

MINUTES

Public Safety Commission Meeting

December 15, 2022

Austin, TX

The Public Safety Commission met in Austin, Texas on December 15, 2022, at 10 a.m. for its regular meeting. Attending the meeting were Chairman Steven Mach, Commissioners Steve Stodghill, and Dale Wainwright. A quorum was present.

- I. Call to Order (0:00:01)**
Chairman Mach called the meeting to order at 10 a.m. Proper notice was posted.
- II. Invocation (0:00:45)**
Chaplain Ferman Carpenter provided the invocation.
- III. Pledges (0:02:15)**
Trooper Davionce Earnest led the pledge of allegiance to the U.S. and Texas flag.
- IV. Approval of Minutes (0:03:15)**
The minutes of the last regular meeting held on October 27, 2022, were approved.
- V. Presentations (0:03:50)**
 - 30 Year Service Award**
Melinda Delagarza
Amy Krizan
Gary Molina (not in attendance)
 - 35 Year Service Award**
Lieutenant Colonel Dwight D. Mathis
 - 40 Year Service Award**
Chief Sheri Gipson
Antonio Rico, Jr.
 - Lifesaving Award**
Jose H. Gonzalez
William Alston
James Glaze
Sean Hazel

Michael Lueck*
Ethan McAdoo
Brian Barnes

Director's Award

Ron Wherry, Deputy, Nacogdoches County Sheriff's Office
Steven Taylor

Unit Citation

Criminal Investigations Division – Southeast Texas Region

Recognition

Hannah Robinson
Adam Unnasch

Director's Award

Chief Valerie Brown

* Received more than one award

Chairman Mach and Lieutenant Colonel Jeoff Williams provided comments on the mobile command post the commissioners toured during a short break. (0:44:05)

VI. Public Comment (0:45:50)

Lieutenant Colonel Edward Burris, USMC, Retired, and Retired-TXDPS Lieutenant, provided comments on the school shooting in Uvalde, Texas.

Chairman Mach acknowledged attendance of the following: (0:53:45)

Trent Peroyea, Governor's Office
Suzanne Tomlin - Lieutenant Governor's Office
Aaron Moncibaiz - Lieutenant Governor's Office
Andrew Kennemer - Senator Bob Hall's Office

VII. Director's Report

A. Operation Lone Star (0:54:15)

Director Steven C. McCraw provided an update on Operation Lone Star.

B. Case Update: Operation Lone Star Stash House Initiative (1:00:50)

Criminal Investigations Division Lieutenant Mario Menchaca and Special Agent Mark Garza provided information on migrant stash house and commercial motor

vehicle events and the Texas Stash House Reward Program.

Director McCraw provided additional comments on Operation Lone Star. (1:10:00)

VIII. New Business

A. Final Determination in Contested Cases – consideration and possible action on Proposals for Decision: (1:14:30)

1. SOAH Docket No. 405-22-07256.PSB – David Lamar Boykin

General Counsel Phillip Adkins presented the proposal for decision for item (1). A motion was made by Commissioner Wainwright, seconded by Commissioner Stodghill, to adopt the proposal for decision issued by the administrative law judge of the State Office of Administrative Hearings for item VIII(A)(1) as the final determination of the Public Safety Commission. Motion passed unanimously.

B. Report, discussion, and possible action on the following rule proposal for publication to receive public comment: (01:16:25)

1. Proposed amendment to TAC Section 16.1, concerning General Requirements

Driver License Division Chief Sheri Gipson presented the rule proposal for item (1). A motion was made by Commissioner Wainwright, seconded by Commissioner Stodghill, to approve for publication in the Texas Register item VIII(B)(1). Motion passed unanimously.

C. Intelligence Threat Briefing (Clearance Required – Executive Session Expected)

IX. Ongoing Business

A. Discussion and possible action regarding Compassionate Use Program (1:18:10)

Regulatory Services Division Chief Wayne Mueller and Deputy Director of Law Enforcement Services Jeoff Williams provided an update on four items related to the Compassionate Use Program. First, an advisory working group was publicized and 10 individuals were selected, including an additional public position. Second, a consultant contract solicitation was posted. Third, administrative rule proposals will be postponed until after legislative session. Fourth, a new license application window will open in mid-January 2023 for approximately 90 days, but no decision will be made until after legislative session. No action was requested or taken.

B. Report, discussion and possible adoption of the following previously published rule: (1:30:45)

1. Proposed new 37 TAC Section 36.5, concerning Sellers of Catalytic Converters in the Ordinary Course of Business

Regulatory Services Division Chief Mueller presented the rule adoption with changes to the proposal made in response to public comments for item (1). A motion was made by Commissioner Stodghill, seconded by Commissioner Wainwright, to adopt the rule with the changes to the proposal made in response to public comments under IX(B)(1). Motion passed unanimously.

C. Report, discussion, and possible action regarding the modification of the DPS organizational structure and the appointment, promotion, ratification, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of the Department or Commission management team. (1:35:35)

None.

D. Report, discussion, and possible action regarding ongoing criminal investigations pursuant to Government Code § 411.0041 (Executive Session anticipated)

To be discussed during Executive Session.

X. Reports

A. Commission member reports and discussion (1:36:05)

None.

B. Finance Report (1:36:15)

None.

C. Chief Auditor's Office (1:36:20)

None.

D. Division status reports on activities and action (1:36:25)

Crime Laboratory Division Chief Brady Mills provided an update on the status of sexual assault evidence collection kits.

Training Operations Division Chief Brian Baxter and Program Supervisor Michael Harper provided an update on results from the Fall 2022 command presence and physical fitness testing cycle.

XI. Consent Items (1:51:15)

A. Donations:

1. Additional donation items, as needed
None.

XII. Items for Future Agenda (1:51:25)

None at this time.

XIII. Date for Future Meeting (1:51:35)

The regular Public Safety Commission meeting is scheduled for February 16, 2023. Discharge hearings will be scheduled for February 17, 2023.

XIV. Adjourn into Executive Session (1:51:50)

Executive Session began at 12:08 p.m. The Commission adjourned into executive session to discuss security issues; to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; to deliberate regarding real estate matters; to consider any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; and to discuss ongoing criminal investigations.

The Public Safety Commission reconvened in open session at 2:25 p.m. Chairman Steven Mach and Commissioners Steve Stodghill and Dale Wainwright were present. A quorum was present. (1:52:15)

XV. ADJOURN

The meeting was adjourned at 2:25 p.m.

Read and approved this 16th day of February, 2023.



Steven P. Mach, Chairman
Public Safety Commission

DOCKET NO. 405-22-07256.PSB

TEXAS DEPARTMENT OF PUBLIC SAFETY – PUBLIC SAFETY COMMISSION	§	BEFORE THE
	§	
	§	
VS.	§	STATE OF TEXAS
	§	
DAVID LAMAR BOYKIN, Applicant	§	PUBLIC SAFETY COMMISSION

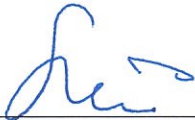
FINAL ORDER

On December 15, 2022, the Public Safety Commission held a public meeting and considered the Proposal for Decision issued in the above referenced case by the Administrative Law Judge (ALJ) of the State Office of Administrative Hearings. For purposes of this Order, the Commission adopts the findings of fact and conclusions of law reflected in the Proposal for Decision.

The Commission, after review and due consideration of the Proposal for Decision, accepts the recommendation of the ALJ that David Lamar Boykin’s noncommissioned security officer license be denied.

IT IS THEREFORE ORDERED that the application for noncommissioned security officer license of David Lamar Boykin be denied.

SIGNED this 15th day of December, 2022.



Steven P. Mach, Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On December 15, 2022, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Metal Recycling Entities
Title 37 T.A.C. Part I, Chapter 36
Subchapter A
Section 36.5

The Texas Department of Public Safety (the department) adopts new §36.5, concerning Sellers of Catalytic Converters in the Ordinary Course of Business. This rule is adopted with changes to the proposed text as published in the November 11, 2022 issue of the *Texas Register* (47 TexReg 7529) and will be republished.

House Bill 4110, 87th Legislative Session, amended the Metals Recycling Entities Act (Occupations Code, Chapter 1956) requiring that a person attempting to sell a catalytic converter to a metal recycling entity provide identifying information on the source vehicle, as well as proof of ownership of the vehicle. However, the statute exempts the purchase of regulated material (including catalytic converters) from businesses that sell regulated materials "in the ordinary course of business" (Occupations Code, §1956.002). Several types of businesses, such as salvage vehicle dealers or repair facilities, acquire and sell used catalytic converters as a standard part of their business and would appear to be operating within the scope of the statutory exemption. The proposed rule provides guidance to as to the department's interpretation of the exemption by outlining several categories of businesses generally recognized as engaging in the sale of catalytic converters in the ordinary course of their business.

Written comments were submitted by Amy Bresnen and Steve Bresnen, on behalf of PGM of Texas; Karen Phillips, General Counsel and Executive Vice President of Texas Automobile Dealers Association; Mr. Mel Wright, President of the Recycling Council of Texas; and Taylor Sims, on behalf of the Recycling Council of Texas.

COMMENT: Amy Bresnen and Steven Bresnen submitted comments in support of the proposed rule. Specifically, they note that the proposed rule "... will give legitimate Texas businesses in the stream of commerce that results in recycling catalytic converters much needed guidance and provide for uniformity of administration of the metal recycling regulatory regime."

RESPONSE: None.

COMMENT: Ms. Phillips is concerned that the proposed rule is overly limited in its application. Specifically, she points out that proposed subsection (b)'s limitation that the acquisition of a catalytic converter must be "through the removal and replacement of catalytic converters on a vehicle" excludes at least two scenarios: (1), there is no "removal" because the original catalytic converter was stolen or otherwise previously removed from the vehicle on which a new catalytic converter is installed; and (2), in its capacity as a parts supplier, the dealership sells a new catalytic

converter to a repair shop. In either of these scenarios the rule's exemption would not apply. Ms. Phillips recommends the removal of subsection (b).

RESPONSE: The department agrees with the comment and the recommendation. It appears there are legitimate transactions that would be excluded from the rule's application as proposed. In the interest of avoiding this and any additional unintended consequences subsection (b) has been removed.

COMMENT: Mr. Wright requests that the rule "... explicitly make clear that the "Sellers of Catalytic Converters in the Ordinary Course of Business" should not be purchasing or otherwise acquiring detached catalytic converters unless they are registered and regulated as a MRE with DPS and compliant with DPS reporting regarding catalytic converters." To accomplish this, Mr. Wright proposes the following addition to the proposal:

(a) For purposes of §1956.002(1), Occupations Code, a manufacturing, industrial, commercial, retail, or other seller that sells catalytic converters in the ordinary course of the seller's business which acquires catalytic converters through the purchase and/or servicing of a whole vehicle or unit includes but is not limited to a person acting on behalf of a business that is a:

Mr. Wright indicates "this change will help clarify the means of possession of the catalytic converter to those who are legally allowed to purchase and those who are legally allowed to sell catalytic converters."

RESPONSE: Limiting the scope of the rule to transactions involving the "purchase or servicing of a whole vehicle" would exclude the transfer of catalytic converters from a parts supplier to a repair shop. In light of Ms. Phillips' comments and the department's intent to clarify that the scope of the rule should not be so limited, the department respectfully disagrees with Mr. Wright's proposal and declines to make this change.

COMMENT: Ms. Sims requests that the exception for "automotive wrecking yard or salvage yard as defined by §234.001(1), Local Government Code" be removed from the proposal. The concern is that "this reference to automotive wrecking and salvage yards is not a reference to any legitimate and licensed entity."

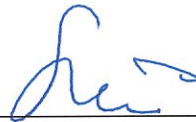
RESPONSE: The department agrees that proposed subsection (a)(2) does not describe any entities other than those also described in proposed subsection (a)(5) as used automotive parts recyclers licensed under Chapter 2309, Occupations Code and has removed the referenced language from the proposal.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the commission required by the Administrative Procedures Act, Government Code, §2001.033.



Steven P. Mach, Chairman
Public Safety Commission