

**MINUTES
PUBLIC SAFETY COMMISSION
October 21, 2010
Austin, TX**

The Public Safety Commission met in Austin, Texas on October 21, 2010. Attending the meeting were Chairman Allan Polunsky, Commissioners Carin Barth, C. Tom Clowe and John Steen. Commissioner Ada Brown was absent. A quorum was present for the meeting. DPS staff members and guests were also present.

Call to order

The meeting was called to order by Chairman Polunsky at 10:04 a.m. All members except Commissioner Brown were present. Proper notice had been posted.

Approval of Minutes (02:02) indicates time stamp from audio)

A motion was made by Commissioner Steen and seconded by Commissioner Barth approving the minutes as submitted for the September 16, 2010 meeting. Motion carried unanimously.

Public Comment (02:32)

Scott Henson, writer for the blog "Grits for Breakfast", thanked the Commission and the Department for the great job and progress made on the Driver Responsibility Program. Chairman Polunsky thanked Mr. Henson for initiating the issue, which Commissioner Steen echoed and thanked him for taking the time to come.

Director's Report (09:04)

Director McCraw spoke about the Fusion Center and Texas Border Security Operations Center. He focused on the important role they played in a recent Falcon Lake incident that resulted in a fatality. He showed how resources responded with the capabilities the center provides. He followed with a presentation of the seizure totals in the 41 counties that border Mexico. The totals included cash and firearms for the years 2006-2010. Chairman Polunsky asked what occurs when someone who is apprehended is found to be in the state illegally. The Director stated they are referred to Border Patrol since they are the experts who can make the determination and deal with immigration. He added the Department's role is not to make that determination or enforce the legal aspects.

New Business (19:39)

Due to the withdrawal of Derrick Jeter's appeal, no discharge appeal hearing was conducted.

(20:55) AD Simpson and DAD Todd Early of the Law Enforcement Support division submitted a thorough presentation on the Public Safety Communications Consolidation Plan. At the request of the Director a plan to streamline operations and better utilize manpower was initiated in June 2010 to go from 36 (in 2005) to 22 facilities, exempting border stations, and from 291 to 269 FTE's, through attrition. Commissioner Barth requested a timeline of the transition, which DAD Early stated he would report back. Chairman Polunsky inquired if the program was implemented, would the consolidation compromise the effectiveness of the communications bureau support. AD Simpson assured there would be no compromise. Commissioner Clowe thanked the Director for initiating this idea and AD Simpson and DAD Early for the level of detail in their presentation. He highlighted the high points – the Moto bridge gateway system that would provide the interactive communications and the \$1.1 million in annual salary savings. **A motion was made by Commissioner Clowe and seconded by Commissioner Steen to move forward with the recommended closing of select communications facilities through attrition. Motion passed unanimously.**

Executive Session (49:47)

The Commission went 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; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; and ongoing criminal investigations. Executive Session began at 11:00 a.m. and ended at 1:25 p.m.

(50:51) The Public Safety Commission reconvened at 1:25 p.m. A quorum was present.

Ongoing Business (51:12)

There was no update report on the search to retain a new General Counsel.

The report on the 28-day work cycle and overtime and compensatory time policy was deferred to the next Commission meeting.

Deputy Director MacBride reported details, by division, on the Fiscal Year 2011 Operating Budget, including encumbrances, stating it was one month into the fiscal year. She continued with a report on purchases using seized funds stating there was a \$7.9 million balance.

DAD Woodall, Education, Training & Recruitment, provided the results of a requested study comparing the Department recruit school size, requirements and salaries with the Austin Police Department and Texas Parks & Wildlife. Commissioner Steen asked if the requirement on school level was statutory. DAD Woodall stated it was not, but that having a degree showed commitment. He stated the Commission could change to require a Bachelors degree. He added the intent of the Department is to move to a 14th grade level as discussed at the September PSC meeting. Commissioner Steen focused on the department's 20% attrition rate, tying it to the educational requirement, and stated it would be worth a study. He stated having a degree drove success in an individual.

There were no further Commission or division reports presented.

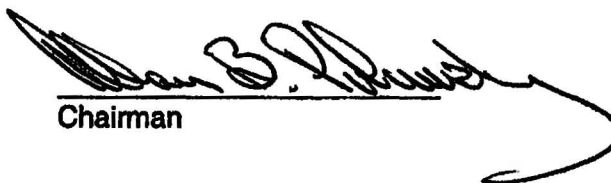
(01:23:49) A motion was made by Commissioner Steen and seconded by Commissioner Clowe to approve Consent Items A, C 1-6, and D 1-3 as presented. Motion passed unanimously.

After Colonel McCraw provided some history on Honorary Rangers and list of previous recipients, a motion was made by Commissioner Clowe and seconded by Commissioner Steen to approve Consent Item B. Motion passed unanimously.

The next meeting of the Public Safety Commission will be held on November 30, 2010.

The meeting was adjourned at 2:07 p.m.

Read and approved this 30th day of November, 2010.


Chairman

IN THE MATTER OF § BEFORE THE

THE DISCHARGE OF § PUBLIC SAFETY COMMISSION

PROBATIONARY EMPLOYEE § IN AUSTIN, TRAVIS COUNTY, TX

Advice and Consent

In accordance with Government Code Section 411.007(f), the Director found that the following named probationary employee was unsuitable for continued employment in the Department of Public Safety. The Public Safety Commission has consented to the discharge of this employee:

Employee Name	Employee Title/Division	Date of Discharge
Krystle Salgado	Trooper Trainee, Administration	09/03/10

Approved:

Allan B. Polunsky, Chairman
Public Safety Commission
Date: October 21, 2010

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On October 21, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Driver License Rules
Title 37 T.A.C. Part I, Chapter 15
Subchapter J
Section 15.163

The Texas Department of Public Safety (the department) adopts the repeal of Section 15.163, concerning Amnesty, Incentive and Indigency Programs without changes to the proposed text as published in the August 6, 2010 issue of the *Texas Register* (35 TexReg 6798).


Adoption of this repeal is necessary in order to simultaneously adopt a new Section 15.163 which will provide for an added reduction on all surcharges issued prior to the proposed rule providing drivers the ability to comply with the Driver Responsibility law and maintain driving privileges.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, Section 708.157.

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, Section 2001.033.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On October 21, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Driver License Rules
Title 37 T.A.C. Part I, Chapter 15
Subchapter J
Section 15.163

The Texas Department of Public Safety (the department) adopts new Section 15.163, concerning Amnesty, Incentive and Indigency Programs. New Section 15.163 is adopted with changes to the proposed text as published in the August 6, 2010 issue of the *Texas Register* (35 TexReg 6799) and will be republished.

Adoption of this new section provides for an added reduction on all surcharges issued prior to the proposed rule, providing drivers the ability to comply with the Driver Responsibility law and maintain driving privileges. These changes promote the department's objective of increasing public safety on the roadways by ensuring the license holder remains in compliance with the law and in compliance with the surcharge program.

The department accepted comment on the proposed rule through September 7, 2010. Written comments were submitted by Rep. Lon Burnam, Rep. Ruth McClendon, Denise Rose, J.D. representing Texas Hospital Association, Amanda Marzullo representing Texas Fair Defense Project, John A. Guest representing Teaching Hospitals of Texas, Texas Criminal Justice Coalition, and 39 individuals. Changes were made to proposed new Section 15.163 based on the comments received by the department. Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: Regarding Section 15.163 (a)(5) and (6), the Teaching Hospitals of Texas recommended adding the ability to pay the reduced surcharge in partial payments during the amnesty period, and to allow for e-mail notifications in lieu of mailing notices to customers.

RESPONSE: The department agrees with these recommendations. The rule states that payment of the reduced amount must be received by the end of the amnesty period. The department will provide information to applicants on the acceptance of payments in any amount during the amnesty period. The department changed the wording in Section 15.163(a)(6) from "mailed" to "sent", which is consistent with the indigency program language, to allow for e-mailing notifications to customers.

COMMENT: Regarding Section 15.163(b), the Texas Hospital Association recommended implementation of the incentive program on a specific date, such as April 1, 2011. Rep. Lon Burnam, and The Texas Criminal Justice Coalition recommended the implementation of the incentive program not be left to the department's discretion.

RESPONSE: The department disagrees with these comments. The proposed language allows the department to implement the incentive program upon completion of the fiscal analysis of the amnesty and indigency programs.

COMMENT: Regarding Section 15.163(b)(2) and (3), the Texas Fair Defense Project recommended relief to other low-income drivers by amending the incentive program to apply to individuals living above 125% but below 300% of the federal poverty guidelines. It further recommended the removal of the reduction for payment of the surcharges in full, and only implementing the reduction of subsequent years for the low-income drivers. They assert that this would allow the department to implement the incentive program immediately, and would not result in the estimated fiscal impact of the proposed incentive program.

RESPONSE: The department agrees with the recommendation for providing an incentive to low-income drivers, and has amended the incentive program by adding the new criterion for eligibility as paragraph (2) of subsection (b) which results in the renumbering of the subsequent paragraphs within subsection (b). The department does not agree with removal of the reduction for payment of surcharges in full, as it provides low-income drivers an additional option for receiving a reduction and complying with all three surcharges immediately.

COMMENT: Regarding Section 15.163(b)(3)(B) – (D), the Texas Hospital Association recommended clarification of the timeframe for payment of a reduced surcharge amount based on the date the individual receives notification that a surcharge is due under the Driver Responsibility Program.

RESPONSE: The department is in agreement with this public comment, and has amended the language to specify the time period begins from the date of the surcharge notice.

COMMENT: Regarding Section 15.163(c), the Teaching Hospitals of Texas submitted a comment supporting the indigency program, and recommended applications be made available online and in all driver license offices.

RESPONSE: The department agrees with the recommendations, and the rule already provides for applications to be available online. The department has added the website address where the application is located online and the department will also make applications available in the driver license offices.

COMMENT: Regarding Section 15.163(c)(1), Rep. Lon Burnam, The Texas Fair Defense Project, and The Texas Criminal Justice Coalition recommended the waiver of the surcharge under the indigency program to be the same as the statutory waiver of surcharges by courts under Texas Transportation Code, Section 708.158.

RESPONSE: The department is not in agreement with this comment. A waiver of the surcharges is not authorized under Texas Transportation Code, Section 708.157, therefore the department cannot implement this suggestion.

COMMENT: Regarding Section 15.163(c), Rep. Lon Burnam recommended the reduction of surcharges for individuals living at or below 250% of the federal poverty level and Rep. Ruth McClendon recommended the department define the indigency level as that adopted by the Health and Human Services Commission for Medicaid eligibility rather than 125%.

RESPONSE: The department is not in agreement with these comments. Texas Transportation Code, Section 708.158, creates an indigency provision administered by the court at the time of disposition for an offense. This indigency provision defines indigency as living at or below 125% of the poverty level, which is consistent with the definition proposed by the department in Section 15.163(c).

COMMENT: Regarding Section 15.163(c)(1), the Texas Fair Defense Project recommended relief to other low-income drivers be limited to individuals living above 125% but below 300%, or to be based on income alone, rather than individuals with a 50% debt-to-income ratio because this could include individuals whose income is greater than 300% of the federal poverty guidelines.

RESPONSE: The department recognizes that the determination of indigency based on a debt-to-income ratio can have the unintended consequence of offering a reduction to individuals who have the ability to comply, and has amended the indigency program by removing this criterion.

COMMENT: Regarding Section 15.163(c)(2), the Texas Criminal Justice Coalition recommended removing the application notarization requirements to more efficiently serve those eligible and minimize administrative burdens.

RESPONSE: The department is not in agreement with this comment. The use of a sworn affidavit is an accepted practice by state and federal courts. The sworn affidavit eliminates the need for supporting documents with each application, which would require extensive resources to review. Furthermore, it allows for prosecution of individuals who attempt to receive a reduction by submitting a fraudulent application.

COMMENT: Regarding Section 15.163(c)(7), the Texas Criminal Justice Coalition recommended extending the requirement for new applications to one year to more efficiently serve those eligible and minimize administrative burdens.

RESPONSE: The department is not in agreement with these comments, as an individual's status as indigent can change. The reapplication process after 90 days reduces the burden on the individual by not requiring a new application for each new surcharge, while still allowing the department to verify that the indigent status has not changed.

Additionally, the department has made the following nonsubstantive changes to Section 15.163, for the purposes of clarity:

Regarding Section 15.163(a), the words "amnesty program" have been added at the beginning of the subsection to easily identify the name of the program.

Regarding Section 15.163(a)(2), the website address and telephone number to complete the application for amnesty have been added to facilitate the application process.

Regarding Section 15.163(b), the words "incentive program" have been added at the beginning of the subsection to easily identify the name of the program.

Regarding Section 15.163(b)(3)(A), the website address to obtain an online application and the option to pick up the application at any driver license office has been added to facilitate the application process.


Regarding Section 15.163(c), the words "indigency program" have been added at the beginning of the subsection to easily identify the name of the program.

Regarding Section 15.163(c)(2), the website address to obtain an online application and the option to pick up the application at any driver license office has been added to facilitate the application process.

The new section is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, Section 708.157(a), which authorizes the department to establish a periodic amnesty program for holders of a driver's license on which a surcharge has been assessed for certain offenses; Texas Transportation Code, Section 708.157(b), which authorizes the department to establish an incentive program for holders of a driver's license on which a surcharge has been assessed for certain offenses; and Texas Transportation Code, Section 708.157(c), which requires the department to establish an indigency program for holders of a driver's license on which a surcharge has been assessed for certain offenses.

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, Section 2001.033.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On October 21, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Crime Records
Title 37 T.A.C. Part I, Chapter 27
Subchapter K
Sections 27.141 – 27.144

The Texas Department of Public Safety (the department) adopts new Sections 27.141 – 27.144, concerning Federal Firearms Disabilities without changes to the proposed text as published in the August 6, 2010 issue of the *Texas Register* (35 TexReg 6801).

Adoption of these new sections is necessary to clarify the methods by which the clerk of the court may report the disabilities to the department and the methods by which the subject of the disability may access the record and submit corrections.

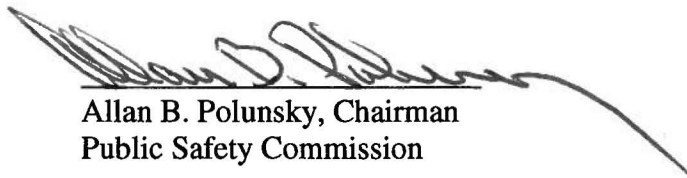
No comments were received regarding the adoption of these new sections.

The new sections are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Section 411.052, which authorizes the department to establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation and a procedure to correct the information.

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, Section 2001.033.


Allan B. Polunsky, Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On October 21, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Metals Registration
Title 37 T.A.C. Part I, Chapter 36
Sections 36.1 – 36.21

The Texas Department of Public Safety (the department) adopts new Sections 36.1 – 36.21, concerning Metals Registration without changes to the proposed text as published in the August 6, 2010 issue of the *Texas Register* (35 TexReg 6803).

Adoption of these new sections is necessary to administer Chapter 1956 of the Texas Occupations Code.

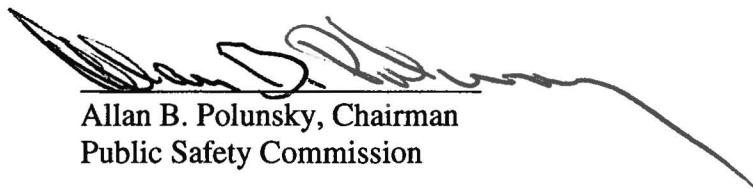
No comments were received regarding the adoption of these new sections.

The new sections are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, Section 1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; Texas Occupations Code, Section 1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act; 80th Legislature, 2007, Senate Bill 1879; 81st Legislature, 2009, Senate Bill 904; and Texas Health and Safety Code, Section 481.003.

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, Section 2001.033.


Allan B. Polunsky, Chairman
Public Safety Commission