

## **To License or Not to License: An Examination of State Statutes Regarding Private Investigators and Digital Examiners<sup>1</sup>**

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### **ABSTRACT**

In this paper the authors examine statutes that regulate, license, and enforce investigative functions in each US state. After identification and review of Private Investigator licensing requirements, the authors find that very few state statutes explicitly differentiate between Private Investigators and Digital Examiners. After contacting all state agencies the authors present a distinct

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<sup>1</sup> This paper was funded by the International Association of Forensic Computer Examiners [ISFCE] and the Forensics, Advanced Networking, and Security Laboratory [FANS] at Roger Williams University.

grouping organizing state approaches to professional Digital Examiner licensing. The authors conclude that states must differentiate between Private Investigator and Digital Examiner licensing requirements and oversight.

Keywords: Digital Examiner, Computer Forensics, State Statutes, Private Investigator

## **1. INTRODUCTION**

### **1.1 Historical Background**

In the United States (US), state statutes set the guidelines for identification, oversight, and licensing of various investigative functions. Many years ago some states passed legislation to manage commercial police and security specialists who undertook roles similar to officers of the court, but neither no longer, nor ever had, held badges. In most statutes these individuals are identified as Private Detectives or Private Investigators (PI).

However, these state statutes were defined in a period when not all areas of highly technical investigation, such as Digital Examiners and Computer Forensics existed. Hence, we see confusion among state statutes and the role of these new investigative professionals. For example, many statutes commonly define all investigators as "someone who attempts to prove the truth or falsity of a statement." Unfortunately, this language is so broad that it provides the opportunity for the inclusion of virtually any investigative profession, including Digital Examiners (DE), who routinely examine systems and media to provide investigative evidence. This situation is problematic for all involved.

Many organizations are addressing this disjuncture between statutes and new forms of investigation. The American Bar Association issued an opinion in which they specifically urge states to realize that Digital Forensics, and by extension Digital Examiners, is a separate field. Moreover, they argue that DEs and other similar technical investigative professions, such as penetration testers, should not be required to obtain a PI license (ABA, 2008).

To survey the existing discussions, we examined numerous Websites that discuss PI requirements (Addo, 2008; Mesis, 2008). Most do not address Digital Forensics and many link to expired state codes. However, we should note the Kessler International Website does contain valuable information for the tangential field of Forensic Accounting (Kessler, 2008). The Kessler Report asks many of the same questions of Forensic Accounting that we address in our discussion below. As such, it should be considered as a parallel study as it pursues questions that must be addressed in the larger Digital Forensics discipline.

### **1.2 Addressing the Situation**

In order to address the problematic statute situation, the authors examined how each state, as well as Washington DC, interprets and implements the Digital

Examiner licensing. We have found that the licensing requirements can create a conflation between DE activities and PI licensing requirements that may be detrimental to both if not correctly interpreted and implemented. In the requirements we routinely discovered interpretations of language permitting any sort of security task (e.g., Penetration Testing) to be part of the PI realm.

Moreover, there are diverse requirements. In some states there are no licensing requirements for Private Investigators; while in others, the profession is governed by statute and or regulatory bodies charged with the oversight and licensing. In some statutes, requirements are implicitly defined; in others the role of DE and PI is either conflated or distinguished. And in other statutes there is no guidance whatsoever.

It must be granted that Digital Examiner is a relatively new profession, but we have found that many states determine how the profession is regulated. Unfortunately, many states default to their PI licensing requirements to do so. This is a matter of procedure since it allows them to combine all professional investigative licensing requirements. We will discuss later how this is detrimental to both the DE and PI professions.

In our paper, we first analyze and interpret existing regulations, then discuss results of our requests from state agencies for statute interpretations. We do not offer legal advice to practitioners; however, we do offer a starting point from which practitioners can make informed decisions about licensing in their state and take action accordingly. Moreover, we must stress that state legalization and statutes are continually changing because of new legal interpretations and other changes in agency perspectives. Subsequent research will follow as we track the evolution of state licensing statutes.

To begin, we will use the following Digital Examiner definition:

A Digital Examiner deals with the extracting, gathering and analyzing data from a computer or computers, networks, and other digital media with subsequent preparation of reports and opinions on this media for evidentiary or other stated purposes such as data/digital security, audit, or assessment.

## **2. METHODOLOGY**

We initially examined all state statutes for the appropriate language covering the definition and licensing of Private Investigators or Private Detectives. To perform this query we used an analysis of the common terminology found in many of the statutes and based our selection on: 1) the strength of the wording and 2) the opinion on the inclusion or exclusion of Digital Examiners from Private Investigator licensing requirements.

### **2.1 Initial Findings**

Although there is no existing objective measure for these statute documents,

we based our initial findings on the strength of the statute language. From there we contacted state agencies and added an analytical component that includes specific state interpretations from each governing body. If there was no interpretation provided or states did not reply after repeated e-mail attempts and phone calls, we included our opinion alone.

When we advocated an opinion, we based it solely on the language contained in the state's code. For example, if a state used language, such as "to prove the truth of falsity of a statement," or "performing investigations for the court," or similar language, we classified our opinion as "likely required." Other states used strong exclusionary language without being specific, such as "exceptions include engineers and scientists." When we encountered this language that implies scientific investigation, we classified our opinion as "likely not required."

However, all of the opinions are subjective and based on our reading of present state codes. As our study demonstrates, state boards have varying opinions, language is subject to varying interpretations, and in cases where we did not receive responses from state officials, our opinion should be taken in the same context.

We should also note that certain states were addressed in the analysis simply if its statute specifically included DEs in the PI requirement or if it specifically excluded DEs from the requirement. Of course, some states do not license PIs and are considered exempt from the licensing issue discussed. However, as we note later, there should be either specific licensing requirements or at the very least distinctions made between PIs and DEs. We have provided a summary of our initial findings (**Table 1**), as well as an overall listing complete with references (**Table 2**) later in our discussion.

## **2.2 Initial and Subsequent Queries**

As part of our research process when we found an ambiguous statute concerning Digital Examiners, we contacted the state's regulatory body. Many such contacts were made. The prevalence of this ambiguity is a topic we will discuss in a subsequent paper.

In particular, we queried the agency as to whether there was a specific rule or regulation in process that would result in a statute to address DEs, or provide guidance as to how the state regulates DEs. We drafted and validated the letter's content with certified DEs beforehand to ensure that we included the most poignant licensing aspects and challenges:

Dear \_\_\_\_\_

I am researching the requirements of various Private Investigator/Detective licensing requirements relating to Digital/Computer Forensic Examiners. I reviewed the \_\_\_\_\_ statute, however, I did not see any exclusion in the statute relating to whether a Private Investigator/Detective license is required for Digital/Computer Forensic Examiners. The role and activities of a Digital/Computer Forensic Examiner may include:

- Acquiring data from a computer
- Examining that data and opine on content
- Processing that data to obtain information to answer questions
- Processing that data to prepare it as evidence

In short, the activities of a Digital/Computer Forensic Examiner deals with the extracting, gathering and analyzing data from a computer or computers and preparing reports on the same. For example, if a government agency or private concern hires a digital examiner to determine if the information on a computer was used for fraudulent or inappropriate purposes, the examiner will extract the information from a computer or computers and make an assessment to that end.

I would greatly appreciate it if you could let me know 1) What the position of the State of \_\_\_\_\_ is relating to the question as to whether a Private Investigator/Detective license is required for the aforementioned activities of a Digital/Computer Forensic Examiner 2) If a rule or regulation exists covering this area 3) If this issue has been settled by a hearing of the Licensing Board could you please send me the official decision/position of the Board.

**Figure 1: Sample Inquiry Letter**

We sent the inquiries primarily via email for ease of use, as well as to record and analyze the responses. When first email contact was not returned within a month, we contacted the agency by phone and sent an additional email. We conducted initial (and subsequent contacts) from April 2008 through September 2008. Of course changes in leadership, statutes, and legislators may result in new interpretations, or even new laws. However, as part of our research endeavor, we will monitor and provide updates in subsequent studies.

Although we refer to a general "regulatory body" in our discussion, in each state a different agency may be tasked with regulation, licensing, and enforcement. Generally, these responsibilities fall to the Department of Public Safety, the Secretary of State's Office (under Business Regulation), or a special board established by statute.

### **2.3 Examination of Language**

In our review we found that of the state laws that did address Digital Examiner professional licensing, each varied greatly in its approach. The **Arkansas Statute § 17-40-102** defines a Private Investigator:

- (13) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:
- (A) Crime or wrongs done or threatened against the United States or any state or territory of the United States;
  - (B) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;
  - (C) The location, disposition, or recovery of lost or stolen property;
  - (D) The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to property; or
  - (E) The securing of evidence to be used before any court, board, officer, or investigating committee;
- (20) "Private investigator" means any person who performs one (1) or more services as described in subdivision (13) of this section;

**Figure 2: Arkansas Statute § 17-40-102**

The Arkansas language leaves open interpretation and does not speak to the functional distinction of a PI versus a DE. As a result, both could conceivably gather information for the stated purposes under this statute. When we contacted the Arkansas state agency, the regulator indicated that a PI license—and by extension a Digital Examiner—is **required** under the statute's language.

The Connecticut statute under **Chapter 534 Sec. 29-152u (4)** defines a PI in almost the same terms as the Arkansas statute:

"Private detective" means any person engaged in the business of, or advertising as engaged in the business of (A) investigating crimes or civil wrongs, (B) investigating the location, disposition or recovery of property, (C) investigating the cause of accidents, fire damage or injuries to persons or to property, except persons performing bona fide engineering services, (D) providing the personal protection of individuals, (E) conducting surveillance activity, (F) conducting background investigations, or (G) securing evidence to be used before a court, board, officer or investigation committee; ...

**Figure 3: Connecticut statute under Chapter 534 Sec. 29-152u (4)**

However, under Connecticut's statutory language, the regulator we contacted noted that a PI license—and by extension a Digital Examiner—is **not required**. We have found that this open-ended interpretation has resulted in many states interpreting the Digital Examiner role and profession disparately and inconsistently.

Finally, we found even more vague language used to determine licensing requirements similar to those in Nebraska's statute (**Neb. Rev. Stat. § 71-3201**):

(6) Private detective shall mean any individual who as a sole proprietor engages in the private detective business without the assistance of any employee;

(8) Private detective business shall mean and include any private business engaged in by any person defined in subdivision (4) of this section who advertises or holds himself or herself out to the public, in any manner, as being engaged in the *secret service or private policing business*;

**Figure 4: Nebraska Rev. Stat. § 71-3201**

Under Nebraska's statute a private detective is one who is "engaged in the secret service or private policing business." However, neither the functionality of Arizona's nor Connecticut's statutes is incorporated into the language of the Nebraska statute. Thus, in Nebraska's opinion, a license is not required.

We did find that Nebraska's **Chapter 1 § 002** of the "Rules & Regulations for

Private Detective, Plain Clothes Investigators and Private Detective Agencies" does explain the profession's functionality in greater detail even though it is not as specific as others we examined:

002. Secret service or private policing business shall mean and include: general investigative work; non-uniformed security services; surveillance services; location of missing persons; and background checks.

**Figure 5: Nebraska Chapter 1 § 002**

#### **2.4 Exemptions in the Language**

Many of the state statutes did not need interpretation because they listed exemptions to the PI licensing requirement. Most, if not all, of these exemptions would exclude a Digital Examiner from PI licensing requirements, but perhaps not other professional licensing requirements (e.g., State Bar Exam) or certification (e.g., CPA). The exemptions typically included:

- Persons under the regular employment of an employer where there is a bona fide employer-employee relationship;
- An officer or employee of the United States, the state where the public employee is employed, or a political subdivision of the state;
- The business of obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;
- A charitable philanthropic society or association;
- An attorney admitted to practice in the state in performing his or her duties as an attorney at law;
- A collection agency or finance company licensed to do business under the laws of this state or any employee of a collection agency or finance company while performing within the scope of their duties;
- Claims adjusters of insurance companies;
- A professional engineer acting within the scope of his or her licensed professional practice who does not perform investigative services;
- A certified public accountant acting within the scope of his or her licensed professional practice who does not perform investigative services;
- Bail agents.



## 2.5 Distinct Licensing Requirements

Finally, we did find three states that were explicit in the Digital Examiner licensing requirements. Two (Delaware and Rhode Island) state that a Computer Forensic specialist is exempt from the PI licensing requirement. Conversely, Michigan's statute includes "Computer Forensics" within the Investigation Business definition; thereby requiring Digital Examiners to become licensed Private Investigators.

Although Michigan does require that DEs obtain a PI license, in December of 2008 the state made a step in the right direction. Michigan issued a policy decision that permits an individual with a degree in security, forensics, or criminal justice, or someone who holds a CISSP (ISC<sup>2</sup>, 2008), a CCE (ISFCE, 208), or other certification which meets the state's standards, to satisfy the qualifying requirement and be issued a PI license (State of Michigan, 2008). Moreover, the certification list was determined via meetings with Digital Forensic professionals to determine what certifications and experience was necessary. Still, this conflation of DE and PI could lead to potential challenges.

Ultimately, our preliminary research indicated that there is no common approach to Digital Examiners within Private Investigator licensing requirements. Although it is not haphazard, there is great diversity in the expectation, definition, requirements, and assumptions in the 50 states and Washington DC.

## 3. DISCUSSION OF FINDINGS

### 3.1 Initial Review

Our initial review, although far from conclusive, provides an overview, as well as a reference of particular state PI licensing statutes. **Table 1** provides a summary of the fifty states with reference to the state code containing the information we used to develop our initial analysis.

**Table 1: State Code Statute References**

State	Statute
Alabama	No Requirement
Alaska	No Requirement
Arizona	Chap. 24 - 32 – 2401
Arkansas	17-40
California	7520 State Law
Colorado	None found
Connecticut	Chap. 534 Sec 29
Delaware	24 – 1301
District of Columbia	Division VIII Title 47
Florida	Title 32 Chap. 493
Georgia	Title 43 - Chap. 38

<b>State</b>	<b>Statute</b>
<b>Hawaii</b>	HRS Chap. 463
<b>Idaho</b>	No Requirement
<b>Illinois</b>	225 ILCS 447 Art 5-10.1.2
<b>Indiana</b>	IC 25-30
<b>Iowa</b>	IC Chap. 80A
<b>Kansas</b>	Chap. 75 - 7b
<b>Kentucky</b>	KRS 329A
<b>Louisiana</b>	LA RS:37 3500
<b>Maine</b>	Title 32 - Chap. 89
<b>Maryland</b>	Title 13-101
<b>Massachusetts</b>	Title XX 147 s22
<b>Michigan</b>	Chap. 338.822 MCL 338.826(1)(f)(iv)
<b>Minnesota</b>	326.338
<b>Mississippi</b>	NA
<b>Missouri</b>	NA
<b>Montana</b>	37-60
<b>Nebraska</b>	72-3201
<b>Nevada</b>	648.012
<b>New Hampshire</b>	106-F
<b>New Jersey</b>	45:19-9
<b>New Mexico</b>	61 Article 27B
<b>New York</b>	Article 7 Sec 71
<b>North Carolina</b>	74C-3
<b>North Dakota</b>	43-30
<b>Ohio</b>	4749.01
<b>Oklahoma</b>	Title 59 - 42a-1750
<b>Oregon</b>	703.4
<b>Pennsylvania</b>	Unknown
<b>Rhode Island</b>	Chap. 5-5
<b>South Carolina</b>	Title 40 Chap. 18
<b>South Dakota</b>	No Requirement
<b>Tennessee</b>	Title 62 Chap. 26 223
<b>Texas</b>	1702.104
<b>Utah</b>	53-9-102
<b>Vermont</b>	Title 26 Chap. 59
<b>Virginia</b>	9-1-138
<b>Washington</b>	18.165.10

State	Statute
West Virginia	Unknown (not listed on site)
Wisconsin	440.26
Wyoming	No Requirement

### 3.2 Summary of Responses

After completing our initial review, we contacted the appropriate state board or agency to either clarify existing statutes or inform us of potential statutes in process. As noted above, after the initial email contact, we followed up with phone calls, as well as a second (and sometimes third) email. **Table 2** provides the full summation of the material for states.

**Table 2: State Statutes and Websites**

State	Belief	Statute	Website
Alabama	No PI Licensing Requirement		
Alaska	No PI Licensing Requirement		
Arizona	Not specific but statements	Chap. 24 - 32 - 2401	<a href="http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/32/02401.htm&amp;Title=32&amp;DocType=ARS">http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/32/02401.htm&amp;Title=32&amp;DocType=ARS</a>
Arkansas	Not Specific but statements	17-40	<a href="http://www.arkleg.state.ar.us/NXT/gateway.dll?f=templates&amp;fn=default.htm&amp;vid=blr:code">http://www.arkleg.state.ar.us/NXT/gateway.dll?f=templates&amp;fn=default.htm&amp;vid=blr:code</a>
California	Not Specific but statements	7520 State Law	<a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpcc&amp;group=07001-08000&amp;file=7520-7539">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpcc&amp;group=07001-08000&amp;file=7520-7539</a>
Colorado	No PI Licensing Requirement	None found	
Connecticut	Not Specific but statements	Chap. 534 Sec. 29	<a href="http://www.cga.ct.gov/2005/pub/Chap534.htm#Sec29-153.htm">http://www.cga.ct.gov/2005/pub/Chap534.htm#Sec29-153.htm</a>
Delaware	PI but excludes CCE	24 - 1301	<a href="http://delcode.delaware.gov/title24/c013/index.shtml">http://delcode.delaware.gov/title24/c013/index.shtml</a>
District of Columbia	Seems to require but unknown	Division VIII Title 47	
Florida	Not Specific but statements	Title 32 Chap. 493	<a href="http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&amp;Search_String=&amp;URL=Ch0493/PART01.HTM">http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&amp;Search_String=&amp;URL=Ch0493/PART01.HTM</a>
Georgia	Not Specific but statements	Title 43 – Chap. 38	<a href="http://sos.georgia.gov/acrobat/PLB/laws/31_Priv_Detective_and_Security_43-38.pdf">http://sos.georgia.gov/acrobat/PLB/laws/31_Priv_Detective_and_Security_43-38.pdf</a>

<b>State</b>	<b>Belief</b>	<b>Statute</b>	<b>Website</b>
<b>Hawaii</b>	May imply as it states all investigation	HRS Chap. 463	<a href="http://www.hawaii.gov/dcca/areas/pvl/main/hrs/hrs_pvl_463.pdf">http://www.hawaii.gov/dcca/areas/pvl/main/hrs/hrs_pvl_463.pdf</a>
<b>Idaho</b>	No PI Licensing Requirement		
<b>Illinois</b>	Includes "electronics" in the definition of investigation.	225 ILCS 447 Art 5-10.1.2	<a href="http://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022504470HArt%2E+5&amp;ActID=2474&amp;ChapAct=225%26nbsp%3BILCS%26nbsp%3B447%2F&amp;ChapterID=24&amp;ChapterName=PROFESSIONS+AND+OCCUPATIONS&amp;SectionID=23672&amp;SeqStart=1000&amp;SeqEnd=2300&amp;ActName=Private+Detective%2C+Private+Alarm%2C+Private+Security%2C+and+Locksmith+Act+of+2004%2E">http://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022504470HArt%2E+5&amp;ActID=2474&amp;ChapAct=225%26nbsp%3BILCS%26nbsp%3B447%2F&amp;ChapterID=24&amp;ChapterName=PROFESSIONS+AND+OCCUPATIONS&amp;SectionID=23672&amp;SeqStart=1000&amp;SeqEnd=2300&amp;ActName=Private+Detective%2C+Private+Alarm%2C+Private+Security%2C+and+Locksmith+Act+of+2004%2E</a>
<b>Indiana</b>	Not Specific but statements	IC 25-30	<a href="http://www.in.gov/legislative/ic/code/title25/ar30/ch1.html">http://www.in.gov/legislative/ic/code/title25/ar30/ch1.html</a>
<b>Iowa</b>	Not Specific but statements	IC Chap. 80A	<a href="http://www.dps.state.ia.us/asd/pi/pi80a03code.pdf">http://www.dps.state.ia.us/asd/pi/pi80a03code.pdf</a>
<b>Kansas</b>	Not Specific but statements	Chap. 75 - 7b	<a href="http://www.kslegislature.org/legsrv-statutes/index.do">http://www.kslegislature.org/legsrv-statutes/index.do</a>
<b>Kentucky</b>	Not Specific but statements	KRS 329A	<a href="http://finance.ky.gov/NR/rdonlyres/0717F804-CB47-4092-A56B-FFC7748744B3/0/lawandregulations.pdf">http://finance.ky.gov/NR/rdonlyres/0717F804-CB47-4092-A56B-FFC7748744B3/0/lawandregulations.pdf</a>
<b>Louisiana</b>	Excludes technical experts	LA RS:37 3500	<a href="http://www.lsbpie.com/pilaw_4_02.pdf">http://www.lsbpie.com/pilaw_4_02.pdf</a>
<b>Maine</b>	Not Specific but statements	Title 32 – Chap. 89	<a href="http://janus.state.me.us/legis/statutes/32/title32ch89.pdf">http://janus.state.me.us/legis/statutes/32/title32ch89.pdf</a>
<b>Maryland</b>	Not Specific but statements	Title 13-101	<a href="http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&amp;fn=main-h.htm&amp;cp=">http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&amp;fn=main-h.htm&amp;cp=</a>
<b>Massachusetts</b>	Not Specific but statements	Title XX 147 s22	<a href="http://www.mass.gov/legis/laws/mgl/gl-147-toc.htm">http://www.mass.gov/legis/laws/mgl/gl-147-toc.htm</a>
<b>Michigan</b>	PI Licensing Requirement	Chap. 338.822 MCL 338.826(1(f)(iv)	<a href="http://www.legislature.mi.gov/(S(543gjn45glxwihrunhpsds45))/mileg.aspx?page=getObject&amp;objectName=mcl-Act-285-of-1965">http://www.legislature.mi.gov/(S(543gjn45glxwihrunhpsds45))/mileg.aspx?page=getObject&amp;objectName=mcl-Act-285-of-1965</a>
<b>Minnesota</b>	Not Specific but statements	326.338	<a href="http://www.dps.state.mn.us/pdb/Resources/PDPA_Minnesota_Statutes.pdf">http://www.dps.state.mn.us/pdb/Resources/PDPA_Minnesota_Statutes.pdf</a>
<b>Mississippi</b>	Does not require a PI license		
<b>Missouri</b>	Does not require a PI license		

<b>State</b>	<b>Belief</b>	<b>Statute</b>	<b>Website</b>
<b>Montana</b>	Not Specific but statements	37-60	<a href="http://data.opi.state.mt.us/bills/mca_toc/37_60_1.htm">http://data.opi.state.mt.us/bills/mca_toc/37_60_1.htm</a>
<b>Nebraska</b>	Should not apply unless you advertise as private detective	72-3201	<a href="http://www.sos.state.ne.us/rules-and-regs/regsearch/Rules/Secretary_of_State/Title-435.pdf">http://www.sos.state.ne.us/rules-and-regs/regsearch/Rules/Secretary_of_State/Title-435.pdf</a>
<b>Nevada</b>	Not Specific but statements	648.012	<a href="http://www.leg.state.nv.us/NRS/NRS-648.html#NRS648Sec006">http://www.leg.state.nv.us/NRS/NRS-648.html#NRS648Sec006</a>
<b>New Hampshire</b>	Not Specific but crime statement	106-F	<a href="http://www.gencourt.state.nh.us/rsa/html/vii/106-f/106-f-mrg.htm">http://www.gencourt.state.nh.us/rsa/html/vii/106-f/106-f-mrg.htm</a>
<b>New Jersey</b>	Not Specific but statements	45:19-9	<a href="http://www.state.nj.us/njsp/about/pdf/060106_amendedstat.pdf">http://www.state.nj.us/njsp/about/pdf/060106_amendedstat.pdf</a>
<b>New Mexico</b>	Not Specific but statements	61 Article 27B	<a href="http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&amp;fn=main-h.htm&amp;2.0">http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&amp;fn=main-h.htm&amp;2.0</a>
<b>New York</b>	Not Specific but statements	Article 7 Sec 71	<a href="http://www.dos.state.ny.us/lcns/lawbooks/pibeawgpa.html">http://www.dos.state.ny.us/lcns/lawbooks/pibeawgpa.html</a>
<b>North Carolina</b>	Excluded Indirectly	74C-3	<a href="http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_74C.html">http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_74C.html</a>
<b>North Dakota</b>	Excluded	43-30	<a href="http://www.legis.nd.gov/code/t43c30.pdf">http://www.legis.nd.gov/code/t43c30.pdf</a>
<b>Ohio</b>	Not Specific but statements	4749.01	<a href="http://codes.ohio.gov/orc/4749">http://codes.ohio.gov/orc/4749</a>
<b>Oklahoma</b>	Not Specific but statements	Title 59 - 42a-1750	<a href="http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=96644">http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=96644</a>
<b>Oregon</b>	Not Specific but statements	703.4	<a href="http://www.leg.state.or.us/ors/703.html">http://www.leg.state.or.us/ors/703.html</a>
<b>Pennsylvania</b>	State Code not available except on AOL website Act of 1953 described		
<b>Rhode Island</b>	Not Specific but statements	Chap. 5-5	<a href="http://www.rilin.state.ri.us/Statutes/Title5/5-5/INDEX.HTM">http://www.rilin.state.ri.us/Statutes/Title5/5-5/INDEX.HTM</a>
<b>South Carolina</b>	Not Specific but statements	Title 40 Chap. 18	<a href="http://www.scstatehouse.net/code/t40c018.htm">http://www.scstatehouse.net/code/t40c018.htm</a>
<b>South Dakota</b>	No PI Licensing Requirement		
<b>Tennessee</b>	Not Specific but statements	Title 62 Chap. 26 223	<a href="http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&amp;fn=main-h.htm&amp;cp=">http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&amp;fn=main-h.htm&amp;cp=</a>
<b>Texas</b>	Specifically includes CF	1702.104	<a href="http://tlo2.tlc.state.tx.us/statutes/docs/OC/content/html/oc.010.00.001702.00.htm#1702.104.00">http://tlo2.tlc.state.tx.us/statutes/docs/OC/content/html/oc.010.00.001702.00.htm#1702.104.00</a>

State	Belief	Statute	Website
<b>Utah</b>	Not Specific but statements	53-9-102	<a href="http://www.livepublish.le.state.ut.us/lpBin22/lpext.dll?f=templates&amp;fn=main-j.htm&amp;2.0">http://www.livepublish.le.state.ut.us/lpBin22/lpext.dll?f=templates&amp;fn=main-j.htm&amp;2.0</a>
<b>Vermont</b>	Not Specific but statements	Title 26 Chap. 59	<a href="http://leg1.state.vt.us/cgi-bin/legp504.exe?000+cod+9.1-140">http://leg1.state.vt.us/cgi-bin/legp504.exe?000+cod+9.1-140</a>
<b>Virginia</b>	Specifically excludes forensics examiners	9-1-138	<a href="http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+9.1-138">http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+9.1-138</a>
<b>Washington</b>	Specifically excludes forensics examiners	18.165.10	<a href="http://apps.leg.wa.gov/RCW/default.aspx?cite=18.165.010">http://apps.leg.wa.gov/RCW/default.aspx?cite=18.165.010</a>
<b>West Virginia</b>	Not Specific but strong language	Unknown (not listed on site)	<a href="http://www.wvsos.com/licensing/piguard/definitions&amp;exemptions.htm">http://www.wvsos.com/licensing/piguard/definitions&amp;exemptions.htm</a>
<b>Wisconsin</b>	No Specific language at all but focused on advertising as private detective	440.26	<a href="http://www.legis.state.wi.us/statutes/Stat0440.pdf">http://www.legis.state.wi.us/statutes/Stat0440.pdf</a>
<b>Wyoming</b>	No PI Licensing Req.		

After we collected all the responses within our time frame (April 2008 to September 2008), we organized the statutes into five (5) distinct groups according to whether a state requires a Private Investigators (PI) license, as well as how it addressed the question of Digital Examiners (DE). What we found can be categorized into one of five segments:

- States that require a PI license and specifically address DEs by statute. (Table 3)
- States that require a PI license, but do not specifically address DEs. There is an opinion issued that includes DEs. (Table 4)
- States that require a PI license, but do not specifically include DEs. There is a present opinion issued that excludes DEs. (Table 5)
- States that require a PI license and specifically exclude DEs by statute. (Table 6)
- States that do not require a PI license by statute. (Table 7)

**Table 3: States that require a PI License and specifically include DEs by statute**

State	Requires PI for DE	Statute
<b>IL</b>	Indirectly but Yes	225 ILCS 447, Art 5-10.1.2
<b>MI</b>	Yes	Chap. 338.822
<b>TX</b>	Yes	TC 1702.104

**Table 4: States that require a PI license, but do not specifically address DEs. There is an opinion issued that includes DEs.**

State	Opinion
<b>AR</b>	License Required
<b>IA</b>	License Required
<b>NV</b>	License Required
<b>NH</b>	License Required
<b>OR</b>	License Required
<b>SC</b>	License Required

**Table 5: States that require a PI license, but do not specifically include DEs. There is a present opinion issued that excludes DEs.**

State	Opinion
<b>CA</b>	No License Required
<b>CT</b>	No License Required
<b>FL</b>	No License Required
<b>KS</b>	No License Required
<b>OH</b>	No License Required
<b>OK</b>	No License Required
<b>UT</b>	No License Required
<b>VT</b>	No License Required

**Table 6: States that require a PI license and specifically exclude DEs by statute.**

State	Statute
<b>DE</b>	<b>DSC 24 – 1301</b>
<b>LA</b>	<b>LSC LA RS:37 3500</b>
<b>ND</b>	<b>NDSC 43-30</b>
<b>NE</b>	<b>Rev. Stat. 71-3201</b>
<b>RI</b>	<b>RSC Chap 5-5</b>
<b>VA</b>	<b>VSC 9-1-138</b>
<b>WA</b>	<b>WSC 18.165.10</b>

**Table 7: States that do not require a PI license by statute.**

<b>State</b>	<b>Requirement</b>
<b>AL</b>	None
<b>AK</b>	None
<b>CO</b>	None
<b>ID</b>	None
<b>MS</b>	None
<b>MO</b>	None
<b>SD</b>	None
<b>WY</b>	None

It should be noted that of all the states contacted, nineteen (19) did not return first, second, or third emails. None of the emails were returned as undeliverable. After first emails were sent, those with no response were contacted via phone. Some agencies did respond after phone contact; others did not. We intend on pursuing all nonresponsive states in subsequent research:

**Table 8: States with Unknown Status**

<b>State</b>	<b>Status</b>	<b>Our Opinion</b>
<b>AZ</b>	No Response	May be Required
<b>DC</b>	No Response	Unclear
<b>GA</b>	No Response	May be Required
<b>HI</b>	No Response	May be Required
<b>MA</b>	No Response	May Be Required
<b>MD</b>	No Response	May Be Required
<b>ME</b>	No Response	May be Required
<b>MT</b>	No Response	May be Required
<b>NC</b>	No Response	May be Required
<b>NJ</b>	No Response	May be Required
<b>NM</b>	No Response	May be Required
<b>NY</b>	No Response	May be Required
<b>PA</b>	No Response	Unclear
<b>TN</b>	No Response	May be Required
<b>WI</b>	No Response	May be Required
<b>WV</b>	No Response	May be required



Of states that did respond, three (3) noted that they had no opinion or thoughts on DE licensing requirements:

**Table 9: States that issued a response of No Opinion**

<b>State</b>	<b>Response</b>	<b>Our Opinion</b>
<b>IN</b>	No Opinion	Only if you advertise as a PI
<b>KY</b>	No Opinion	Implies any sort of investigation requires a license.
<b>MN</b>	No Opinion	May be required

### **3.3 Initial Analysis**

Our review of the 50 states and the District of Columbia indicates that three (3) states require DEs to have a license (**Table 3**). Six (6) additional states have issued opinions that their statute would require a PI license to operate in that state (**Table 4**). Eight (8) states issued opinions that DEs are excluded (**Table 5**). Seven (7) states exclude DEs by statute (**Table 6**). Eight (8) states require no licensing of PIs or DEs (**Table 7**). The remaining states either did not respond (**Table 8**) or issued a no opinion on the matter (**Table 9**) for a total of nineteen (19) states.

## **4. RECOMMENDATIONS**

We would argue that it is not in the best interests of Digital Examiners, nor is it in the best interest of citizens, that DEs be licensed as Private Investigators. Digital Examiners have a specific role in investigations that does not overlap with those duties normally performed by Private Investigators. Conversely, the implication that PIs are capable of conducting DE investigations because they are licensed is harmful to all concerned. These two investigative specializations rarely, if ever, converge. Although Michigan has decided to license Digital Examiners and other Computer Forensic professionals as Private Investigators if they have the education or industry certifications, this could lead to role confusion. Thus, we recommend that states approach their regulation, licensing, and enforcement of Digital Examiners and Private Investigators as follows:

1. Adopt a clear definition of Digital Examiners.
2. Adopt a clear definition of Private Investigators.
3. Review certifications and determine which certifications are recognized by that state.
4. Create a license for DE that is not governed by the PI board of the state. PI boards do not necessarily understand what is involved in DE practice. This board should be comprised of DE

certified citizens holding vendor neutral certifications that include ethics policy and review, as well as regular recertification (e.g., Certified Computer Examiner type certifications [ISFCE, 2008]).

5. Barring the above, states should exclude DE from the requirement of a PI license much as they do forensic accountants, engineers, and others as per Rhode Island, Delaware, and others listed in **Table 6**.

## **5. CONCLUSION**

We strongly encourage constituents of each state to initiate action with their legislatures to implement the five (5) steps outlined above. Digital Examiners would, of course, be the best coalition to advocate for these changes. However, we would advocate a series of targeted educational materials first be made to inform DEs of their particular state's regulations and licensing because only a small fraction know whether PI licenses are obtainable, desirable, or relevant to their profession (White & Micheletti, 2008). We also encourage Computer Forensic and other technology-related organizations to advocate for state regulatory and licensing changes.

Ultimately, we would argue that it is best to exclude Digital Examiners from an established Private Investigator licensing requirement, and rely on other professional certifications, such as the Certified Computer Examiner (ISFCE, 2008). This ensures that citizens, state government, and businesses have access to the most qualified individuals to conduct their forensics examinations and manage digital evidence.

## **6. REFERENCES**

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