

**MINUTES**  
**PUBLIC SAFETY COMMISSION**  
**December 17, 2010**  
**Austin, TX**

The Public Safety Commission met in Austin, Texas on December 17, 2010. Attending the meeting were Chairman Allan Polunsky, Commissioners C. Tom Clowe, Ada Brown and John Steen. Commissioner Carin Barth joined the meeting at the beginning of the Director's Report. 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 10:03 a.m. Proper notice had been posted.

**Approval of Minutes** (00:37 - indicates time stamp from audio)

**A motion was made by Commissioner Steen and seconded by Commissioner Brown approving the minutes as submitted for the November 30, 2010 meeting. Motion carried unanimously.**

**Public Comment** (01:11)

Region Seven Commander Joe Ortiz introduced guests Rick Van Owen, and Rod Welch, Sergeants-at-Arms for the House and the Senate. These individuals were responsible for nominating DPS employee, Lt. Ken Scheer for the Legislative Staff Achievement Award from the National Legislative Services and Security Association (NLSSA). This award recognizes staff excellence in supporting the work of a state legislature and strengthening the legislative institution. Lt. Scheer is the only DPS recipient for this award to date. Chairman Polunsky expressed appreciation for all that Lt. Scheer had done.

**Director's Report** (12:22)

Director McCraw reported on a major case investigation, the Wounded Warrior Program and personnel. The major case involved two East Texas serial church arsonists. He reported both suspects were arrested, pleaded guilty and convicted. The Wounded Warrior program, a program where the Army recognizes seriously wounded individuals by paying for them to come to work as interns, will provide for two individuals to be placed at DPS. Chairman Polunsky inquired how the individuals were identified and recruited. Director McCraw stated this was a way for the interns to transition back into civilian life and use their talents and stated they were hand selected. Chairman commented that we would be as grateful to them as they would be to us. Personnel recognized were Mike Lesko, for his nomination by the FBI to be on the powerful Criminal Justice Information Board. Director McCraw then commented that Sgt. Brian Hawthorne would begin on Monday to work the Legislative session as a permanent member of the detail staff.

Commissioner Brown commented that the last couple of meetings had discipline issues conducted in the discharge hearings. She added how refreshing it was to acknowledge the good that was occurring at the meeting today and hearing about the outstanding successes of the people. Chairman agreed.

**New Business** (24:30)

AD Administration, Valerie Fulmer presented information on two contracts: the Sex Offender Registration Neighborhood Postcard Notification Services (SmartMail of Austin) and the Remotely Hosted Criminal Incident Records Management System (RRMS) project to be awarded. She stated that the money for the later contract came from the Criminal Justice Department.

**Executive Session** (26:14)

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 10:30 a.m. and ended at 12:40 p.m.

(26:45) The Public Safety Commission reconvened at 12:40 p.m. A quorum was present.

### **Ongoing Business** (33:25)

Office of Inspector General Stuart Platt introduced individuals who had been recently transferred and promoted to OIG: CID Division Captain, OIG- Mike Stanford Lieutenants: Todd Cummins (already was LT in THP transferred) Bobby Strickland (was Staff LT and competed for permanent OIG LT Rank) and New Promotions from OIG Board to LT: James Lopez, Kevin Huggins, Chris Pratt, and Hoby Smith.

Commissioner Brown stated she would be interviewing semi-finalists for the General Counsel position the next day and would report back at the January meeting with the 2-3 finalists. Chairman Polunsky thanked her for her time and effort in this search.

DD Cheryl MacBride presented the FY2011 budget. She brought attention to the report reflecting the 2.5% proposed reductions, most recently requested, totaling \$3,165,769. She indicated the reductions would be moved to a holding account as soon as possible. Chairman Polunsky stressed the reduction options considered, stating it was important to mention what items were not being eliminated or considered such as layoffs and overtime for non-commissioned employees. **A motion was made by Commissioner Barth seconded by Commissioner Steen approving the revisions to the 2011 FY Budget as presented. Motion carried unanimously.** Chairman Polunsky expressed it was troubling to him that these reductions had to be considered by the Department who provided the Public Safety to the citizens of the State of Texas.

DD Cheryl MacBride provided an updated seized funds report and requested consideration and approval by the Commission for a 5<sup>th</sup> recruit school, graduating in FY2011. Recruiting, Training and Education DAD Frank Woodall provided responses on the number of recruits achieved at each school and the efforts to attract individuals to the force in order to break even. Commissioner Barth expressed her concerns with the attrition rates and reasons for them leaving. She inquired primarily about the same front-end process and changes that could be made in order to lower the number of those leaving. She stressed she understood the need for the additional school, and repeated her concerns were about the individuals that would leave due to the front-end reasons DPS has been experiencing. She further asked Colonel McCraw if considering the current fiscal year budget did he feel this was the best use of seized funds. He stated he recommended the \$1.6M be used to fund the additional recruit school. Chairman Polunsky asked about the 380 vacancies and when DPS would catch up. The Director was not able to predict. Commissioner Barth inquired what the cost to run a school of 120 would be. DAD Woodall stated \$3.2M (\$26,879 per recruit). Chairman stated the information it costs per recruit at each school should be available at these meetings when this item was on the agenda. He made a statement that this had been an issue with him for a long time. He continued stating he was impressed with the current quality and higher caliber of people being brought into the department and thought that had been addressed, however he was concerned over the number of vacancies and did not feel anything was being done to resolve the issue. He stressed the Director needed to do whatever he could do in order to address the vacancies. Commissioner Clowe echoed the same concerns, adding it would be unrealistic to think the 380 vacancies could be filled by a certain date. He complimented DPS on the superb quality of individuals such as those introduced earlier today and added the tough job was that the Troopers are underpaid. He thanked DAD Woodall for his efforts and the work he continued to do, and stated he appreciated his honesty and candor. **A motion was made by Commissioner Brown seconded by Commissioner Clowe approving the 5<sup>th</sup> Recruit School using seized funds in the amount of \$1,612,768. Motion passed 4-1. Commissioner Steen voted no and stated he would make a request that some of the seized funds be considered for use to enhance safety and security at headquarters.** Commissioner Barth asked that within the next few months DAD Woodall bring a report showing the actual breakdown - fixed and variable - dollar amounts per recruit at each school.

Commissioner Steen suggested that they bring a presentation to the next Commission meeting and walk the Commission through this item.

(01:28:40) Major Rhonda Fleming of the Equal Employment Opportunity Office provided an update on the sexual harassment policy new hire and compliance training. She presented a video depiction of a hostile working environment occurrence which took place at the DPS training academy. Major Fleming provided a timeline of the training done since her joining this division, stating DPS was now current with the training. Commissioner Barth complimented Major Fleming on the fine job she has done adding DPS had come a long way. Commissioner Clowe asked if instances, such as in the video, were continuing to occur. Major Fleming responded that the "reporting of incidences" had gone up, so the training was producing good results. She added the education and awareness of this policy had improved more than 100%. Chairman Polunsky asked the Major where she worked and how long prior to this position – she replied she had been in DL since moving to this position in 2009. Commissioner Steen added DPS would not have made it this far in the training without the Director's leadership and thanked him.

Drivers License DAD Paul Watkins presented an updated status on the DL metrics and progress continuing in the: customer service, safety/security and employee environment improvement plan. He displayed slides demonstrating the customer service wait times. Commissioner Barth inquired why someone would have had to wait two hours, and commented these were instances that needed to be addressed. DAD Watkins stated with the information Nemo Q provides it would now be possible to look into. DAD Watkins said recommendations were being considered regarding the population growth vs. DL offices and personnel. Commissioner Clowe asked that copies of his report be placed in their binders prior to all future meetings since this is a continuing effort. He added he did not think DPS was where they wanted to be, so at future meetings, he wanted to see the progress. Commissioner Steen inquired about DAD Watkins background and he replied he had been a business man and came to work for DPS last year; had a Master's degree in business and graduated from West Point. Commissioner Barth stated the statistics presented at the meeting were much more significant than the usual "monthly report of accomplishments" placed in their binder, so she wanted this type of presentation in the future. Commissioner Brown agreed.

There were no reports from any Commission member.

Law Enforcement Support AD Mike Simpson and DAD Pat Johnson presented a recent milestone in the McAllen area. Two technicians at that location were recently recognized for burning the one-millionth pound of marijuana! He displayed a picture of the incinerator purchased (under \$200K) for these disposals, which burns twenty thousand pounds per day and is the largest one of its kind in the state. AD Simpson stated the Troopers had to perform the labor intensive process of removing the packaging materials since those could not be placed in the incinerator. He stated various options for the process were being considered in order to remove the commissioned officers from this task as well as the cost effectiveness to change this procedure. Commissioner Steen asked if we provided the service to other agencies for free. AD Simpson stated DPS did, but that other agency's officers provided us security and manpower in the process in exchange. Chairman Polunsky asked OGC Duncan Fox to follow up with a report at the next meeting on the authority to allow DPS to charge for these incinerator services and for Government Relations Amanda Arriaga to check with Senator Hinojosa to see if this would be contrary to his wishes.

Colonel Lamar Beckworth stated there were no issues with any of the consent items. **A motion was made by Commissioner Steen and seconded by Commissioner Barth approving the consent items A and B 1-6 as presented. Motion passed unanimously.**

Commissioner Steen asked that a report on gifts to employees with possible action on some sort of reporting requirement be placed on the January agenda.

The next meeting of the Public Safety Commission will be held on Thursday, January 20, 2011 starting at 9:30 a.m. with a tour of the Driver License office.

The meeting was adjourned at 2:40 p.m.

Read and approved this 14<sup>th</sup> day of January, 2011.



Chairman

TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On December 17, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Organization and Administration  
Title 37 T.A.C. Part I, Chapter 1  
Subchapter X  
Section 1.291

The Texas Department of Public Safety (the department) adopts new Section 1.291, concerning Technology Policy without changes to the proposed text as published in the November 5, 2010 issue of the *Texas Register* (35 TexReg 9860).

This new section is necessary to implement Texas Government Code, Section 411.0043, which requires the department to have a technology policy and utilize appropriate technological solutions to improve the department's ability to perform its functions.

No comments were received regarding the adoption of this new section.

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; and Texas Government Code, Section 411.0043 which authorizes the commission to implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions.

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, Chair  
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On December 17, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

License to Carry Handguns  
Title 37 T.A.C. Part I, Chapter 6  
Subchapter B  
Section 6.11 and Section 6.12

The Texas Department of Public Safety (the department) adopts amendments to Section 6.11 and Section 6.12, concerning Eligibility and Application Procedures without changes to the proposed text as published in the November 5, 2010 issue of the *Texas Register* (35 TexReg 9860).

The amendments to Section 6.11 are necessary to provide consistency with changes made by 81st Legislature, 2009 to Texas Government Code, Section 411.177(a) which removed references to the proficiency certificate requirement. In addition, amendments clarify that the department will establish by policy the required method and form of proof of proficiency.

The amendments to Section 6.12 are intended to articulate the department's policy of automating the application process to include: encouraging online application, requiring submission of fingerprints in an electronic format, and adopting the use of photographs through the department's driver license system or other electronic means.

No comments were received regarding the adoption of these amendments.

The amendments 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 Government Code, Section 411.174(a)(1), which authorizes the department to determine the form in which applications are submitted, and Texas Government Code, Section 411.197, which authorizes the department to adopt rules to administer Texas Government Code, Subchapter H relating to License to Carry a Concealed Handgun.

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, Chair  
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On December 17, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

License to Carry Handguns  
Title 37 T.A.C. Part I, Chapter 6  
Subchapter G  
Sections 6.71 – 6.73, 6.78, 6.83, 6.84, and 6.87

The Texas Department of Public Safety (the department) adopts amendments to Sections 6.71 - 6.73, 6.78, 6.83, 6.84, and 6.87, concerning Certified Handgun Instructors without changes to the proposed text as published in the November 5, 2010 issue of the *Texas Register* (35 TexReg 9863).

The amendments to Sections 6.71, 6.72, and 6.78 are necessary to implement the requirement that concealed handgun license instructor's training be offered through an online format for the initial renewal and on alternate subsequent renewals as required by Texas Government Code, Section 411.190.

The amendments to Section 6.73 are necessary to repeal the requirement that any non-semi-automatic weapon used to qualify be at least .38 caliber, and to clarify that the prohibition against optical enhancers is applicable to all applicants for concealed handgun licenses, and not only applicants for instructor certifications.

The amendments to Section 6.83 are necessary to repeal the current rule-based requirement of range certification. The certification requirement is without specific statutory authority. Moreover, there are no statutory standards for range safety, nor any statutory basis for establishing such standards. "Certifying" the range facilities creates unsupported expectations of public safety and exposes the department to potential liability for range accidents. It also appears to create a license without statutory authority and without statutory guidance regarding eligibility or disciplinary action.

The amendments to Section 6.84 provide consistency with the proposed amendments to Section 6.83. As such, the amendments to Section 6.84 are proposed in a manner consistent with the proposed amendments to Section 6.83, by striking the references to "range number", and adding the requirement that the range be identified by name.

The amendments to Section 6.87 are necessary to provide consistency with changes made by the 81st Legislature, 2009 to Texas Government Code, Section 411.177(a) which removed references to proficiency certificate requirements.

No comments were received regarding the adoption of these amendments.

The amendments 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 411.197, which authorizes the department to adopt rules to administer Texas Government Code, Subchapter H relating to License to Carry a Concealed Handgun.

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, Chair  
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On December 17, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

License to Carry Handguns  
Title 37 T.A.C. Part I, Chapter 6  
Subchapter G  
Section 6.89

The Texas Department of Public Safety (the department) adopts the repeal of Section 6.89, concerning Proficiency Certificates without changes to the proposed text as published in the November 5, 2010 issue of the *Texas Register* (35 TexReg 9865).

The repeal of Section 6.89 is necessary to provide consistency with changes made by the 81st Legislature, 2009 to Texas Government Code, Section 411.177(a) which removed references to proficiency certificate requirements.


No comments were received regarding the repeal of this section.

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 Government Code, Section 411.197, which authorizes the department to adopt rules to administer Texas Government Code, Subchapter H relating to License to Carry a Concealed Handgun.

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, Chair  
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On December 17, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

DNA, CODIS, Forensic Analysis, and Crime Laboratories  
Title 37 T.A.C. Part I, Chapter 28  
Subchapter L  
Section 28.191

The Texas Department of Public Safety (the department) adopts new Section 28.191, concerning Sexual Assault Evidence in Cases Without Law Enforcement Reporting without changes to the proposed text as published in the November 5, 2010 issue of the *Texas Register* (35 TexReg 9865).

This section is adopted pursuant to 81st Legislature, 2009, HB 2626, which added Code of Criminal Procedure, Article 56.065 titled "Medical Examination For Sexual Assault Victim Who Has Not Reported Assault; Costs". This new article requires the department to pay appropriate fees for the forensic portion of the medical examination and for the evidence collection kit in specified circumstances, in addition to authorizing the department to develop procedures regarding the submission, transfer, and preservation of evidence collected under the article.


No comments were received regarding the adoption of this section.

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; and Code of Criminal Procedure, Article 56.065(i), which provides that the department shall adopt rules as necessary to implement this article.

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, Chair  
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On December 17, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Sex Offender Registration  
Title 37 T.A.C. Part I, Chapter 37  
Section 37.1 and Section 37.2

The Texas Department of Public Safety (the department) adopts new Section 37.1 and Section 37.2, concerning Sex Offender Registration without changes to the proposed text as published in the November 5, 2010 issue of the *Texas Register* (35 TexReg 9866).

The sections are necessary to clarify the method by which a social networking site may request and receive online identifiers maintained by the department that relate to a person required to register as a sex offender under Code of Criminal Procedure, Chapter 62.


No comments were received regarding the adoption of these 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 Code of Criminal Procedure, Article 62.0061(b), which authorizes the department to establish a procedure through which a commercial social networking site may request online identifiers, and Code of Criminal Procedure, Article 62.010, which authorizes the department to adopt any rule necessary to implement Code of Criminal Procedure, Chapter 62.

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, Chair  
Public Safety Commission