



7-11-2022

To License or Not to License Reexamined: An Updated Report on Licensing of Digital Examiners Under State Private Investigator Statutes

Thomas Lonardo
Roger Williams University, tlonardo@rwu.edu

Alan Rea
Western Michigan University, rea@wmich.edu

Doug White
Roger Williams University, dwhite@rwu.edu

Follow this and additional works at: <https://commons.erau.edu/jdfsl>



Part of the [Computer Law Commons](#), and the [Information Security Commons](#)

Recommended Citation

Lonardo, Thomas; Rea, Alan; and White, Doug (2022) "To License or Not to License Reexamined: An Updated Report on Licensing of Digital Examiners Under State Private Investigator Statutes," *Journal of Digital Forensics, Security and Law*. Vol. 17 , Article 1.

Available at: <https://commons.erau.edu/jdfsl/vol17/iss2/1>

This Article is brought to you for free and open access by the Journals at Scholarly Commons. It has been accepted for inclusion in Journal of Digital Forensics, Security and Law by an authorized administrator of Scholarly Commons. For more information, please contact commons@erau.edu.



(c)ADFSL



TO LICENSE OR NOT TO LICENSE REEXAMINED: AN UPDATED REPORT ON LICENSING OF DIGITAL EXAMINERS UNDER STATE PRIVATE INVESTIGATOR STATUTES

Thomas Lonardo^a, Alan Rea^b, and Doug White^c

^aSchool of Justice Studies and Gabelli School of Business, Roger Williams University, One Old Ferry Road Bristol, RI 02809

^bHaworth College of Business, Western Michigan University, 1903 West Michigan Avenue, Kalamazoo, MI 49008-5412

^cCybersecurity and Networking, Roger Williams University, One Old Ferry Road Bristol, RI 02809

tlonardo@rwu.edu, alan.rea@wmich.edu, and dwhite@rwu.edu

ABSTRACT

In this update to the 2015 study, the authors examine US state statutes and regulations relating to licensing and enforcement of Digital Examiner functions under each State's private investigator/detective statute. As with the prior studies, the authors find that very few state statutes explicitly distinguish between Private Investigators (PI) and Digital Examiners (DE), and when they do, they either explicitly require a license or exempt them from the licensing statute. As noted in the previous 2015 study, there is a minor trend in which some states are moving to exempt DE from PI licensing requirements. We examine this trend and look at some additional information in terms of exemptions, including those relating to practicing attorneys, employer/employee relationships, expert testimony, and penalties for violation of the PI statutes where it is believed a PI license is required. As with the previous studies (Lonardo et al., 2008, 2009, 2012, 2015), we reviewed all state statutes relating to PI licensing. Where statutory language did not explicitly address exemption or inclusion of Digital Examiners, we contacted the relevant state regulatory body (i.e., Secretary of State's office, State Police, regulatory agency) to assess the applicability of Digital Examiners under the respective state statutes. Based on this statutory review and regulatory feedback, we present the various state approaches to professional Digital Examiner licensing. Our recommendation remains the same: states must differentiate between Private Investigator and Digital Examiner licensing requirements and oversight.

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

1. INTRODUCTION

This ongoing research regarding state licensing requirements for digital examiners (DE) under private investigator (PI) statutes considers the functionality and technical expertise contrasted with that of states that often apply outdated or incongruous PI licensing requirements when contrasted with the burgeoning technical digital forensics profession or where states ignored licensing them altogether (Lonardo et al., 2008, 15). The inconsistent treatment from State to State makes the practice of a DE difficult to manage since the investigative function and technical expertise do not fit the traditional role of a PI, even as outlined in many state statutes.

Since our previous study, we found a decrease in responses to our queries: from 3 to 10 non-responses and three states declining to render an opinion. Of the states reviewed, 17 combine PI and DE licensing requirements. Where the statute is silent as to licensing, and the regulatory body rendered no response or no opinion, it is assumed the State requires a license for a DE in these cases. Adding these categories brings the total number of states requiring a license to 28, consistent with our previous study. (Lonardo et al., 2015). An encouraging trend is that eight states distinguish between the professions, thereby providing exemptions, whereas just four did so in our previous study (Lonardo et al., 2015). Absent an explicit DE exemption, for those states that have exemptions relating to the practice of law; we assumed those states still require a PI license for the simple fact that the lawyer exemptions, for the most part, are very narrow by limiting the qualified exemption to just the attorney or “employees” of the attorney or law firm. As it relates to the “Expert Witness Exemption” (see Section 3.1), unless this exemption is clear in allowing for data retrieval as well as

testimony at trial, the statute is considered to require a PI license.

Our latest study found that even though it appears some state legislatures have attempted to define the function and role of a digital examiner, many states still conflate the licensing of the two professions; this could lead to statutory violations and penalties assessed against digital examiner professionals examining hard drives (see Table 1) (Lonardo et al., 2012, 15). Over the 6-year period from our last study, there have been state-by-state shifts in either direction regarding the requirement of digital examiners to be licensed private investigators. As an example, in our previous study, California’s Bureau of Security and Investigative Services opinion response indicated that extraction of data is allowed if no physical inquiries are made (Lonardo et al., 2015). However, in this current study, the bureau’s response was that a license is unequivocally required under any circumstance where an investigation is undertaken, including data retrieval. Conversely, New Hampshire, who per the previous survey required a license for digital examiners, amended their statute explicitly exempting digital examiners from licensing in 2019.

The shift in defining digital examiners yet still licensing them as private investigators led us along two paths:

1. To look elsewhere and determine where the increasing amount of digital evidence was being analyzed (Shavers, 2013). Are more PIs moving into the digital forensics field, or are different professionals examining digital evidence?
2. To look at changes in state digital examiner licensing definitions or classifications from our last study (Lonardo et al., 2012). Our research shows some states changing definitions or moving to exempt DE from PI licensing requirements.

NOTE: Any findings, results, or interpretation of statutes or state laws or regulatory opinions should not be considered a legal opinion of the authors. As such, each person should seek an independent opinion from their attorney regarding PI licensing requirements of DEs.

1.1 Why Not Just License?

The methods, skill sets, and credentialing of a PI is much different when contrasted to that of the skill sets and function of a DE. Although the functions as described in many statutes requiring a PI license generally appear to be the same insofar as the goal of the investigations, the actual processes and methods utilized by DEs are much different from that of the “traditional” methods of a PI. For example, the Georgia statute is typical in most respects to many other states requiring a PI license which states in part:

(3) “Private detective business” means the business of obtaining or furnishing, or accepting employment to obtain or to furnish, information with reference to (A) Crimes or wrongs done or threatened against the United States of America or any state or territory thereof; (B) The background, identity, habits, conduct, business, employment, occupation, assets, 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, damage, or injury to persons or property; (E) The securing of evidence in the

course of the private detective business to be used before any court, board, officer, or investigating committee; or (F) The protection of individuals from serious bodily harm or death.

When overlaying the credentialing requirements to obtain a PI license, the contrast between the functionality and credentials of a PI versus a DE becomes more profound. For example, to obtain a PI license in Georgia, among other requirements, an applicant must have

... at least two years’ experience as an agent registered with a licensed detective agency, or has had at least two years’ experience in law enforcement, or has a four-year degree in criminal justice or a related field from an accredited university or college; Georgia Private Detective and Security Agencies Act, § 43-38-6(7).

Furthermore, an applicant must take a 70-hour PI training program with most of the content relating to traditional law enforcement training (i.e., investigative methods, legal procedure, surveillance, etc.). Moreover, only four hours are devoted to “*instruction in sources of information, database searches and use of information brokers*”; Ga. Comp. R. & Regs. 509-3-.06 (k). The applicant is also required to take and pass a two-hour comprehensive examination covering all topics in the training. Ga. Comp. R. & Regs. 509-3-.06 (z).

Juxtaposing the PI licensing requirements with the credentials of a DE or cyber-security professional, which typically includes a degree in IT engineering or IT-related undergraduate or graduate degree and extensive training and certifications, one can appreciate how the licensing of a DE as a private investigator is inappropriate and ill-suited.

1.2 Penalties

If a DE is hired to image or retrieve files from a computer unless there is a clear exception, most states will deem such conduct a violation of their PI statutes, and a penalty could be imposed if prosecuted and there is a finding of culpability. Most violations are a misdemeanor which may include fines and or jail time. In some states, there are civil monetary fines. The more “aggressive” state civil fine is Indiana with up to \$10,000 with each “transaction” a separate offense and Florida assessing a felony charge for subsequent violations. (**Table 1**)

Table 1. State Penalties for Violations

Arizona	(O)	6 Months \$2,500	Department of Public Safety
Arkansas	(O) **	1 st violation Class A (\leq yr \$2,500 fine Misdemeanor: 2 nd violation within 1 year of previous class D felony (\leq 6 years)	State Police
California	(C)	Misdemeanor punishable by a fine of five thousand dollars (\$5,000) or by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.	Department of Consumer Affairs: Bureau of Security and Investigative Services
Florida	(O) *	For a first violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. 2. \$1,000 For a second or subsequent violation, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and the department may seek the imposition of a civil penalty not to exceed \$10,000.	Department of Agriculture and Consumer Services
Georgia	(C)	Misdemeanor: \$1,000	Board
Hawaii	(C)	Misdemeanor: \$500	Board (6 needed): 1 PI, 1 Physical Security, 2 Chiefs of Police, 2 Private Citizens
Indiana	(O) **	Misdemeanor: 1 yr. \$5,000 (c) In addition to any other fine imposed on the person, the court shall fine the person convicted of an offense under subsection (b) the amount of compensation earned by the person in the commission of the offense. Notwithstanding IC 35-50-3-2, the total fine imposed under this section may exceed ten thousand dollars (\$10,000) if necessary to comply with this subsection. each transaction = separate offense.	Board (4 needed): PI, PS, LE, Private Citizen
Iowa	(C)	Misdemeanor: Fine shall not be suspended by the court, within the following limits: a. For a simple misdemeanor, there shall be a fine of at least sixty-five dollars but not to exceed six hundred twenty-five dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.	Department of Public Safety
Kentucky	(O) *	Class A Misdemeanor: 90 days to 12 months in jail and a fine of up to \$500. D-felony 2 nd offense 1- 5years	Board (3 of the 7 members): PIs. Funded through fees.
Maine	Yes (O) for Extraction, No (O) for Analysis *	Civil \$1,000 fine	Board (2 of the 7 members): PIs
Maryland	(O) *	Misdemeanor 1 year \$5,000: or a maximum aggregate of \$10,000 for a 2-year license term	State Police
Massachusetts	(O) *	A fine of not less than two hundred nor more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.	Colonel, State Police
Michigan	(C)	Misdemeanor imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both	Michigan Department of Labor and Economic Growth
Minnesota	(C)	Gross Misdemeanors one year in jail and/or a \$3,000 fine	Board (1 of 5): PIs
Missouri	(O) - Limited Exclusion		
Nebraska	(O)	Class II Misdemeanor up to six months in jail or a fine up to \$1,000	Secretary of State
New Jersey	(O)	Misdemeanor: 6 months' imprisonment or less, whether or not in combination with a fine	State Police
New York	(O)	Class A misdemeanor. one year in jail or three years' probation. In addition, a fine of up to \$1,000 or twice the amount of the individual's gain from the crime may be imposed.	Department of State
North Dakota	(O) - Limited Exclusion *	Class B misdemeanor. maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both.	Governor Appointed Board: No less than 5 and no more than 11 members majority of the board must be actively engaged in the private investigative or security profession.
Oklahoma	(O) *	Misdemeanor: not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.	The director of the Council on Law Enforcement Education and Training.
Oregon	(C) - If the original search and examination was not part of DE hired as an expert. Expert witness testimony exception.	Notwithstanding subsection (1)(a) of this section, if a person violates ORS 703.405 (License requirement), the person is subject to payment of a civil penalty in an amount of not more than \$5,000 for each violation with maximum penalties not to exceed \$10,000 per year.	Department of Public Safety Standards and Training: Private Security and Investigators Policy Committee
South Carolina	(C)	Misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.	State Police: South Carolina Law Enforcement Division
Tennessee	(C) - Limited Exclusion but not if hired by an attorney or court appointment or imaging the owner's computer.	Class A Misdemeanor. 11 months 29 days in jail or a fine not to exceed \$2,500, or both	Private Investigation and Polygraph Commission (9 members): 7 members are Private Investigators who must be in the State for at least five (5) years prior to the date of their appointment.
Texas	(C) - With Limited Exceptions	Civil penalty to be paid to the State not to exceed \$10,000 for each violation	Administered by the Department of Public Safety. By Statute. Non-Regulatory Advisory Board (7 members) One PI.
Utah	(O) *	Class A Misdemeanor: \$2,500.	
Vermont	(O) *	Misdemeanor and subject to a fine of not more than \$500.00	Board of Private Investigative and Security Services appointed by Governor: 5 members, 2 PI, 1 PI and Security, and 2 public
West Virginia	(O) - With Limited Exceptions	Misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$5,000	Secretary of State
Wisconsin	(O) - Expert Opinion Exemption	Not less than \$100 nor more than \$500 or imprisoned not less than 3 months nor more than 6 months or both	Department of Safety and Professional Services

* No Response ** Refused to Render Opinion

2. EXEMPTIONS FROM PI LICENSING

We have noted several exemptions to the PI licensing statutes that may affect the ability of a DE to practice in certain states (Table 2). Those exemption categories include:

1. Employer/Employee relationships
2. Attorney engagement where the attorney licensed to practice law within the State, which may include non-attorney employees of the attorney or attorney's law firm
3. DEs and Computer Forensic professionals. If an absolute and explicit exemption exists for this category, the other exemptions are considered inconsequential to licensing requirements and thus not considered in our analysis.
4. Expert Witness exemptions
5. Other

2.1 Employer/Employee Exemption

Under this exemption, if the person is performing the functions set forth under the state PI statute and is working exclusively for the employer and those activities relate solely to the employer's affairs, a PI License is not required. Under this definition, the employee cannot be an independent contractor but must be classified as an "employee."

Although there is no precise definition of an "employee" as differentiated from an "independent contractor," in making the determination generally, several factors are considered (Lonardo et al., 2015). The following are the factors under the IRS interpretation using common law rules under "the right to control test" (IRS, 2021a):

1. Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. Financial: Are the business aspects of the worker's job controlled by the payer? (These include how workers are paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. Type of Relationship: Are there written contracts or employee type benefits (i.e., pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business? (IRS, 2021b) These factors are echoed in great part in the US Supreme court case (*US V Silk*, 1947).

Therefore, if a DE or cyber-security professional works exclusively for an employer, that person may investigate and retrieve files *of the employer's system only* and cannot undertake such actions outside the purview and control of the employer or the employer's business affairs. 26 states include this exemption. (Table 3)

2.2 The Practicing Attorney Umbrella Exemption

Although digital evidence processing under an attorney's practice does not supersede state regulations for PI/DE licensing, in our opinion, it does muddy the waters somewhat because much of what a digital examiner does as it relates to legal proceedings occur when the DE would likely work in tandem with an attorney.

A review of the attorney exemption from licensing (if applicable) for those states where a PI license for DEs is believed to be required is important so that DEs are aware of the potential certification issues. If an attorney in these states requires DE services, his/her hiring choices are restricted to only those who

Table 2. State PI Licensing Exemption Matrix

State	Attorney	Employee	Computer Forensics	Expert Witnesses	Other
Alabama			X		
Arizona	X	X			
Arkansas	X	X			
California	X	X			
Delaware			X		
Florida	X	X			
Georgia	X	X			
Hawaii	X				
Indiana	X				
Iowa	X	X			
Illinois			X		
Kentucky	X	X			
Louisiana	X	X			X
Maine	X	X		X	
Maryland	X	X			
Massachusetts	X	X			
Michigan	X	X			
Minnesota	X	X			
Missouri	X	X		X	
Montana	X				
Nebraska					
Nevada	X			X	X
New Hampshire			X		
New Jersey	X	X			
New York	X	X		X	
North Carolina			X		
North Dakota	X	X		X	
Ohio	X	X			
Oklahoma		X			
Oregon	X	X		X	
Rhode Island			X		
South Carolina	X				X
Tennessee	X	X	X		X
Texas	X	X			X
Utah	X	X			
Vermont	X	X			
Virginia			X		
Washington	X	X			X
West Virginia	X	X			X
Wisconsin	X	X		X	X

have a PI license. This potentially precludes the attorney from hiring a highly regarded DE who possesses a particular technical expertise and proficiency area if he/she is not a

licensed PI. The result might compromise the attorney's case and result in a disservice to the attorney's client by limiting a defendant's ability to present the best possible defense in

Table 3. Attorneys and Employees Exclusively Working for the Attorney

Arkansas	A person employed exclusively and regularly by one (1) employer in connection with the affairs of that employer only and where there exists an employer-employee relationship.
California	A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, deadly weapon is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.
Florida	“In-house” investigators who are solely, exclusively, and regularly employed as an investigator in connection with the business of an employer who does not advertise or provide investigative services for a fee.
Georgia	A person or corporation which employs persons who do private security work in connection with the affairs of such employer only and who have an employer-employee relationship with such employer. Neither such persons or corporations nor their employees shall be required to register or be licensed under this chapter, although such persons or corporations or their employees may elect to be licensed under this chapter.
Iowa	A person employed full or part-time by one employer in connection with the affairs of the employer.
Kentucky	A private business employee conducting investigations relating to the company entity by which he or she is employed.
Louisiana	An individual who is regularly and exclusively employed as an investigator or in any other capacity by a person who is not engaged in the business of providing private detective services, while performing any duty of the employment.
Maine	A person employed exclusively and regularly by an employer in connection with the affairs of the employer only, and there exists a bona fide employer-employee relationship in which the employee is reimbursed on an hourly basis.
Maryland	An individual who is regularly and exclusively employed as an investigator or in any other capacity by a person who is not engaged in the business of providing private detective services, while performing any duty of the employment.
Massachusetts	A person employed as an investigator, detective, watchman, guard, patrolman, or employed or assigned to perform any of the activities described in the definition “watch, guard or patrol agency” or whose duties include an inquiry into the fitness of an applicant for employment, in connection with the regular and customary business of his employer and whose services are not let out to another for-profit or gain, but only while so acting for his employer.
Michigan	A person employed exclusively and regularly by an employer in connection with the affairs of the employer only, if there exists a bona fide employer-employee relationship for which the employee is reimbursed on a salary basis.
Minnesota	An employee while providing security or conducting an investigation of a pending or potential claim against the employee’s employer.

Table 3 – Continued from previous page

Missouri	A person employed exclusively and regularly by one employer in connection only with the affairs of such employer and where there exists an employer-employee relationship.
New Jersey	...nor to any employee, investigator or investigators solely, exclusively, and regularly employed by any person, firm, association, or corporation which is not engaged in any of the businesses hereinbefore described in items numbered one to nine, both inclusive...
New York	Any person regularly employed as special agent, detective, or investigator exclusively by one employer in connection with the affairs of that employer only.
North Dakota	Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.
Ohio	An employee in the regular course of the employee’s employment, engaged in investigating matters pertinent to the business of the employee’s employer or protecting property in the possession of the employee’s employer, provided the employer is deducting all applicable state and federal employment taxes on behalf of the employee and neither the employer nor the employee is employed by, associated with, or acting for or on behalf of any private investigator or security guard provider.
Oklahoma	A bona fide, salaried, full-time employee of a firm, corporation, or other legal entity not in the primary business of soliciting and providing private investigations, who conducts investigations that are exclusive to and incidental to the primary business of said firm, corporation, or entity, and when the costs of such investigations are not charged directly back to the particular client or customer who directly benefits from the investigation.
Oregon	A person employed exclusively by one employer in connection with the affairs of that employer only.
Tennessee	A private business employee conducting investigations relating to the internal affairs of the business; A person engaged exclusively in the business of obtaining and furnishing information regarding a candidate for employment to the candidate’s potential employer.
Texas	Except as provided by Subsections (b) and (d), this chapter does not apply to an individual employed in an employee-employer relationship exclusively and regularly by one employer in connection with the affairs of the employer.
Utah	Any person or employee conducting an investigation on the person’s or employee’s own behalf or on behalf of the employer if the employer is not a private investigator under this chapter.
Vermont	Persons regularly employed as investigators exclusively by one employer in connection with the affairs of that employer only, provided that the employer is not a private investigative agency and the employee is engaged directly as part of the ordinary payroll for tax, accounting, and insurance purposes.
Washington	A person who is employed exclusively or regularly by one employer and performs investigations solely in connection with the affairs of that employer, if the employer is not a private investigator agency.
West Virginia	Employed exclusively and regularly by only one employer in connection with the affairs of that employee.
Wisconsin	Any employee of a commercial establishment, while the person is acting within the scope of his or her employment and whether or not he or she is on the employer’s premises.

a criminal prosecution or civil case. In the end, the “direct attorney” PI license exemption has little practical impact from a digital examination perspective because an attorney would most likely hire a DE who possesses

a PI license to have the strongest case for his/her client.

The categories of attorney exemptions generally fall into two categories: 1. attorneys and any employees exclusively working for the attorney (Table 3) with three

states—Montana, Vermont, and Wisconsin—including law students or interns and 2. exclusively limited to attorneys (Table 4).

2.2.1 Exclusively Limited to Attorneys

In this category, only the attorney is exempt from the licensing requirement. Under this exemption, an attorney can perform any investigation, including extraction of digital evidence, in preparation for a legal case/proceeding that a PI may undertake in the PI's normal course of their licensed profession (Lonardo et al., 2015). This all presupposes a particular attorney has the technical expertise to do so, which is not typically the case. Even assuming the attorney possesses the technical skills to extract the digital evidence for trial, introducing such evidence from a pragmatic evidentiary legal process perspective would be awkward, to say the least, especially as it relates to authentication. Since authentication goes to the finder of fact in a trial (jury or Judge in a Bench Trial), the weight and credibility of such evidence would likely be looked upon askance by a finder of fact even if a third party authenticated the evidence retrieved by the attorney. In short, the attorney would not be able to enter the digitally retrieved information as evidence since he/she extracted it versus a "qualified" independent third-party who would be in a better position to add value and credibility to such evidence in his/her testimony at trial. Therefore, this exemption from a digital evidence extraction and evidentiary authentication perspective seems to render this exemption inconsequential (Lonardo et al., 2015).

2.2.2 Attorneys and "Employees" Working Exclusively for the Attorney

Since the exemption makes no distinction regarding the job description and duties of the

"employee" of the law firm, it appears that anyone who works for the law firm as a valid employee, including a DE, falls under the exemption. In essence, under this exemption, if the person performing digital examinations is an employee of the law firm, then that person may perform the examination and data extraction regardless of whether the employee is qualified to do so. In Montana, for instance, data extraction may be performed by a "legal intern, paralegal, or legal assistant" MCA 37-60-105(f)... or "a law student who is serving a legal internship" ... MCA 37-60-105(g) (emphasis added). Therefore, under Montana law, it is acceptable for a law student who very well possesses little to no technical expertise, extensive training, or certifications to perform digital examinations and extractions, whereas a person who does possess such credentials must obtain a PI license.

The traditional role of a legal assistant includes a person who is an employee for a lawyer or law firm providing various administrative "secretarial related" matters. In contrast, as an employee, a paralegal requires minimal legal training or certification and could undertake responsibilities such as legal research, production and review of documents, preparation of evidence schedules and exhibits for trial, and other legal administrative support. Performing forensic analysis and examinations are not noted functions of either a legal assistant or paralegal (Lonardo et al., 2015). The United States Department of Labor Statistics (DOLS) refers to and treats a Legal Assistant and Paralegal the same. The DOLS website states, "Paralegals and legal assistants are found in all organizations, but most work for law firms, corporate legal departments, and government agencies. They usually work full time, and overtime is sometimes needed to meet deadlines" (BLS, 2014). Since the traditional and accepted role and classification of a Legal As-

Table 4. Exclusively Limited to Attorneys in their Practice of Law

Arizona	A practicing attorney involved in a case for which the attorney has been retained or a person employed under an employee-employer relationship with a practicing attorney, in the employee's performance of duties related to a case for which the attorney has been retained.
Arkansas	An attorney at law in performing his or her duties or an employee of an attorney at law, only in connection with providing investigative services to the attorney and his or her practice.
California	An attorney at law in performing his or her duties as an attorney at law.
Florida	Attorneys in the regular practice of their profession.
Georgia	An attorney at law or a bona fide legal assistant in performing his or her duties.
Hawaii	An attorney at law in performing the attorney's duties as such attorney at law.
Indiana	An attorney or employee of an attorney to the extent that the person is engaged in investigative matters.
Iowa	An attorney licensed to practice in Iowa, while performing duties as an attorney.
Kentucky	An attorney-at-law, or an attorney's bona fide employee, performing duties within the scope of the practice of law or authorized agent with duties limited to document and record retrieval or witness interviews.
Louisiana	A lawyer, while performing any activity that relates to the lawyer's regular practice of law in the State; (3) to an individual who, as a regular part-time or full-time employee of a lawyer, provides services that relate to the lawyer's regular practice of law in the State.
Maine	An attorney admitted to practice law in the State acting in a professional capacity.
Maryland	A lawyer, while performing any activity that relates to the lawyer's regular practice of law in the State; an individual who, as a regular part-time or full-time employee of a lawyer, provides services that relate to the lawyer's regular practice of law in the State.
Massachusetts	An attorney at law in the practice of his profession.
Michigan	An attorney admitted to practice in this State in performing his or her duties as an attorney at law.
Minnesota	An attorney-at-law while performing the duties of an attorney-at-law or an investigator employed exclusively by an attorney, or a law firm engaged in investigating legal matters.
Missouri	An attorney performing duties as an attorney, or an attorney's paralegal or employee retained by such attorney assisting in the performance of such duties or investigation on behalf of such attorney.
Montana	An attorney at law while performing duties as an attorney at law; a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; a law student who is serving a legal internship.

Table 4 – Continued from previous page

Nevada	To an attorney at law in performing his or her duties as such.
New Jersey	To any attorney or counselor-at-law in connection with the regular practice of his profession, nor to any person employed by any such attorney or counsellor-at-law when engaged upon his employer's business.
New York	...nor shall anything in this article contained be construed to affect in any way attorneys or counselors at law in the regular practice of their profession, but such exemption shall not inure to the benefit of any employee or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law.
North Dakota	Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.
Ohio	Attorneys at law or any expert hired by an attorney at law for consultation or litigation purposes.
Oregon	An attorney admitted to practice law in this State performing the attorney's duties as an attorney; A legal assistant or paralegal engaged in activity for which the person is employed by an attorney admitted to practice law in this State.
South Carolina	An attorney-at-law while in the performance of his duties.
Tennessee	An attorney at law in good standing and licensed to practice law; An employee of a single attorney or single law firm who is acting within the employee's scope of employment for the attorney or law firm.
Texas	An attorney while engaged in the practice of law; a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition.
Utah	An employee of an attorney licensed to practice law in this State.
Vermont	Attorneys engaged in the practice of law and law clerks, paralegals, and other laypersons regularly employed exclusively by one attorney or law firm when the attorney or law firm retains complete professional responsibility for the work product of the law clerk, paralegal, or other laypersons in his, her, or its employ.
Washington	An attorney-at-law while performing the attorney's duties as an attorney.

sistant is an employee, for this exemption, we consider Legal Assistants (i.e., North Dakota) and "Bonafide" legal Assistants (i.e., Georgia) as employees. Whether a person is an "employee" versus an independent contractor" has been subject to numerous tests under federal case law interpretation of various federal statutes. The IRS follows the "common Law" classification based on the totality of the circumstances in determining the degree of control over the person performing the services by the employer.

Ultimately, the practitioner should review the relevant state law in defining an employee vs. independent contractor. The practical implication for this exemption would be that unless an attorney or law firm has an employee who is a DE, they would need to hire a DE who is licensed under the state certification statute (Lonardo et al., 2015).

3. DES AND COMPUTER FORENSIC PROFESSIONAL EXEMPTION

Under this category, states have specifically excluded computer forensic professionals from the PI licensing requirement. In doing so, eight states explicitly exempt these professionals (Delaware amended in 2018, NH amended in 2019). A more comprehensive definition is seen in the Delaware statute that was amended in 2018:

“Computer forensic specialist” shall mean an individual who interprets, evaluates, tests, or analyzes preexisting data from computers, computer systems, networks, or other electronic media, provided to them by another where that person owns, controls, or possesses said computer, computer systems, networks or electronic media through the use of highly specialized expertise in recovery, authentication and analysis of electronic data or computer usage. A computer forensic specialist shall not be classified or within the definition of a private investigator. Delaware Code, Title 24 §1302(7)

There are state exemptions that may be considered as such indirectly. Those state exemptions do not speak directly to DE or computer forensics as exemptions but instead, use terms such as “Technical Experts” (Louisiana) RS 37:3503(8) (a) (iv) or “Forensic Scientist” (Washington) RCW 18.165.010(8) and 18.165.020(10). In South Carolina, a DE is exempt from the licensing by virtue of an opinion by the state attorney general, which limits the imaging and investigation to “*imaging*’ the information stored on a computer

for the purpose of recovering encoded data for the owner of that computer” (TNAG, 2012) (emphasis added). Therefore, a careful reading of each state statute and caution is advised in relying on terms that may substantially limit the exemption or be open to differing legal interpretations. As such, attorney consultation is recommended. (Table 5)

3.1 Expert Witness Exemption

The expert witness exception is found in only seven states. Typically, this exemption allows for the expert witness to opine on the digital evidence based on an independent examination of such evidence. However, the exemption typically does not allow a DE to retrieve or collect such evidence. As noted above in Section 2.2, states that do not have this exemption would hinder a criminal defendant’s ability to adequately present a reasonable defense if a DE cannot evaluate and or obtain information directly from a computer. For example, if a particular DE who has exemplary credentials does not possess a PI license in a particular state, the DE may think twice about accepting the engagement, thereby leaving the defendant with a potentially weaker defense strategy. Few states allow an “agent” or expert for retrieval, but most attorney exemptions relate to the attorney or employees of the law firm’s attorney. (Table 6) If a DE is hired by a court or is asked to retrieve data from a PC pursuant to a court order (such as found the South Carolina AG opinion exemption), the pitfall of practicing as an unlicensed PI may possibly be avoided. In these matters’ attorney consultation is strongly recommended.

3.2 Other Exemptions

This category of exemptions found here total 8, of which three relate solely to repair, maintenance, or data security. (Table 7)

Table 5. Computer Forensic Exemption

Alabama	Any individual engaged in the following: (a) Computer or digital forensic services. (b) The acquisition, review, or analysis of digital or computer-based information for evidentiary or other purposes or to provide expert testimony before any court, board, officer or investigating committee. (c) Network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.
Delaware	“Computer forensic specialist” shall mean an individual who interprets, evaluates, tests, or analyzes preexisting data from computers, computer systems, networks, or other electronic media, provided to them by another where that person owns, controls, or possesses said computer, computer systems, networks, or electronic media through the use of highly specialized expertise in recovery, authentication and analysis of electronic data or computer usage. A computer forensic specialist shall not be classified or within the definition of a private investigator. (Amended 11/19/18)
Illinois	225-15-5(5): A person, firm, or other entity engaged in providing computer forensics services so long as the person, firm, or other entity does not hold himself or herself out to be a private detective. For the purposes of this item (5), "computer forensics services" means a branch of forensic science pertaining to the recovery and analysis of electronically stored information.
New Hampshire	Persons engaged in computer or digital forensic services, or computer network or system testing. (Amended 2019.)
North Carolina	A person engaged in (i) computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or (ii) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.
Rhode Island	Rhode Island An individual employed as a computer forensic specialist who holds professional certification as a computer examiner.
Tennessee	A digital forensics provider would not be required to obtain a private investigation license prior to “imaging” the information stored on a computer for the purpose of recovering encoded data for the owner of that computer. AG opinion 12-84. https://www.tn.gov/content/dam/tn/commerce/documents/regboards/pi/posts/AGOp12-84PIPCDigitalForensicInvestigators.pdf
Virginia	§ 9.1-140(29) Exemption: Any individual engaged in (i) computer or digital forensic services as defined in § 9.1-138 or in the acquisition, review, or analysis of digital or computer-based information, in order to obtain or furnish information for evidentiary purposes or to provide expert testimony before a court, or (ii) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network; § 9.1-138 “Computer or digital forensic services means the use of highly specialized expertise for the recovery, authentication, and analysis of electronic data or computer usage. (Amended 2011)

4. PI/DE STATE CLASSIFICATION CHANGES

Although explicit in the statute, the above noted exemptions often do yield a clear basis or guidance, and therefore digital examiners need to be aware of state response and statute changes that might cause licensing questions

where there were none before. We list all state statutes in Table 8 and note important changes since our previous study (Lonardo et al., 2015).

Table 6. Expert Witness Exemption

Maine	A person acting within the scope of the person's professional practice to analyze facts, evidence, or other data for the purposes of supplying expert testimony in a legal proceeding.
Missouri	Expert witnesses who have been certified or accredited by a national or State association associated with the expert's scope of expertise.
Nevada	A crime or tort that has been committed, attempted, threatened, or suspected, except an expert witness or a consultant who is retained for litigation or a trial, or in anticipation of litigation or a trial, and who performs duties and tasks within his or her field of expertise that are necessary to form his or her opinion.
New York	An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire origin and cause investigations, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the State, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.
North Dakota	North Dakota Attorneys at law or any expert hired by an attorney at law for consultation or litigation purposes.
Oregon	The licensing requirement of ORS 703.405 (License requirement) does not apply to a person while the person is: (1) Providing testimony in a court as an expert under ORS 40.410 (Rule 702. Testimony by experts); or (2) Conducting investigations or reviews or engaging in other activities in preparation for providing testimony in a court as an expert under ORS 40.410.
Wisconsin	Admin. Code SPS 30.02 (12) (b) (10): Scientific researchers, laboratory personnel and expert consultants who may provide testimony to any court, board, officer or investigating committee.

Table 7. Other Exemptions

Louisiana	“Private investigator” or “private detective” means any person who holds out to the general public and engages in the business of furnishing or who accepts employment to furnish information or who agrees to make or makes an investigation for the purpose of obtaining information with reference to the following: The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties. However, scientific research laboratories, technical experts, and licensed engineers shall not be included in this definition.
Nevada	To a person performing the repair or maintenance of a computer who performs a review or analysis of data contained on a computer solely for the purposes of diagnosing a computer hardware or software problem and who is not otherwise engaged in the business of a private investigator. To any person who for any consideration engages in business or accepts employment to provide information security. (Amended 2015)
South Carolina	A consultant when the person is retained by an attorney or appointed by a court to make tests, conduct experiments, draw conclusions, render opinions or make diagnoses, where those services require the use of training or experience in a technical, scientific or social science field. (Opinion 2012)
Tennessee	The repair or maintenance of a computer does not constitute an investigation for purposes of this section and does not require licensing under this chapter if: (1) the review or analysis computer-based data is performed only to diagnose a computer or software problem; 2) there is no intent to obtain or furnish information described by Subsection (a)(1).
Texas	The repair or maintenance of a computer does not constitute an investigation for purposes of this section and does not require licensing under this chapter if: (1) the review or analysis of computer-based data is performed only to diagnose a computer or software problem; (2) there is no intent to obtain or furnish information described by Subsection (a)(1); and (3) the discovery of any information described by Subsection (a)(1) is inadvertent. (c) The review and analysis of computer-based data for the purpose of preparing for or responding to a cybersecurity event does not constitute an investigation for purposes of this section and does not require licensing under this chapter. (Section C added: REV 2019)
Washington	Washington 18.165.010 "Definitions": (8) "Forensic scientist" or "accident reconstructionist" means a person engaged exclusively in collecting and analyzing physical evidence and data relating to an accident or other matter and compiling such evidence or data to render an opinion of likely cause, fault, or circumstance of the accident or matter.
West Virginia	Exemption: 18.165.020 (10): A person who is a forensic scientist, accident reconstructionist, or other person who performs similar functions and does not hold himself or herself out to be an investigator in any other capacity.
Wisconsin	Wisconsin PS 30.02 (12) (b) (11): A person who is not licensed as a private detective in Wisconsin, who commences an investigation in another jurisdiction and who physically enters into Wisconsin for the purpose of pursuing that investigation, provided that the person is accompanied by a licensed private detective while conducting the investigation and that the person is not armed with a firearm.

Table 8. Statute Licensing Statutes and Changes

State	Authors' Belief (S) By Statute (O) By Opinion	Statute	Change Since 2015
Alabama	(S) PI License not Required	§34-25B-24 et seq	
Alaska	No PI Licensing Statute - Municipal Licensing with No Specific Requirements	§10-40-20 et seq	
Arizona	(O) PI Licensing Requirement	§24-32-2401 et seq	
Arkansas	(O) PI Licensing Requirement **	§MN SS 326.338 Subd. 1 (1-9)	
California	(O) PI Licensing Requirement	§BPC section 7522	X
Colorado	(S) PI License not Required	§Section 12-160-111	X
Connecticut	(O) PI License not Required	Chapter 534 C.G.S 29-152u et seq See also declaratory ruling 8/4/08	
Delaware	(S) PI License not Required	§24-1302(7)	X
District of Columbia	(O) PI Licensing Requirement	§47-2839	
Florida	(O) PI Licensing Requirement *	§493.6201 et seq	
Georgia	(O) PI Licensing Requirement	§43-38-3 et seq	
Hawaii	(O) PI Licensing Requirement	§463-1 et seq and §16-97-2 et seq	X
Idaho	No PI Licensing Statute	NA	
Illinois	(S) PI License not Required	§225-15-5(5)	
Indiana	(O) PI Licensing Requirement **	IC 25-0.5-3-19 et seq	
Iowa	(O) PI Licensing Requirement	80A.1-18 et seq	
Kansas	(O) PI License not Required	§75-7b01 et seq	
Kentucky	(O) PI Licensing Requirement *	KRS §329A.010 et seq	
Louisiana	(S) PI License not Required- Limited Exclusion	La. R.S. §37:3503 et seq	
Maine	(O) Licensing Requirement - Ltd. Exclusion	§14-1 et seq and §36-1 et seq	X
Maryland	(O) PI Licensing Requirement *	§13.101 et seq	
Massachusetts	(O) PI Licensing Requirement *	§147-23 (12) et seq	
Michigan	(S) PI Licensing Requirement	§338.822 et seq	
Minnesota	(O) PI Licensing Requirement	326.338 et seq	
Mississippi	No PI Licensing Statute	NA	
Missouri	(S) Licensing Requirement- Ltd. Exclusion	§324.1106 et seq	
Montana	(S) PI License not Required *	§37-60-105 et seq	
Nebraska	(O) PI Licensing Requirement	§71-3202 et seq	
Nevada	(S) PI License not Required	§NRS 648.012 et seq and §NRS 648.018	
New Hampshire	(S) PI License not Required	§106-f4-(XII)	X
New Jersey	(O) PI Licensing Requirement	§45:19-9 et seq	
New Mexico	(O) PI License not required	§61-27B-1 et seq	X
New York	(O) PI Licensing Requirement	§7-71 et seq	
North Carolina	(S) PI License not Required	§74C-3 et seq	
North Dakota	(O) Licensing Requirement - Ltd. Exclusion *	§43-30-02 et seq	
Ohio	(O) PI License not Required	§4749.01 et seq	X

Continued on next page

Table 8 – Continued from previous page

State	Authors' Belief (S) By Statute (O) By Opinion	Statute	Change Since 2015
Oklahoma	(O) PI Licensing Requirement *	§59-42a-1750.02 et seq	
Oregon	(O) PI Licensing Required with Limited Exceptions*	§703.401 et seq	X
Pennsylvania	(S) Licensing Requirement by County	NA	
Rhode Island	(S) PI License not Required	§5-5-20 et seq	
South Carolina	(O) PI Licensing Requirement	§40-18-20 et seq	
South Dakota	No PI Licensing Statute	NA	
Tennessee	(O) Licensing Requirement - Ltd. Exclusion	§62-26-233 et seq	
Texas	(S) PI Licensing Requirement with Limited Exceptions	§1702.104 (b)	X
Utah	(O) PI Licensing not Required *	§53-9-101 et seq	
Vermont	(O) PI Licensing not Required *	§26-59-3151 et seq	
Virginia	(S) PI Licensing not Required	§9.1-140 (29)	
Washington	(S) PI Licensing not Required	RCW §18.165.010 et seq	
West Virginia	(O) Licensing Requirement - Ltd. Exclusion	§30-18-1	
Wisconsin	(S) Licensing Requirement - Ltd. Exclusion	§440.26(5)	
Wyoming	No PI Licensing Statute	NA	
* No Response ** Refused to Render Opinion			

4.1 Changes in Classifications

California’s previous opinion was that a PI license was not required for data extraction, but any inquiries or communications made towards that end required a license. The current opinion response now is that a license is unequivocally required.

Aside from the existing “repair and maintenance” of computers as an exemption in some states that provide such exemption, in 2019, Texas amended its statute to exempt the following activities:

1702.104 (c) The review and analysis of computer-based data for the purpose of preparing for or responding to a cybersecurity event does not constitute an investigation for purposes of this section and does not require licensing under this chapter.

A word on regulatory opinions: Caution should be taken when relying exclusively on regulatory opinions, even if such opinions are in the form of an “official” response from an individual within the regulatory body. The reason is that today a person who may render an opinion one way may no longer be with the agency or regulatory body in the future. Furthermore, policies, personnel, and leadership typically change with every new administration, so one would be well advised to seek an official opinion **in writing** covering the current circumstances and factual content that prompted the rendering of the opinion and seek the advice of an attorney.

Those states that refused to render an opinion regarding the applicability of whether a DE falls under their current PI statute create uncertainty and potential pitfalls for the DE practitioner in those states. When given specific and unambiguous criteria, as we have done so in this study in soliciting an opinion, the regulatory authority should be able to opine on the applicability of licensing for a

DE as a public service. Fortunately, just two states fall under this category: Indiana and Kentucky. However, the nine states are just as problematic with the refusal to render an opinion.

4.2 Amended Statutes to Exempt Digital Examiners

Since our last report on our licensing findings, just two states have amended their statutes to exempt Digital Examiners, Delaware, 24 Del. C.1302 (7) (amended 2018) and New Hampshire NH Rev Stat 106-f4 (xii) (amended 2019).

Exempting Digital Examiners is appropriate for PI licensing requirements given the underlying differences in function, purpose, and technical skillsets than that of a PI. However, we do believe that a separate and distinct licensing statutory scheme for DEs is appropriate if reasonable and meaningful criteria and standards are included that protect the public and reflect the true role and function of the DE.

4.3 Potential Licensing Implications

The requirements and restrictive nature of requiring a PI license for DEs can have many implications for both the DE practitioner and the clients they serve.

4.3.1 Equal Representation in Courts

As one example, states that do not have an exemption for expert witness testimony, or where the unlicensed DE may testify but not be allowed to extract or copy data, could severely limit the resources of a party to a civil suit or, more profoundly, hamper the ability of a defendant in a state criminal prosecution to defend themselves adequately. In prosecuting a defendant, the State likely has substantial resources at their disposal in the way of law enforcement experts in Com-

puter Forensics or Digital Examiners. On the other hand, the defense attorney is hampered by virtue of the limited attorney exemption, which often does not allow for the engagement of a highly qualified unlicensed computer forensic or DE expert who is not otherwise an employee of the attorney or law firm.

This prohibition may deny the defendant the fundamental right under the 6th Amendment to the US Constitution, which states in part, “In all criminal prosecutions, the accused shall enjoy the right... *to have compulsory process for obtaining witnesses in his favor*”... (emphasis added). However, unless and until the constitutionality of a state PI statute is challenged in court by a disciplined unlicensed DE, the statute remains in effect. In the federal court system, the state restrictions of unlicensed DEs as witnesses are likely negated by Article VI paragraph 2 of the US Constitution, known as the “Supremacy Clause,” which states:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Here the federal courts’ rules and federal statutes override state law where there is an irreconcilable conflict between the execution of state law and federal law. In this case, if a federal court judge allows for or subpoenas an unlicensed DE, the DE will likely be allowed to provide evidence, notwithstanding the state PI statutory licensing requirements.

4.3.2 Enforcement of Licensing Statutes

The enforcement and imposition of sanctions for violating the PI licensing statutes and regulations often emanate from a private party complaint filed with the regulatory authority. The extent to which the PI statutes are rigorously enforced or not enforced at all relating to practicing DEs is currently unknown. This research is not part of this paper but may be considered for future research. Regardless, the environment under which the DE operates in states requiring a PI license, and potential prosecution and imposition of civil fines or criminal sanctions for violation of such state laws, could be sufficient reason to give practicing DEs cause for genuine concern.

There is continued diversity and disparity in the treatment of licensing from State to State. In many cases, the determination as to whether a state PI license is required is dependent on several factors, including 1. the specific function(s) and tasks performed by the DE, 2. who has hired the DE and for what purpose, 3. the status as an expert in the eyes of a court, and 4. the specific inclusion or exclusion by the State’s PI statute. The DE practitioner must identify their engagement status and seek legal guidance if there is any question in this regard.

5. CONCLUSION

The status and trends from previous research indicate that states continue to address DE licensing under PI statutes using diverse statutory and regulatory schemes and interpretations. As in prior studies, we relied on documented findings such as statutory reviews and written (email) regulatory opinions and feedback. However, as noted previously, reliance on regulatory authorities to provide “unofficial” or official feedback responses as to the applicability of PI licensing under their

relevant PI statute is time and fact specific meaning the current opinion could be transitory.

In some cases, the statute provided clear guidance and easily determined applicability. Where the regulatory body either declined feedback on the statute's applicability or just referred to the PI statute without guidance, we determined a PI license is required. In total, 29 states rendered an opinion. Not surprisingly, 24 opinions indicated that a PI license is required.

We noted in our last research an area of concern whether there is a conflict between the rules of evidence allowing expert witnesses (particularly DEs) vs. the PI licensing requirements (Lonardo et al., 2015). This issue is particularly acute where, as is the case with many PI statutes, a PI license may be required to testify before a court or tribunal as under expert testimony. Just seven states have an Expert Witness exemption that allows for testimony but not extraction of the evidence in question (Lonardo et al., 2015). The scope of this paper is limited to the statutory requirements only without exploration or research undertaken for this topic but may be explored in future research.

REFERENCES

- Bureau of Labor Statistics [BLS] (2014). Retrieved December 24, 2014 from <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-1>
- Internal Revenue Service (IRS) (2021a). Employee (common-law employee). Retrieved August 12, 2021 from <https://www.irs.gov/businesses/small-businesses-self-employed/employee-common-law-employee>
- Internal Revenue Service (IRS) (2021b). Independent contractor (self-employed) or employee? Retrieved August 5, 2021 from <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>
- Lonardo, T., White, D. Rea, A. (2008). "To License or Not to License: An Examination of State Statutes Regarding Private Investigators and Digital Examiners." *Journal of Digital Forensics, Security and Law*, 3:3.
- Lonardo, T., White, D. Rea, A. (2009). "To License or Not to License Revisited: An Examination of State Statutes Regarding Private Investigators and Digital Examiners." *Journal of Digital Forensics, Security and Law*, 4:3.
- Lonardo, T., White, D. Rea, A. (2012). "To License or Not to License Updated: An Examination of State Statutes Regarding Private Investigators and Digital Examiners." *Journal of Digital Forensics, Security and Law*, 7:3.
- Lonardo, T., Rea, A. White, D. (2015). "To License or Not to License Reexamined: An Updated Report on State Statutes Regarding Private Investigators and Digital Examiners." *Journal of Digital Forensics, Security, and Law*, 10:1.
- Shavers, B. (2013). *Placing the Suspect Behind the Keyboard: Using Digital Forensics and Investigative Techniques to Identify Cybercrime Suspects* (1st ed.). Syngress Publishing.
- Tennessee Attorney General (TNAG) (Sept. 10, 2012). Application of Private Investigators Licensing Act to Digital Forensics Providers. Retrieved June 4, 2021 from <https://www.tn.gov/content/dam/tn/commerce/documents/regboards/pi/posts/AGOp12-84PIPCDigitalForensicInvestigators.pdf>

US V Silk, 331 U.S. 704; 67 S. Ct. 1463; 91
L.Ed. 1757 (1947).