent them from working as security guards in Colorado. As such, this case can only be considered a demonstration of the potential for harm in Colorado.

Case #14²²

A Florida high school security officer was charged with sexual battery of a 14-year old girl, according to a September 13, 2005, report. Police reported that the security guard took the girl to a shower area on campus and tried to force sex. The victim’s family was “outraged” that the security guard was hired despite a previous record of misdemeanor traffic violation and a felony arrest for domestic assault (later dropped). The director of school district professional standards said that without a conviction on the felony charge, there was no reason not to hire the accused man.

²¹ Testimony of Don Wilson, Chairman of Securitas Security Services USA, Inc., before the U.S. House of Representatives Subcommittee on Crime Terrorism and Homeland Security. March 30, 2004.

²² Memorandum from the Applicant to DORA dated January 23, 2006, page 4.

This case does not specifically address harm in Colorado. This case implies that since Colorado does not require criminal history background checks, something similar could happen in Colorado. However, as the case itself notes, absent a conviction on the previous felony charge, this individual would likely have been eligible for licensure under the Applicant's proposed regulation for Colorado, as was the case in Florida, which regulates security guards. Such regulation did not prevent this harm from occurring, but did provide a mechanism by which future harm caused by this security guard could be prevented. Additionally, this case highlights the fact that criminal history background checks only provide information on past criminal behavior and they do not provide insight as to future criminal behavior, since this individual had never before been convicted of a felony, let alone a sex-related crime. As such, this case can only be considered a demonstration of the potential for harm in Colorado.

Case #15²³

The New York Attorney General and the Comptroller filed suit in June 2002 against a national security company for having provided unregistered and unqualified personnel, some of whom had criminal convictions, to guard sensitive state facilities. The action was the subject of a press release by the Office of the New York State Attorney General on June 28, 2002. Among the sites for which the private security company provided security were: Camp Smith, described as a New York State military installation housing arms and munitions; homeless shelters in New York City; and the federal Department of the Interior's Ellis Island and Statue of Liberty properties.

This case does not specifically address harm in Colorado and does not allege any specific harm in New York, which regulates security guards. The limited information provided does not discuss the terms of the contract between the State of New York and the private security company, which might reveal whether the security guards provided under the contract were required to have clean criminal histories. Finally, however, this case illustrates the power of the contract between the security company and the client. In this case, the client sued the security company, presumably under the terms of the contract. Nothing presented indicates that this remedy is insufficient.

²³ Memorandum from the Applicant to DORA dated January 23, 2006, page 5.

Case #16²⁴

A plainclothes security guard for a department store was charged with involuntary manslaughter following the choking death of a Detroit man. The security guard and four other plainclothes security guards confronted the victim and his stepdaughter in the parking lot of a Dearborn, Michigan mall. An altercation began when the officers grabbed the victim's 11-year-old stepdaughter and accused her of shoplifting. The victim then confronted the security guard but was restrained by the other guards. The security guard then threw the victim to the ground and placed him in "semi-restraining head lock position." The medical examiner reported that the victim died from asphyxia. Whether the security guard had adequate training or a background check was not disclosed. At the time of this writing, the judge in the case had dismissed the involuntary manslaughter charge and the prosecution was appealing.

This case does not specifically address harm in Colorado. In fact, the harm it does allege would be exempt under the Applicant's proposal for Colorado since the plainclothes security guards involved in this case appear to have been proprietary security guards, not private security guards. Importantly, although Michigan regulates private security companies, it does not regulate proprietary security guards such as those involved in this case. As such, this case can only be considered a demonstration of the potential for harm in Colorado.

Case #17²⁵

A recent article disclosed that a private security company was under fire in Albuquerque, New Mexico for look-alike police cars and a lack of a state license. New Mexico regulated security guards and private security companies. Albuquerque police officials wanted to order the company to change its car design because the vehicles looked too much like the police department's cars. State officials also said they planned to issue a cease and desist order to the company. The state officials voiced concern that the public may be confused as to whether they are dealing with a police officer or a private security guard because of the company's car design. State officials claimed that the security company never received a license after being in operation for four years. The owner countered that he was operating under the assumption that he had a license on record because he had applied for one at the business' beginning. However, state officials said that the company

²⁴ Memorandum from the Applicant to DORA dated January 23, 2006, page 4.

²⁵ Memorandum from the Applicant to DORA dated January 23, 2006, page 5.

applied for a license but was rejected when the owner's check for the fees bounced. State officials stated that their main concern was the public. The president of the regulatory board that governs security company licenses noted, "people operating in a quasi-law enforcement fashion could put the public at risk, thus there are procedures in place to protect the public." The owner of the private security company responded that he had met all of the required obligations and plans to talk to the state and the city concerning these problems.

This case does not specifically address harm in Colorado and does not allege any specific harm in New Mexico, which regulates private security companies and private security guards. While concern regarding confusion between a private security company's vehicles and official law enforcement vehicles is a legitimate concern, as presented, this case does not allege that any harm actually occurred as a result of this confusion. As such, this case can only be considered a demonstration of the potential for harm in Colorado.

Case #18²⁶

A shopping center in Danbury, Connecticut was listed as a possible terrorist target, and the mall increased the number of security guards.

This case does not specifically address harm in Colorado and does not allege any specific harm in Connecticut, which regulates private security companies, private security guards and proprietary security guards.

Case #19²⁷

Extra security was assigned at Indiana shopping malls during the holiday season to prevent thefts and to increase public trust. The purpose of security guards was to "render customer assistance and to provide a safe environment for the customers and employees at the mall." The main duties of such security guards remained customer service and crime prevention.

This case does not specifically address harm in Colorado and does not allege any specific harm in Indiana, which regulates private security companies and private security guards.

²⁶ *News-Times*, December 13, 2005.

²⁷ Bill Ruthhart and Paul Bird, "Mall security guards: a shopper's best friend," *IndyStar*. November 26, 2005.

Case #20²⁸

Las Vegas “City Watch” program connects every security system to help prevent terrorist attacks and respond to disasters. Recommended to go statewide.

This case does not specifically address harm in Colorado and does not allege any specific harm in Nevada, which regulates private security companies and private security guards.

Case #21²⁹

A private security guard who had worked at a Pittsburgh, Pennsylvania school for 12 years stopped a student from entering the building when a gun in the student’s jacket triggered the alarm on the school’s metal detector. The student left the school and later returned without the gun.

This case does not specifically address harm in Colorado and does not allege any specific harm in Pennsylvania, which regulates private security guards, private security companies and proprietary security guards.

Case #22³⁰

A woman was allegedly molested during a security pat down by a private security guard at a major Texas airport. The woman complained to airline personnel, the Department of Transportation, the Federal Aviation Administration and the private security guard’s employer. All claimed lack of responsibility. The woman did not report the incident to law enforcement.

While reprehensible, if true, this case does not specifically address harm in Colorado. Notably, Texas regulates both private security guards and private security companies, thus illustrating that regulation does not prevent criminal behavior.

²⁸ Edward Lawrence, *State Watch: Nevada Homeland Security Program*, posted December 14, 2005, at www.klastv.com/global/story.asp?s=4246517&nav=168y.

²⁹ M. Ferguson Tinsley, “Security guard fired, charged in Wilkinsburg High School gun incident,” *Pittsburgh Post-Gazette*. May 5, 2005.

³⁰ Ann Imse, “Woman contends frisking by man at Dallas airport went too far,” *Rocky Mountain News*, p. 1B. February 9, 2002.

In addition, the Applicant suggests that lack of regulation in Colorado has led to harm and endangerment in situations involving crowd control, weapons screening and handling, bomb detection, cargo screening and background checks for security personnel at airports. The Applicant failed to submit specific examples of such harm. Additionally, federal law already addresses or pre-empts some of these situations.

Whether harm occurs in Colorado as a result of the lack of regulation of private security companies and private security guards requires an examination of evidence beyond the Applicant's submissions of alleged harm. Recall that several local governments in Colorado already regulate private security companies, private security guards, proprietary security guards or all three.

In conversations with regulatory authorities in such jurisdictions, it became clear that there are relatively few complaints and disciplinary actions involving private security companies and private security guards. According to these representatives, most complaints involve unlicensed activity or failure to report incidents to law enforcement as required.

Taking the examples of alleged harm submitted by the Applicant, along with the reports of local regulators, it becomes apparent that there may be a potential for harm. Indeed, the potential for harm is almost intuitive. However, if this potential were as real as the Applicant and proponents of regulation posit, then more specific examples of harm in Colorado would be readily available. Since such examples of harm were not submitted and since many of the examples submitted failed to even allege any actual harm, this sunrise review concludes that the absence of regulation has not harmed Colorado citizens.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

Although this sunrise report concludes that there is insufficient evidence of harm to justify a recommendation in favor of regulation, it is still necessary to complete the sunrise analysis and to determine whether, to the extent there is at least a potential for harm, competency is the issue.

A common refrain throughout this sunrise review concerned consistency. Many larger private security companies already conduct criminal history background checks and provide their employees with varying degrees of training. The concern is that not all private security companies engage in such activities and that there are no consistent standards to which every private security company must adhere.

As a result, it is argued that some private security companies do a better job than others with respect to criminal history background checks. Some companies perform comprehensive criminal history background checks, while some perform only cursory checks. Worse, it is alleged that some private security companies that assert that they screen their employees actually do not.

Admittedly, there is only so much private employers can do with respect to criminal history background checks. Until very recently, when the U.S. Attorney General implemented regulations pursuant to the Private Security Officer Employment Authorization Act of 2004, a private security company could not, on its own, perform fingerprint-based criminal history background checks through the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI). As a result, current criminal history background checks performed by private security companies have been limited to name- and Social Security number-based criminal history background checks, which are far from perfect.

Such processes involve a considerable degree of self-disclosure on the part of the individual being screened. For example, it is often necessary for such an individual to disclose every address at which such person has ever lived, every name ever used, and every Social Security number ever used. If such an individual had ever been convicted under a different name or in a jurisdiction other than one in which the individual had resided, such convictions could elude detection. This situation is exacerbated by the transient nature of Colorado's population. As more people move to Colorado from other states and other nations, this status will only increase. As a result, the private security industry, and many clients, can take only minimal comfort in the fact that such criminal history background checks adequately screen private security guards.

Although fingerprint-based criminal history background checks, run through CBI and FBI databases, are the most comprehensive form of criminal history background checks practically available, they, too, are not perfect. For example, criminal activity perpetrated beyond the borders of the United States very likely will not be accessible through FBI databases. This is particularly important to remember when listening to arguments proposing regulation as a matter of national security. Criminal history background checks will likely not prevent terrorism and any arguments asserting that they will serve only to create a false sense of security.

Additionally, criminal history background checks, regardless of the method used, are not predictors of future conduct. They only report past criminal activity. However, criminal history background checks will help to prevent those known to have engaged in violent, fraudulent or dishonest behavior that rose to the level of criminal conviction from obtaining positions as private security guards. The same can also be said of sexual predators and child abusers.

However, the fact that there have been no specific incidents of harm in Colorado tends to argue that, despite the lack of state oversight and mandatory criminal history background checks, Colorado's private security force is relatively safe.

Proponents of regulation also argue that regulation is necessary to impose consistent training standards on private security guards in Colorado. Again, however, the lack of evidence of harm is difficult to surmount.

During the course of this sunrise review, a representative of DORA interviewed numerous private security guards and representatives of private security companies and their clients. There is no general consensus as to what type of minimal training a private security guard would need to be considered competent and safe.

When discussing state-mandated training, it must be noted that the state should only require the knowledge and skill set necessary to operate at a minimally competent level. This is difficult given that each and every post to which a private security guard could be posted is different from every other. For example, the knowledge and skills necessary to sit at a security desk in downtown Denver are drastically different from those necessary to patrol a gated residential community, and those are drastically different from those necessary to protect a nuclear reactor or power generating facility.

Regardless, an amalgamation of the training proposed throughout these interviews revealed that entry-level private security guards need to be trained in the following areas, presented in no particular order, to be deemed minimally competent for any posting:

- Legal Restrictions – i.e., use of force, search and seizure, restraint and detention
- Crisis Management
- Workplace Violence
- Emergency Evacuation
- Report Writing
- Emergency First Aid
- Emergency Communications
- Self-Defense
- Public Relations
- Fire/Life Safety
- Observation Skills
- Basic Patrol
- Access Control
- Hazardous Materials Procedures
- Basic Investigations
- Personal Liability Issues

It is generally agreed that armed security guards would need additional training.

Most individuals contacted for this sunrise review maintained that covering such topics within 8 to 24 hours would be necessary. Time requirements beyond these would become cost prohibitive and unduly burdensome on the low-wage-earning private security guards seeking licensure.

However, some of these topics could be very complex, raising the question as to whether they can be covered in any meaningful way in such a compressed time period. As such, requiring training in such areas, many of which are included in the Applicant's proposal, becomes a government mandate with high cost and questionable value.

An additional concern regarding the Applicant's proposed training curriculum is the pre- and post-licensure training requirements. The purpose of licensure is to provide the public with some assurance that the individual licensee has been deemed minimally competent by the state. Given this, it is not logical for the state to require some training prior to licensure and passage of an examination, and then to require additional training after the state has licensed, and thereby declared minimally competent, the individual involved.

Rather, a licensure candidate who is not minimally competent, by whatever measure, should not be issued a license. The role of the state is to issue a license to those deemed minimally competent, not to those who may be competent pending additional training.

Finally, discussions revolving around consistency often include the patchwork of local regulation that currently exists in Colorado. At least eight local governments in Colorado place some type of restriction on private security guards, private security companies, or both. Trying to comply with these local laws can be problematic for private security companies that work in multiple jurisdictions. This can be particularly true for private security guards who may have to obtain and maintain licenses in multiple jurisdictions. The costs for some of these licenses can be quite high, especially considering the low wages most private security guards earn.

A uniform, statewide system, proponents of regulation maintain, would reduce administrative costs for the private security companies and would relieve the need of private security guards to obtain licenses in multiple jurisdictions. On the other hand, there are likely a considerable number of private security guards working in Colorado today who work in local jurisdictions with no regulatory requirements. Imposing regulation for those who work under multiple requirements would serve to erect an unnecessary barrier to entry for those who currently work under no such requirements.

While there is some validity to these assertions, it is irrelevant to a sunrise analysis. The sunrise process is designed to implement regulation only when it is necessary to protect the public. The convenience of those to be regulated does not play a role in any strict interpretation of the sunrise criteria. Therefore, this review must reject such arguments as irrelevant.

All of this, however, begs the question – is regulation necessary to protect the public? Arguments and assertions that regulation will increase the self-image of security guards, or increase professionalism in the industry are all irrelevant to public protection.

During the course of this sunrise review, proponents of regulation often recited a figure from the executive summary of the *9/11 Commission Report* asserting that 85 percent of the nation's critical infrastructure is controlled by the private sector. However, this figure does not reflect how much of that critical infrastructure is protected by private, versus proprietary, security.

Indeed, if one were to accept the Applicant's and proponents' arguments supporting regulation, it is reasonable to question why proprietary security guards should be excluded from regulation. Many of these individuals argue that regulation in this sector is not necessary because the employers of proprietary security guards have an inherent incentive to ensure that their own employees are safe, competent and properly trained because these employees protect the property of the employer.

This is inconsistent with arguments supporting regulation of private security guards on the one hand, and irrelevant to public protection on the other hand.

Employers of private security guards, just as employers of proprietary security guards, have an inherent incentive to ensure that their employees are safe and competent. Although the private security company's property and employees may not be as directly at risk as they are in the proprietary context, the private security company is vicariously liable for the actions and inactions of its private security guard employees. Similarly, if the client determines that the private security company's private security guard employees are incompetent or otherwise unacceptable, the client can request replacements or terminate the contract. Thus, the private security company, too, has an inherent incentive to ensure that its private security guards are safe and competent.

All arguments attempting to justify exempting proprietary security from regulation focus on the ability of the employer to protect itself, rather than on protecting the public. Many of the reasons put forward to justify regulation of private security guards hold true for proprietary security guards.

Whether a shopping mall, for example, employs its own security force or contracts out such services, the public expects the security personnel to be safe and competent and able to deal with lost children. Indeed, to the general public, there is no difference between a private security guard and a proprietary security guard. Both are held in the same regard. From a public protection standpoint, there is no logical reason to make a distinction between the two with respect to regulatory requirements.

Additionally, if the Applicant's regulatory proposal is enacted, private security guards would be required to pass fingerprint-based criminal history background checks through CBI and FBI databases. By exempting proprietary security guards from regulation, with few exceptions, employers of proprietary security guards would not be able to obtain similar criminal history background checks. Although employers of proprietary security guards could simply require licensure as a private security guard as a condition of employment, none would be required to do so. If regulation is imposed under the assumption that it is necessary to protect the public, then this is an absurd situation.

A somewhat related issue pertains to additional exemptions, all of which revolve around how "security guard" is defined. For example, it is far from clear as to why an individual who works for a private security company, but sits behind a visitor information kiosk, wears a blazer and provides strictly concierge-type services needs to be regulated.

Similarly, it is reasonable to question whether event staff that works events with multiple law enforcement and emergency medical personnel present on-site, need to be regulated to the same degree as a more traditional security guard. Very often, events are staffed by off-duty police officers that serve in the role of traditional security guards, while event staff serves more of a customer service role (i.e., ticket takers, ushers, etc.). Typically, event staff does not come into physical contact with the public. If such contact is necessary, security should be summoned. In this sense, if the private security industry can be considered the eyes and ears of law enforcement, then perhaps it is reasonable to conclude that event staff is the eyes and ears of security at such events.

Similar questions surround the need to regulate or exempt from regulation off-duty or retired law enforcement personnel and individuals with previous military experience. Depending upon the duties such individuals perform(ed) in those other roles, either regulation or an exemption may be appropriate, but such decisions would necessarily need to be based on individual circumstances. This could severely complicate licensing decisions since the regulator would have to determine such issues on a case-by-case basis.

In the end, however, this review concludes that, according to the sunrise criteria, there is no need for the state to regulate private security companies, private security guards or proprietary security guards.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The Applicant's proposal for regulation would implement an expensive and burdensome regulatory system. Private security companies would be required to maintain high levels of liability insurance, which any good business would choose to do voluntarily. Absent a showing of harm, however, it is inappropriate for the state to mandate that all private security companies incur the added expense.

Similarly, there is insufficient evidence to warrant a state mandate that all private security guards obtain the type of extensive training advocated by the Applicant, pass fingerprint-based criminal history background checks and take and pass a licensing examination. The evidence revealed by this sunrise review simply does not justify such extreme measures.

Thus, the most cost-effective alternative to the Applicant's proposal is the current system of local regulation. That system has given rise to a situation where no evidence of harm could be identified.

Without clear evidence of harm, it is impossible to craft alternative solutions because, in the end, there is no problem in need of resolution.

Conclusion

During the course of this sunrise review, DORA spoke with numerous private security guards and representatives of private security companies and their clients. While many arguments in favor of regulation were put forward, none were convincing.

The sunrise criteria are clear, absent a showing of harm to the public, regulation should not be imposed. Aside from Case #2, the Applicant was unable to provide any direct evidence of harm, and DORA's own search for harm proved fruitless.

Additionally, it must be remembered that the contract between the private security company and its client governs the entire relationship, including the relative safety and competency of the private security guards posted to the client's property.

If a particular client wants only conviction-free private security guards, it can make provision for such in the contract. If the private security company is unable or unwilling to comply, it can either reject the contract up front, or be sued later for breach. There is a private remedy and the forces of the market can provide adequate redress.

Similarly, if a client desires particular types of training for the private security guards posted to its facility, it can so require in the contract. For example, a client that needs a construction site guarded will have different training and competency requirements than a client who is an art dealer and needs a personal escort to protect valuable pieces of art. Similarly, the desired training for a security guard at a shopping mall who provides primarily concierge-type services may be very different from a private security guard who works access control at a city building or who monitors security cameras at a power plant.

In each of these cases, the client is able to demand its needs be satisfied via the contract with the private security company. No evidence has been submitted or discovered to suggest that this contractual relationship is insufficient to protect either the client or the public. As a result, the state should not interfere where the law of contract and the free market are working in a satisfactory manner.

The public is not suffering harm at the hands of unregulated private security companies or private security guards. Therefore, regulation is not justified.

Recommendation – Do not regulate private security companies or private security guards.

Appendix A – Regulation in Other States

State	Who is Regulated?				How is Regulation Administered?				Licensing Requirements				Financial Responsibility		
	Proprietary Security Guards	Security Guards	Security Companies	Name of Department	Board	Director Model	Training Requirements	Criminal History Background Checks	Examination	Company	Bonding	Guards	Insurance		
Alabama															
Alaska		x	x	Public Safety		x	8 hrs. pre-assignment and 40 in-service w/in 180 days of employment	x							
Arizona	x	x	x	Public Safety	x		8 hrs. pre-assignment	x				\$100,000			
California		x	x	Consumer Affairs		x	8 hrs. (powers to arrest) 12 additional hrs. w/in first year	x				\$100,000 for unarmed guards and \$200,000 for armed guards			
Colorado															
Connecticut	x	x	x	Public Safety		x	8 hrs. general	x			\$10,000				
Delaware		x	x	Safety and Homeland Security	x	x	40 hrs. of firearm training	x		\$10,000	\$5,000	\$1,000,000			
Florida	x	x	x	Agriculture	x	x	40 hrs. of training and additional 28 hrs. for firearm license	x				\$300,000			
Georgia		x	x	Secretary of State	x	x	8 hrs. general for unarmed guards and 12 additional hrs. for armed guards	x			\$25,000	\$1,000,000			
Hawaii		x	x	Commerce and Consumer Affairs	x			x			\$5,000				
Idaho															
Illinois	x	x	x	Financial and Professional Regulation	x		20 hrs. for unarmed guards and 40 hrs. for armed guards	x				\$1,000,000			
Indiana		x	x	Professional License Agency	x	x			\$7,000 for less than 15 employees and \$100,000 for more than 14 employees						

State	Who is Regulated?				How is Regulation Administered?				Licensing Requirements			Financial Responsibility		
	Proprietary Security Guards	Security Guards	Security Companies	Name of Department	Board	Director Model	Training Requirements	Criminal History Background Checks	Examination	Company	Bonding	Guards	Insurance	
Iowa		x	x	Public Safety		x		x		\$5,000 and \$10,000 for companies licensed in one type of business				
Kansas														
Kentucky														
Louisiana		x	x	Public Safety	x		16 hrs. of firearm training	x	x			\$10,000 for resident and \$50,000 for non-resident	\$500,000	
Maine			x	Public Safety		x		x						
Maryland		x	x	State Police		x		x					\$1,000,000	
Massachusetts		x	x	State Police		x		x			\$5,000			
Michigan			x	Labor and Economic Growth		x		x			\$25,000		general liability for injury or death of one person and \$200,000 general liability for injury or death for more than one person	
Minnesota	x		x	Public Safety	x		12 hrs. pre-assignment and 6 hrs. continuing ed. per year	x		\$10,000			Must show proof of liability insurance	
Mississippi														
Missouri														
Montana	x	x	x	Labor and Industry		x		x					\$500,000	
Nebraska														
Nevada		x	x	Attorney General	x			x					\$200,000	

State	Who is Regulated?				How is Regulation Administered?				Licensing Requirements				Financial Responsibility		
	Proprietary Security Guards	Security Guards	Security Companies	Name of Department	Board	Director Model	Training Requirements	Criminal History Background Checks	Examination	Company	Bonding	Guards	Insurance		
New Hampshire	x	x	x	Public Safety		x		x			\$50,000				
New Jersey		x	x	Law and Public Safety		x		x			\$5,000				
New Mexico		x	x	Regulation and Licensing	x			x			\$2,000				
New York		x	x	Dept. of State		x	8 hrs. pre-assignment and 47 hrs. for armed guards	x				General liability			
North Carolina		x	x	Dept. of Justice	x	x	16 hrs. for unarmed and additional 20 hrs. for armed guards	x				\$100,000			
North Dakota		x	x		x		Apprentice security officers must have 16 hrs. of instruction plus 16 hrs. of field training, security officers must have 1,000 hrs. of experience and 32 hrs. of instruction, and commissioned officers must have 3,000 hrs. as a security officer and 1,000 hrs. of apprentice officer plus 8 hrs. of instruction	x				\$300,000			
Ohio	x	x	x	Public Safety Council on Law Enforcement Education and Training	x	x	24 hrs. for armed guards	x			\$10,000 for armed and \$5,000 for unarmed guards	\$100,000			
Oklahoma	x	x	x		x	x		x				\$100,000			
Oregon	x	x	x	Public Safety	x		8 hrs. instruction and 4 hrs. of an assessment module for unarmed and 15 hrs. of additional firearm training plus biannual refresher courses for armed guards	x			\$5,000				
Pennsylvania	x	x	x	State Police		x		x			x	\$300,000 for bodily or personal injury and \$100,000 for property damage			
Rhode Island		x	x	Attorney General		x		x							

State	Who is Regulated?				How is Regulation Administered?				Licensing Requirements				Financial Responsibility		
	Proprietary Security Guards	Security Guards	Security Companies	Name of Department	Board	Director Model	Training Requirements	Criminal History Background Checks	Examination	Company	Bonding	Guards	Insurance		
South Carolina	x	x	x	Law Enforcement		x	4 hrs. instruction and an additional 4 hrs. for armed guards	x			\$10,000				
South Dakota															
Tennessee	x	x	x	Commerce and Insurance	x	x	4 hrs. for unarmed and 16 hrs. for armed guards	x				\$400,000			
Texas		x	x	Public Safety	x			x				\$100,000 general liability, \$50,000 personal injury and \$200,000 aggregate amount for all occurrences			
Utah		x	x	Occupational and Professional Licensing	x	x	8 hrs. of instruction for unarmed and an additional 8 hrs. of firearm training for armed guards	x			\$10,000	\$300,000 for each incident and \$1,000,000 total aggregate for each annual term			
Vermont		x	x	Secretary of State	x	x	40 hrs. of instruction for unarmed and an additional 12 hrs. of classroom instruction plus 4 hrs. on the use of a specific weapon for armed guards	x				\$100,000			
Virginia	x	x	x	Criminal Justice Services	x	x	18 hrs. of instruction for unarmed and an additional 4 hrs. for armed guards	x			\$100,000	\$25,000 for bodily or personal injury and \$75,000 for property damage			
Washington		x	x	Licensing		x	8 hrs. of instruction and 4 hrs. of on-the-job training	x							
West Virginia		x	x	Business and Licensing		x		x			\$2,500				
Wisconsin	x	x	x	Regulation and Licensing		x	36 hrs. of firearm training	x			\$2,000	\$100,000			
Wyoming															