

# SUNSET ADVISORY COMMISSION

## FINAL REPORT

Department of Public Safety

Private Security Board

Polygraph Examiners Board

July 2009



# Sunset Advisory Commission



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\* Senator Kim Brimer served on the Commission from December 2005 through December 2008.

\*\* Charles McMahan was appointed to fill the unexpired term of Michael Stevens.

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Director

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*In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.*

**DEPARTMENT OF PUBLIC SAFETY  
PRIVATE SECURITY BOARD  
POLYGRAPH EXAMINERS BOARD**



**SUNSET FINAL REPORT  
JULY 2009**



This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission and the Legislature for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and members of the public, as well as action taken by the Sunset Commission and the Legislature in each step of the Sunset process.

- ◆ *Sunset Staff Report* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
- ◆ *Hearing Material* – Summarizes all responses from agency staff and members of the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission.
- ◆ *Decision Material* – Includes additional responses, testimony, or new policy issues raised during the public hearing for consideration by the Sunset Commission in its decision meeting on an agency.
- ◆ *Commission Decisions* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
- ◆ *Final Report* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.



*Staff Report – May 2008*  
*Commission Decisions – October 2008*  
*Final Report – July 2009*

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# SUMMARY




# Summary

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Few state agencies touch as many Texans' lives as the Department of Public Safety (DPS). Virtually every adult in the state has a driver license or identification card issued by the agency, and automobile owners must get their vehicles inspected at stations regulated by DPS. Because Texas ranks first among the states for frequency of tornados and flash floods, DPS's emergency management efforts also impact large numbers of Texans. The Department's law enforcement functions also affect many in the state, from the black and white patrol cars on rural highways to Texas Rangers investigating major crimes.

Given the broad reach of the agency and the importance of its mission – enforcing laws to protect public safety and preventing and detecting crime – Sunset staff found that DPS has significant room for improvement. Despite its many dedicated employees, the Department's tendency to do things “because they've always been done that way,” and not carefully scrutinize operations reduces the agency's success. In its review of the agency, Sunset staff sought ways to promote modernization and effectiveness of the Department. For example, a management and organizational study would provide an objective look at the functions and structure of the law enforcement operations of the agency and recommend improvements. The study would examine mismatched regional boundaries, information silos, and other areas. At the direction of the Public Safety Commission, the Department is in the process of contracting for an information technology audit. This audit would outline a strategy to correct years of neglect of this function so vital to modern law enforcement agencies.

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*Sunset staff sought ways to promote modernization and internal scrutiny at the Department.*

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The Department's promotion policy provides an example of the agency's resistance to change. Requiring commissioned officers to regularly move their families across the state to receive a promotion made more sense in the 1950s when fewer spouses worked outside the home, but not today, and adjustments should be made to the policy.

Sunset staff found that the Department's Vehicle Inspection program suffers from a lack of agency scrutiny. Staff was surprised to learn that DPS does not study statewide data on citations and warnings issued to vehicle inspection stations, and therefore could not explain regional variations in this program so susceptible to fraudulent activity by the stations.

The Sunset review also assessed the need to continue the Private Security Board, operated by the Department as the Private Security Bureau (Bureau). The Department assumed regulation of the private security industry in 2003 when the Legislature abolished the Texas Commission on Private Security as a stand-alone agency and transferred its functions to the Department. Sunset staff found that the Bureau has cleared the backlog of enforcement cases



inherited from its predecessor and effectively regulates the industry. Because the Bureau will continue to be reviewed along with DPS in the future, the Private Security Board no longer needs a separate Sunset date.

Sunset staff also evaluated the Polygraph Examiners Board, which is administratively housed at the Department of Public Safety, and is separately subject to review under the Sunset Act. Given the Polygraph Board's small number of staff and licensees, potential Board member conflicts of interest, and an increasingly antagonistic relationship between DPS and the Polygraph Board, Sunset staff determined that transferring polygraph regulation to the Texas Department of Licensing and Regulation would best serve the public.

The following material provides a summary of the Sunset staff recommendations on the Department of Public Safety, Private Security Board, and Polygraph Examiners Board.

## **Issues and Recommendations**

### **Issue 1**

***The Department of Public Safety's Operating Structure Diminishes Its Potential Effectiveness.***

#### **Key Recommendations**

- ◆ The Department should contract for a management review and organizational study to examine the Department's structure, communication, and policies.
- ◆ DPS should operate the Driver License program using a civilian business management model.

### **Issue 2**

***The Department Fails to Effectively Manage the Vehicle Inspection Program.***

#### **Key Recommendations**

- ◆ DPS should manage the Vehicle Inspection program as a civilian business and licensing operation.
- ◆ Establish Vehicle Inspection goals and expected performance outcomes.

### **Issue 3**

***Clarifying Roles and Exempting GDEM From Capital Expenditure Caps Would Assist Texas' Emergency Management Function.***

#### **Key Recommendations**

- ◆ Specify that the Department's Director appoints the chief of GDEM, subject to approval of the Governor, and require coordination between DPS, GDEM, and the Governor's Office of Homeland Security.

- ◆ Change GDEM's name to the Texas Division of Emergency Management, and clarify that it is a division of the Department.
- ◆ The Sunset Commission should recommend that the Legislature exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds, with certain precautions.

## **Issue 4**

### ***The Administrative Hearing Process for Suspending Driver Licenses of Individuals Arrested for DWI Wastes Government Resources.***

#### **Key Recommendations**

- ◆ Require hearings to be held by telephone, and allow witnesses to testify by telephone, unless the judge finds that an in-person hearing or appearance is necessary for the fair administration of justice.
- ◆ Require affidavits of the breath test operators or breath test supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence.
- ◆ Require the defense to request breath test operators and breath test supervisors by subpoena.

## **Issue 5**

### ***DPS' Law Enforcement Promotion Policy May Impede the Department From Making the Best Use of Its Workforce.***

#### **Key Recommendation**

- ◆ The Department of Public Safety should modify its promotional policy to provide officers with location options when applying for promotions.

## **Issue 6**

### ***Key Elements of the Private Security Bureau's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.***

#### **Key Recommendations**

- ◆ Standardize the Bureau's licensing functions by allowing the Bureau to license by industry class endorsement, and authorize jurisprudence examinations.
- ◆ Provide more flexibility and fairness in application approval by allowing the Private Security Bureau to consider extenuating circumstances in approving or denying occupational licenses due to criminal histories.
- ◆ Update elements relating to enforcement such as allowing appeals of Private Security Board decisions to civil district court under the substantial evidence rule; and increasing the maximum administrative penalty to \$5,000 per violation, per day.

## Issue 7

### ***Texas Has a Continuing Need to Regulate the Private Security Industry Through the Private Security Bureau.***

#### **Key Recommendations**

- ◆ Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.
- ◆ Prohibit Private Security Bureau troopers from having outside employment as security officers.

## Issue 8

### ***Texas Has a Continuing Need for the Department of Public Safety.***

#### **Key Recommendation**

- ◆ Continue the Department of Public Safety for 12 years.

## Issue 9

### ***Transfer the Regulation of Polygraph Examiners to the Department of Licensing and Regulation.***

#### **Key Recommendations**

- ◆ Abolish the Polygraph Examiners Board and transfer its functions to the Texas Department of Licensing and Regulation.
- ◆ Establish a polygraph advisory committee to assist with the regulation of polygraph examiners.
- ◆ Conform elements of polygraph licensing and regulation to commonly applied licensing practices.

## Fiscal Implication Summary

One recommendation in this report would have a fiscal impact to the State.

- ◆ **Issue 9** – Transferring the functions of the Polygraph Examiners Board to the Texas Department of Licensing and Regulation would result in an estimated annual savings to the State of \$41,740. This recommendation would result in a reduction of one FTE, based on eliminating the administrative support position. The reduction of this FTE would result in an annual savings of about \$32,740 based on the average salary and fringe benefits for the position. The recommendation would also result in a savings of approximately \$9,000 due to a reduction of travel costs for Board members, based on average travel reimbursements for fiscal year 2007.

<b><i>Fiscal Year</i></b>	<b><i>Savings to the General Revenue Fund</i></b>	<b><i>Change in Number of FTEs From FY 2007</i></b>
2010	\$41,740	-1
2011	\$41,740	-1
2012	\$41,740	-1
2013	\$41,740	-1
2014	\$41,740	-1

## *Summary of Legislative Action*

### *H.B. 2730 Kolkhorst (Hinojosa)*

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The Legislature adopted all but one of the Sunset Commission's recommendations on the Department of Public Safety and the Private Security Board and added numerous provisions to House Bill 2730. The bill continues DPS for six years and removes the separate sunset date for the Private Security Board. The list below summarizes the major provisions of H.B. 2730, and more detailed discussion is located in each issue.

#### **Sunset Provisions**

1. Require the Department to manage the vehicle inspection program as a civilian business and licensing operation with established goals and expected performance outcomes.
2. Clarify roles among GDEM, DPS, and the Governor's Office of Homeland Security, and request that the Legislature, through the appropriations process, exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds.
3. Require the defense to request breath test operators and supervisors by subpoena in administrative license revocation hearings.
4. Conform key elements of the Private Security Bureau's licensing and regulatory functions to commonly applied licensing practices.
5. Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.
6. Require Sunset to conduct a limited scope review of DPS in 2011 to study the agency's implementation of the information technology audit conducted in 2008 and to review implementation of a civilian business management model for the Driver License Program.
7. Strengthen and rename the internal affairs function at DPS regarding investigation of potential wrongdoings by DPS employees and crimes committed on DPS property.
8. Request that the Legislature, through the appropriate legislative committees, consider whether technology specialists who engage in computer forensics and analysis should be separately registered or otherwise set apart from traditional private security personnel or investigators.
9. Authorize DPS to put the classroom part of the concealed handgun licensing renewal class and the written test online.
10. Continue the Department of Public Safety for 6 years.

#### **Provisions Added by the Legislature**

1. Modernize the Department's enabling statute.
2. Modify state law enforcement agencies' physical fitness programs.
3. Decentralize and rename the Texas Rangers Unsolved Crimes Investigation Team.

4. Increase training requirements for Driver License Division staff.
5. Increase integrity of driver licenses and identification certificates.
6. Modify driver education programs for minors.
7. Modify the Driver Responsibility Program.
8. Establish a driver record monitoring pilot program.
9. Conform state and federal law regarding motor vehicle conviction information on holders of commercial driver licenses.
10. Increase penalties for commercial drivers and youth who smuggle persons.
11. Amend certain driver license provisions.
12. Ease restrictions on who may hold a concealed handgun license (CHL), and remove penalties for failure to display a CHL.
13. Provide an alternative to the requirement to carry an automobile insurance card.
14. Authorize DPS to access FBI criminal history record information on holders of certain registrations, certificates, or permits.
15. Update statutes regarding collection and use of criminal history record information.
16. Improve counties' crime record data reporting.
17. Require subcontractors to obtain criminal history background checks on all employees who provide services at schools and are not holders of current teaching certificates.
18. Prohibit the release of public school employees' criminal history information.
19. Increase parking fines and fees in the Capitol Complex.
20. Exempt computer repair from the Private Security Act.
21. Create an interagency council to plan transferring the controlled substances database from DPS to the Pharmacy Board.
22. Allow DPS employees to donate compensatory or annual leave time for legislative purposes.
23. Authorize compensatory time for DPS security officers for working on certain holidays.
24. Modify inspection requirements for out-of-state motor buses.

### **Fiscal Implication Summary**

H.B. 2730 will create a gain to General Revenue of \$410,900 for the 2010-2011 biennium from increases in Capitol Complex parking fees.

## *Summary of Legislative Action*

### *S.B. 1005 Hinojosa (Kolkhorst)*

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The Legislature adopted all of the Sunset Commission's recommendations on the Polygraph Examiners Board and added minor statutory changes to Senate Bill 1005. The bill abolishes the Board and transfers its functions to the Texas Department of Licensing and Regulation. A summary of the major provision in S.B. 1005 appears below.

#### **Sunset Provision**

1. Transfer the regulation of polygraph examiners to the Department of Licensing and Regulation, and standardize licensing and enforcement provisions in the Act.

#### **Provisions Added by the Legislature**

None added.

#### **Fiscal Implication Summary**

Senate Bill 1005 will save the State about \$36,300 annually, resulting from the elimination of an administrative support position and a small reduction in travel costs by replacing seven Board members with five advisory committee members. TDLR received authority during the 81st Legislative Session to reimburse its advisory committee members.



# ISSUES





# Issue 1

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## *The Department of Public Safety's Operating Structure Diminishes Its Potential Effectiveness.*

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### Summary

#### Key Recommendations

- ◆ The Department should contract for a management review and organizational study to examine the Department's structure, communication, and policies.
- ◆ DPS should operate the Driver License program using a civilian business management model.

#### Key Findings

- ◆ DPS' organizational structure hampers communication and crime analysis.
- ◆ DPS lacks certain tools needed to prevent and respond to terrorism and other crimes.
- ◆ The levels of mid-management in the Department's law enforcement functions need further study.
- ◆ Driver license services operate through a law enforcement command structure rather than as a business service.
- ◆ Consulting firms provide objective, outside expertise that can increase law enforcement agencies' efficiency and effectiveness.

#### Conclusion

The Department of Public Safety (DPS) operates under a basic management and organizational structure that has not changed significantly in many years. The law enforcement functions operate in a chain of command style that works well for carrying out individual law enforcement activities, but hinders communication and sharing of information and ideas. This "silo" effect works to the detriment of the agency.

As Sunset staff further examined agency operations, it identified other potentially inefficient law enforcement operations. For example, DPS law enforcement functions appear to have significant numbers of officers assigned to mid-management positions, regional boundaries differ unnecessarily for different programs, the fusion center has not gotten far off the ground, and the agency's information technology systems also operate in silos. In the driver license program, staff found that DPS manages the program with a law enforcement command structure unnecessary to carry out what is primarily a business sales and customer service operation, albeit one with needs for a strong law enforcement presence.

Early in its review, Sunset staff identified the organizational inefficiencies discussed above. However, some of these problems dealt directly with law enforcement operations. Given that law enforcement is a specialty service that affects the safety of citizens as well as DPS officers, Sunset staff was not as confident about the impact of potential recommendations. Instead, staff focused on identifying the problems and examining whether an outside management evaluation with law enforcement expertise

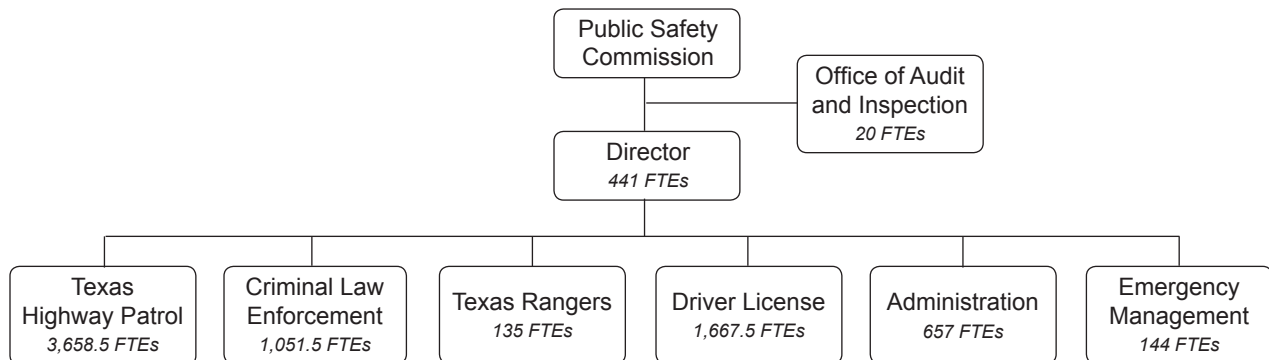
would more appropriately identify the solutions. Recently, the Public Safety Commission recognized similar organizational issues and has issued a request for qualifications to procure a firm to perform a management and organizational study of DPS. The problems identified in this issue could be incorporated into that study.

## Support

### The Department provides statewide public safety services.

- ◆ The Department of Public Safety (DPS) seeks to accomplish its mission to provide public safety services through four main functions: traffic law enforcement, criminal law enforcement, license regulation, and emergency management. DPS organizes its 7,800 employees into six divisions: Texas Highway Patrol, Criminal Law Enforcement, Texas Rangers, Driver License, Administration, and the Governor’s Division of Emergency Management. These divisions, in turn, have staff located throughout the state in regional offices to provide services at the local level. The *Department of Public Safety Organizational Chart*, shows the basic structure of the agency and fiscal year 2007 FTEs.

**Department of Public Safety  
Organizational Chart**



### DPS’ organizational structure hampers communication and crime analysis.

- ◆ Effective communication at DPS is stymied by the Department’s organization into six divisions which often act as silos, a command structure that limits delegation of authority, the divisions’ regional boundaries across the state, and separate information systems. Sunset staff interviews with DPS personnel revealed that staff within a certain division must often go up their chain of command to get assistance or resources from staff in another division, rather than communicating directly with their counterparts in the other division.

While the threats to public safety that DPS is charged with combating have changed over the years, particularly since the September 11, 2001

attacks, the agency has not changed its structure in response. For example, the agency continues to maintain separate programs for Criminal Intelligence, Narcotics, and Motor Vehicle Theft, even though they may all be dealing with the same transnational gang that is smuggling humans, trafficking narcotics, and stealing automobiles. While the agency locates these programs in the Criminal Law Enforcement Division, each have separate staff and separate performance measures, which impede effective communication and cooperation.

To facilitate information sharing and leverage a wider array of knowledge, the Department created the Bureau of Information Analysis (BIA) in late 2007 by transferring 158 DPS crime analysts from the Texas Rangers, Driver License Fraud Unit, Criminal Intelligence, Motor Vehicle Theft, and Narcotics services into one unit. Collocating has helped coordination and information sharing to some degree already – each service formerly handled its own administrative subpoenas, for example, but they are now combined into one tracking system – but the analysts largely perform the same tasks as before DPS consolidated them, and the effectiveness of BIA remains to be seen.

- ◆ Most divisions, and even some programs within divisions, at DPS have different regional boundaries. DPS maintains that regional boundaries depend on the span of control for each of the divisions or services, but having different regions creates communication and operational difficulties. For example, a Narcotics Service captain may discuss an investigation with a THP lieutenant, but that lieutenant cannot make any decisions without consulting his captain, who may be located in a different regional office.

Interviews with DPS field staff have revealed frustration with the mismatched boundaries, with staff saying they sometimes have difficulty even determining where their counterpart in another region is located. Adjustments to regional boundaries occur on an ad hoc basis, and Department staff could not recall the last time DPS evaluated them as a whole.

- ◆ Several of the Department's divisions have separate databases and reporting systems that cannot easily share information, further complicating communication. For example, DPS staff indicated that the Texas Rangers, Criminal Law Enforcement, and Highway Patrol divisions have three separate case reporting programs that cannot share information.

DPS also operates the separate driver licensing system with its long-delayed re-engineering and manages the state's TDEx information sharing system that pulls together information from local law enforcement, DPS, Department of Criminal Justice, and other sources. With guidance from the Public Safety Commission, the Department recently issued a request for qualifications for a consultant to assess its information technology strategy and provide direction for improvement.

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*Most divisions, and even some programs within divisions, have different regional boundaries.*

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*Several of the Department's divisions have separate databases and reporting systems that cannot easily share information.*

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## **DPS lacks certain tools needed to prevent and respond to terrorism and other crimes.**

- ◆ Since the attacks of September 11, most states and several local governments have established fusion centers, which are collaborative efforts designed to detect, prevent, investigate, and respond to criminal or terrorist activity.<sup>1</sup> While fusion centers vary based on state and local needs, they generally all involve two or more federal, state, or local agencies combining information from different sources – including law enforcement, public safety, and the private sector – since information-sharing weaknesses have been recognized as a major contributing factor in the nation’s lack of preparedness for the 9/11 attacks.<sup>2</sup>
- ◆ The Department established its fusion center, now called the Texas Intelligence Center, in 2003, and it works mainly as a call center from which law enforcement agencies can request assistance with simple tasks such as obtaining individuals’ dates of birth or addresses. The Center also provides daily security updates using federal databases and open source information such as newspaper articles and arrests. The Center’s operation within the BIA provides some ability to analyze information from multiple sources, but it does not currently have the local, state, and federal participation and resulting analytical capabilities to provide the integrated approach envisioned in a fusion center. While many fusion centers have expressed concern about the uncertainty of long-term federal funding, and many states do not yet meet baseline capabilities, the Department should be taking a leading role in development of an effective fusion center.
- ◆ DPS, like agencies in many other states, has struggled to pull its fusion center effort together. The agency is still working to enter participation agreements with federal and local agencies. While DPS has identified sufficient space for a fusion center at headquarters and remodeling has begun, development of information technology resources has stalled. Since much of the information and analyses that a fusion center must pull together is law enforcement related, a management analysis could identify additional roadblocks and provide best practices for fusion center development and operation.

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*The Department’s fusion center does not yet have the local, state, and federal participation to provide the analytical approach envisioned in a fusion center.*

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## **Levels of mid-management in the Department’s law enforcement functions need further study.**

- ◆ DPS uses a command structure that in some cases incorporates a major or commander, assistant commanders, captains, lieutenants, sergeants, corporals, and troopers. Several DPS divisions that use this type of structure have management ratios that appear out of line with standards used in non-law enforcement agencies. DPS does not have a written policy on management-to-staff ratios.
- ◆ For example, the Private Security Bureau has one civilian assistant chief, one captain, one lieutenant, and three sergeants in its management

structure. The Bureau of Information Analysis has one commander, one assistant commander, two captains, and four lieutenants in its management structure. Evaluating the need for each of these positions requires a background in law enforcement to ensure that public and officer safety are fully considered. Again, a law enforcement management analysis could best assess this question.

**Driver license services operate through a law enforcement command structure rather than as a business service.**

- ◆ The DPS driver license services primarily constitute a retail sales operation. Texans obtain driver licenses by passing a test, verifying identity, and paying a fee. Like many businesses, the operation has a significant online component for Texans to renew their licenses. As shown in the textbox, *Key Driver License Business Outputs*, the Division has a very busy business operation.

**Key Driver License Business Outputs**

- ◆ About 16.3 million Texans hold driver licenses.
- ◆ DPS issues about 6.2 million driver licenses and identification cards each year.
- ◆ About 16 percent of renewal transactions occur online.
- ◆ DPS performs about 6 million driver license tests a year.
- ◆ The Division collected \$95 million in driver license fees in fiscal year 2007.
- ◆ DPS also collected \$61 million in driver record fees.

- ◆ The Driver License Division employs roughly 1,600 staff, 220 or 14 percent of which are commissioned officers. DPS operates 256 driver license offices located throughout the state. In fiscal year 2007, DPS spent \$104 million to operate the Division.
- ◆ The Driver License Division does not effectively meet consumer needs. DPS has long had high-profile problems with customer service, such as long wait times for citizens in driver license offices and in its call centers. While the agency does not have overall statistics on wait time in its driver license offices, the staff strives for an average time in line of no more than 20 minutes. This wait time is very different for each office, although peak wait times usually occur during lunch hours and are much longer than the 20 minute target. For example, the agency reports that the average wait time at the Houston-Gessner office is 33 minutes.

As opposed to most businesses, DPS has not adjusted its operating hours to meet consumer needs. Even the most crowded DPS driver license offices generally open from 8 a.m. to 5 p.m. Lines at the Gessner office in Houston are reported to snake outside and around the building at peak times.

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*A law enforcement management analysis could best assess DPS' command structure.*

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*The Driver License Division does not effectively meet consumer needs.*

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DPS' call center is also a source of frustration for customers. Of the 70,000 monthly phone calls, about 10,000 use the automated system to answer their questions. After navigating the menu tree, other callers wait an average 13 ½ minutes before being able to speak to a staff person. The agency admits most callers hang up before reaching a live person and that only about 35 percent of calls are actually completed. The call center closes at 5 p.m. and on weekends.

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*DPS' call center  
closes at 5 p.m.  
and on weekends.*

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- ◆ While primarily a business function, DPS manages the Driver License program through a law enforcement model. The Chief of the Division is a civilian, but the consumer-related field operations are overseen by two majors. At the regional level, DPS manages driver license functions with a captain who oversees two or three lieutenants who oversee sergeants that manage the day-to-day functions. No civilian management exists in the regions. Other than management, law enforcement is present to ensure security of the operations, investigate use of fraudulent documents, and arrest people that show up with outstanding warrants. Peace officer participation will likely also be integral to the changeover to the federal REAL ID program.
- ◆ Law enforcement officer training does not focus on business management. While some officers may bring business acumen to the job, such skills are not required. Well-trained business managers could better focus on customer service improvements and provide civilian personnel management techniques that may not be in the repertoire of officers.
- ◆ The Legislature and DPS have made efforts to increase the number of troops in the field. While many driver license commissioned officer positions must remain at those offices for security purposes, some management level officer positions would become available for reassignment if the offices changed to civilian business management.
- ◆ Most other states operate the driver licensing function through civilian management. Based on information from the American Association of Motor Vehicle Administrators, only 10 states use their public safety department for issuance of driver licenses. Thirty-eight states issue licenses through a department of motor vehicles. The remainder use a combination of other state agencies and local governments.

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*Most other states  
operate the driver  
license function  
through civilian  
management.*

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**Consulting firms provide objective, outside expertise that can increase law enforcement agencies' efficiency and effectiveness.**

- ◆ Numerous consulting firms perform management reviews to help improve practices at law enforcement agencies, including state police agencies such as the Department of Public Safety. For example, a series of studies of the New Jersey State Police made recommendations on staffing levels for patrol and investigation functions, the promotions policy, and the use of intelligence. A recent audit of the City of Austin Police Department recommended organizing units based on common mission to eliminate

overlapping duties, and reducing the number of command areas to focus resources and eliminate overhead costs.

- ◆ State legislative oversight agencies generally have a limited history of conducting detailed reviews of law enforcement agency operations, reducing the best practices Sunset staff could draw from for the Department's review. Contracting with an outside consulting firm would help DPS make the organizational and other changes necessary to accomplish its mission in the 21st Century.
- ◆ The Public Safety Commission recently recognized and discussed organizational issues similar to those identified in this report. It has started a process of procuring a firm to perform a management and organizational study of the Department.

## Recommendations

### Management Action

#### **1.1 The Department should contract for a management and organizational study to examine the Department's structure, communication, and policies.**

DPS has significant challenges ahead on how best to modernize and organize for changes in criminal activity, technology, and the need for threat assessment and response. Under this recommendation, DPS would contract with a consulting firm that has law enforcement expertise for a management and organizational study. The study should identify problems and opportunities for improvement and recommend solutions for each problem or opportunity discussed in the report. DPS should begin this process as soon as possible to ensure any changes can be identified quickly, and be ready to provide any statutory solutions, if needed, to the 81st Legislature. DPS should report the study's findings and recommendations to the Lieutenant Governor, the Speaker of the House, and the appropriate legislative oversight committees, including the Sunset Commission.

A management and organizational evaluation can take many forms. The list below provides some, but certainly not all, of the items that DPS could consider for inclusion in the management review. This effort should be done in concert with the management review process recently begun by the Public Safety Commission.

- Organizational structure
- Communication between functions and divisions
- Law enforcement span of control and levels of delegation
- Staff allocation process
- Regional boundaries
- Organizing licensing programs functionally
- Customer service in business/consumer activities
- Whether ethnic, gender, and cultural barriers exist

## **1.2 DPS should operate the Driver License program using a civilian business management model.**

The Driver License program is a combination of a basic business activity with law enforcement components. The State has significant public safety responsibilities related to the licensing function, but the transactions related to obtaining and renewing driver licenses and ID cards are primarily a consumer service function. While DPS needs law enforcement to secure operations and detect and investigate fraud, DPS does not need to manage the program with law enforcement personnel.

With the advent of federal REAL ID requirements and the continuing growth of identification theft and fraud, having a strong law enforcement presence in the driver licenses offices remains important. This presence could continue as a separate Driver License Division, or DPS could transfer this responsibility and troops to the Texas Highway Patrol. The Department should include evaluation of this question in the management study. Regardless of this decision, DPS should continue to use the expertise and training of experienced driver license troopers in this activity.

### **Fiscal Implication**

An external management review would have a significant cost, depending on the scope developed by DPS and the Public Safety Commission. The Commission has indicated that funds are available at this time to pay for such a study.

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<sup>1</sup> U.S. Department of Justice, *Fusion Center Guidelines: Law Enforcement Intelligence, Public Safety, and the Private Sector* (Washington, D.C., August 2006), p. 2.

<sup>2</sup> Eileen R. Larence, Director Homeland Security and Justice Issues - U.S. General Accountability Office, Testimony before the U.S. Senate ad hoc subcommittee on State, Local, and Private Sector Preparedness and Integration, Committee on Homeland Security and Governmental Affairs, April 17, 2008.



## *Responses to Issue 1*

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### **Recommendation 1.1**

***The Department should contract for a management and organizational study to examine the Department's structure, communication, and policies.***

#### **Agency Response to 1.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 1.1**

None received.

#### **Against 1.1**

None received.

### **Recommendation 1.2**

***DPS should operate the Driver License program using a civilian business management model.***

#### **Agency Response to 1.2**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 1.2**

Carolina Segundo – Department of Public Safety, McAllen

#### **Against 1.2**

Curtis Borland, Retired DPS Captain, Lubbock

## *Commission Decision*

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Adopted Recommendations 1.1 and 1.2.

*Legislative Action*



No action needed.

# Issue 2

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## *The Department Fails to Effectively Manage the Vehicle Inspection Program.*

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### Summary

#### Key Recommendations

- ◆ DPS should manage the Vehicle Inspection program as a civilian business and licensing operation.
- ◆ Establish Vehicle Inspection goals and expected performance outcomes.

#### Key Findings

- ◆ DPS fails to adequately supervise the Vehicle Inspection program.
- ◆ Lack of statewide oversight leads to performance disparities among the regions.
- ◆ Operating a business function as an offshoot of a law enforcement function has led to a lack of effective oversight.

#### Conclusion

Under the current structure of the Vehicle Inspection Service (VI), program quality and effectiveness are not in anyone's chain of command at the Department of Public Safety (DPS). Obviously, senior executives have responsibility for the program, but no person is assigned primary oversight to ensure that the program works well overall, and in each of the DPS regions. This missing link impedes the program from operating as effectively as possible.

The safety inspection of vehicles is a major DPS activity. DPS oversees more than 10,000 vehicle inspection stations in Texas, employing about 38,000 licensed inspectors who perform approximately 16 million inspections annually. Sunset staff examined DPS' approach to overseeing the vehicle inspection system and found the lack of a basic business operational and supervisory structure disquieting. Texas Highway Patrol (THP) majors oversee the VI program at the regional level, along with a myriad of other responsibilities. At the headquarters level, DPS assigns a THP captain to oversee a Bureau to manage distribution of inspection certificates and maintain records of licensed stations and inspectors. This Bureau is not responsible for overall program performance.

The recommendations in this issue would establish a civilian business and occupational licensing structure for the vehicle inspection activity at DPS. The agency should establish performance goals and outcome expectations for the VI program by the end of this year and ensure it has a management structure to track and improve performance.

## Support

**The Department of Public Safety, through its Vehicle Inspection program, oversees the annual inspection of 16 million motor vehicles by 10,000 licensed inspection stations.**

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*The State implemented the current Vehicle Inspection program in 1952 to stem the growth in automobile accidents due to defective equipment.*

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- ◆ Compulsory inspection of vehicles registered in Texas is mandated by law. Texas has inspected motor vehicles since 1925 to ensure compliance with equipment standards beginning with the inspection of automobile headlights. The State implemented the current inspection program in 1952 to stem the growth in both fatal and nonfatal automobile accidents attributed to defective equipment. In 1952, Texas accident statistics reflected that 13 percent of fatal accidents and 12 percent of nonfatal accidents had defective equipment as a contributing factor. Those numbers were reduced to 1 percent and 2 percent, respectively, by 2001.<sup>1</sup>

Currently, the state has about 10,000 licensed vehicle inspection stations of which 6,500 perform only safety inspections and an additional 3,500 perform both safety and emissions inspections. These stations employ more than 32,000 inspectors trained and certified by the Department, who perform approximately 16 million vehicle inspections annually.

- ◆ The State requires emissions testing in 17 urban counties. These counties are mainly in the Dallas, Houston, Austin and El Paso metropolitan areas. The Texas Commission on Environmental Quality develops the standards for emission testing, and DPS Vehicle Inspection enforces those standards in the counties that require emission inspections.
- ◆ The DPS Vehicle Inspection Service licenses and supervises all vehicle inspection stations throughout Texas. The inspection program requires motorists to have their vehicles inspected annually for conditions and defects in an effort to prevent traffic crashes and eliminate other health and safety risks. The 264 civilian employees of the Vehicle Inspection Service train and examine prospective inspectors, conduct routine quality control checks, investigate citizen complaints, and take administrative enforcement action against certified inspection stations and inspectors found in noncompliance with program requirements.

Twenty Highway Patrol vehicle inspection troopers located in Dallas and Houston focus on counterfeit document enforcement, ensuring integrity of government documents related to the program, and conducting regulatory duties in support of the vehicle inspection program. The troopers also conduct traffic patrol directed toward compliance with vehicle inspection, driver license, registration, insurance, and other laws and regulations.

- ◆ The Vehicle Inspection Records and Emissions Bureau is a headquarters-based organization that supports the Vehicle Inspection Service by managing the distribution of inspection certificates. The Bureau also maintains official records of certified stations and inspectors in addition

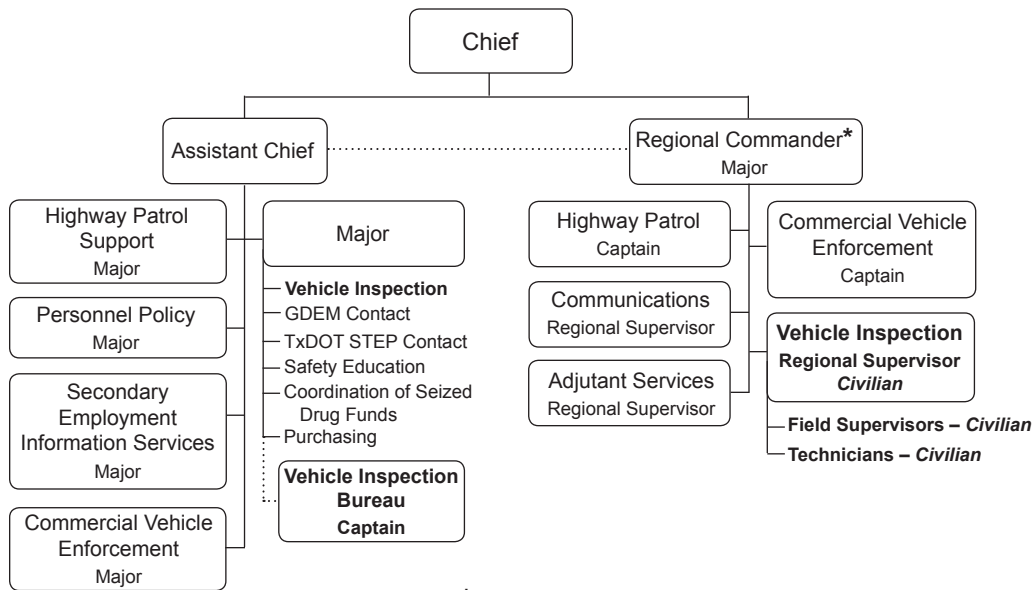
to providing support functions for the emissions inspection program. Although the Bureau is headed by a Texas Highway Patrol captain, it is primarily composed of civilian employees as is the Vehicle Inspection Service.

**DPS fails to adequately supervise the Vehicle Inspection program.**

- ◆ Direct supervision of the Vehicle Inspection program only occurs at the regional level. Civilian vehicle inspection technicians report to field supervisors managed by regional supervisors. The regional supervisors report to the regional commander of their respective regions. This regional commander is a THP major who also supervises all Highway Patrol activities in the region, including captains for Highway Patrol and Commercial Vehicle Enforcement, and reports to the chief of the Texas Highway Patrol. See the following chart for more detail.

*DPS does not compile statewide information to assess overall program performance.*

**Highway Patrol Division  
Organizational Chart**



\* All regions have substantially the same organization

- ◆ Supervision of statewide performance in the Vehicle Inspection program is lacking. Headquarters managers do not compile statewide information to assess the performance of the program overall. The regional THP major is responsible for managing the performance of the regional vehicle inspection team. However, the commander does not receive information from Vehicle Inspection staff at headquarters providing performance indicators to allow comparison of a region's performance to other regions in the state.

The headquarters Vehicle Inspection Bureau is not assigned responsibility for statewide performance measurements, trend analysis, or reviewing

reports from the regions. Vehicle Inspection Bureau personnel stated that the responsibility for those issues were “not in my chain of command.” When asked about communication between the groups of commissioned troopers in Dallas and Houston to discuss fraud activities and trends, Bureau staff did not have an answer as those groups were also not in their chain of command. When asked who is responsible for these management functions on a statewide level, staff did not really know, but guessed the responsibility was either the THP chief or assistant chief. This lack of review oversight and ability to communicate performance information is hampered by the law enforcement command structure of DPS and does not allow necessary business management functions to take place.

**Performance Measurements *not* Tracked by VI Bureau Management**

- ◆ Citations issued by region
- ◆ Technician performance by region
- ◆ Fraud citations by region
- ◆ Statewide emission testing performance results
- ◆ Statewide inspection trends from past three years

Limited oversight and knowledge of statewide trends and performance hampers effective management of this program. For example, DPS has not developed standards for use as tools for managing performance in the regions. Information is not available at the state level to track fraudulent activity and determine how effective the regions are in their efforts to combat fraud. Also, best practice information is not often shared with the regions to enhance performance.

**Lack of statewide oversight contributes to continued performance disparities among the regions.**

- ◆ As shown above, the Vehicle Inspection program does not review performance by region nor does it review statewide performance

**Vehicle Inspection Citations and Warnings  
FYs 2005 – 2007**

Region		FY 05	FY 06	FY 07	
1	Garland	Troopers	62	27	74
		Technicians	645	598	596
2	Houston	Troopers	50	18	121
		Technicians	652	439	389
3	Corpus Christi	248	182	183	
4	Midland	472	321	283	
5	Lubbock	304	147	150	
6	Waco	292	138	156	
8	McAllen	90	47	44	
<b>Total</b>		<b>2,815</b>	<b>1,917</b>	<b>1,996</b>	

indicators. DPS systems have data available to detail both safety and emissions inspection results, in addition to enforcement activity by region, but is not being accessed. This information would give management the ability to compare performance on a region by region basis. However, no one on the headquarters staff reviews statewide performance of the program. As a result, the trends go unnoticed. For example, citations and warnings issued statewide dropped 29 percent from a total of 2,815 in fiscal year 2005 to 1,996 in fiscal year 2007 with one region showing a 50 percent reduction over that time period. See the table, *Vehicle Inspection Citations and Warnings*, for more information.

- ◆ Regional disparities for technician performance are not being reviewed. Citations and warnings issued in each region vary greatly on a per technician basis. For example, from fiscal years 2005 to 2007, Region 4 headquartered in Midland averaged 27 citations and warnings per technician, per year versus an average of 10 per technician in Region 8 (McAllen), over the same time period. These types of variations from region to region should be reviewed on a regular basis to determine if the numbers are reasonable for the demographic makeup of that region or if adjustments are needed to enhance performance.

Sunset staff requested this data which DPS had not previously analyzed. These performance indicators are also key elements in the efforts to combat fraudulent activity such as the sale of inspection stickers without completing a valid inspection and use of counterfeit inspection stickers and other documents. For example, Sunset staff analysis of the regional data shows that Region 8 (McAllen) issued only seven fraud citations in fiscal year 2007, the only region in single digits. In comparison, Region 4 (Midland) issued 104 fraud citations. If management assessed this data, they would know to focus training for Region 8 and set higher expectations.

### **Operating a business function as an offshoot of a law enforcement function has led to a lack of effective oversight.**

- ◆ The Vehicle Inspection program is essentially a business and occupational licensing process run using a law enforcement model. In September 1991, following directives of the Legislature, DPS began transitioning from using commissioned DPS troopers to inspect stations to using civilian technicians. The Vehicle Inspection program now has approximately 264 civilian employees with 194 of those located in seven DPS regions. The civilian regional employees report up through the Highway Patrol command structure and are managed with a regional focus. As discussed previously, performance comparisons with other regions are not done; analyses of statewide trends are not completed and shared with the regional commanders to focus on areas needing improvement; and results of VI fraud detection efforts and practices are not tracked or communicated.

Sunset staff repeatedly were told in interviews that the management philosophy is to react when something goes wrong and fix it. Constant oversight is needed in business functions to analyze results and trends and make adjustments beforehand to avoid problems. Performance evaluations and analysis are needed at both the regional and state level to provide effective management and leadership to this program. Achieving overall goals requires several ongoing activities, including identification and prioritization of desired results, tracking and measuring progress towards results, periodically reviewing progress, and intervening to improve progress where needed.<sup>2</sup>

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*In fiscal year 2007 the McAllen region issued only seven vehicle inspection fraud citations while the Midland region issued 104.*

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*The agency's management philosophy is to react when something goes wrong and fix it.*

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Nineteen states mandate vehicle safety inspections.<sup>3</sup> Eleven of those 19, including New Jersey and Pennsylvania, manage their programs in a civilian state agency environment. Managing a business function with command and control type oversight does not promote the most efficient operation of the program.

### **Other state agencies manage business programs out of Austin using both local and state-level management structure.**

- ◆ Most large state agencies in Texas have a regional and local presence around the state. However, statewide programs are directed and monitored at the state level as well as the region level. Agencies manage personnel locally including individual performance. Program evaluations are agency-level responsibilities reviewed at headquarters with input from regional management.

For example, the Texas Department of Agriculture has several programs in its regulatory, pesticide, and marketing areas that have employees in the regions dedicated to those individual programs. The regional program specialists report to the regional operations manager for day-to-day management and performance issues. The regional operations manager reports to a senior-level manager in headquarters. However, at the headquarters level, a program manager is responsible for each program's statewide performance. This program manager has the authority to contact directly either the regional program specialist or the regional operations manager to discuss issues or trends in the program. No person is outside the "chain of command." This statewide accountability is missing in the DPS Vehicle Inspection program.

## **Recommendations**

### **Change in Statute**

#### **2.1 DPS should manage the Vehicle Inspection program as a civilian business and licensing operation.**

The Legislature envisioned the Vehicle Inspection Service as a primarily civilian function when it mandated civilian technicians for the program. While DPS accomplished the transition to civilian technicians, the program continued as a law enforcement activity and not a civilian business function. This change would place the program in a business model environment where DPS analyzes expectations, results, and information flow in a more effective structure to improve the program and maintain a high level of performance. Under this approach, DPS would manage the program from headquarters. Regional supervisors would manage area VI activity with primary responsibility for performance and results. DPS executive management would set overall program goals with the VI program director setting and monitoring regional goals and expectations. The VI program would continue to use the regional administrative infrastructure for administrative matters.

Highway Patrol would need to continue to provide law enforcement support as they do now. The regional VI supervisor must work with the regional THP captain(s) on performance expectations and program needs for troopers assigned to support VI activities.



## Management Action

### 2.2 Establish Vehicle Inspection goals and expected performance outcomes.

DPS needs to set the goals and performance outcome measures for both the overall VI program and for each of the regions. Each region currently operates in a vacuum as it relates to vehicle inspection. Tasking DPS management to establish a performance measurement system will ensure overall program improvement and enable VI employees to understand performance expectations. DPS should establish the new goals and outcome measures no later than December 31, 2008. The agency should also obtain input from regional VI staff when developing the system. Finally, as part of the new system, DPS should stress the importance of detecting issuance and use of fraudulent inspection stickers. The performance measures should also take into account geographical and opportunity differences between the regions. Best practices developed and used in improving performance should be shared within the regions.

## Fiscal Implication

These recommendations would not have a fiscal impact on the State as the existing program budget would allow for the reengineering of the program.

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<sup>1</sup> Texas Department of Public Safety, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (August 2007) p. 101.

<sup>2</sup> Carter McNamara, "Field Guide to Consulting and Organization Development," [www.managementhelp.org/perf\\_mng/overview.htm](http://www.managementhelp.org/perf_mng/overview.htm). Accessed: April 25, 2008.

<sup>3</sup> American Association of Motor Vehicle Administrators, Safety Inspections, [www.aamva.org](http://www.aamva.org). Accessed: April 20, 2008.



## *Responses to Issue 2*

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### **Recommendation 2.1**

***DPS should manage the Vehicle Inspection program as a civilian business and licensing operation.***

#### **Agency Response to 2.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 2.1**

None received.

#### **Against 2.1**

None received.

### **Recommendation 2.2**

***Establish Vehicle Inspection goals and expected performance outcomes.***

#### **Agency Response to 2.2**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 2.2**

None received.

#### **Against 2.2**

None received.

## *Commission Decision*

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Adopted Recommendations 2.1 and 2.2.

## *Legislative Action*

House Bill 2730 requires DPS to manage the vehicle inspection program from headquarters with a civilian program director who is responsible for setting and monitoring regional goals and expectations, among other duties. The Legislature added a provision that requires the Vehicle Inspection Advisory Committee to meet quarterly instead of annually. (Recommendation 2.1)

# Issue 3

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## *Clarifying Roles and Exempting GDEM From Capital Expenditure Caps Would Assist Texas' Emergency Management Function.*

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### Summary

#### Key Recommendations

- ◆ Specify that the Department's Director appoints the chief of GDEM, subject to approval of the Governor, and require coordination between DPS, GDEM, and the Governor's Office of Homeland Security.
- ◆ Change GDEM's name to the Texas Division of Emergency Management, and clarify that it is a division of the Department.
- ◆ The Sunset Commission should recommend that the Legislature exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds, with certain precautions.

#### Key Findings

- ◆ The Department of Public Safety houses the Governor's Division of Emergency Management.
- ◆ The Governor of Texas plays a large role in the State's emergency management function, particularly during a disaster.
- ◆ The Legislature caps certain state agency expenditures through the General Appropriations Act.
- ◆ Lines of authority between DPS, GDEM, and the Governor's Office of Homeland Security are unclear.
- ◆ GDEM's unpredictable receipt of federal funds contributes to DPS quickly reaching its cap on capital expenses.

#### Conclusion

With Texas experiencing more federally declared disasters than any other state in recent years, emergency management clearly presents enormous challenges. The Governor's Division of Emergency Management (GDEM) at the Department of Public Safety (DPS) helps local officials across the state prepare for and respond to disasters of all kinds, both manmade and natural. GDEM also helps implement the Governor's statewide homeland security strategy.

From the beginning of its review of DPS, Sunset staff heard from many individuals about the lack of defined roles between GDEM, DPS, and the Governor's Office of Homeland Security. Clarifying in statute that the DPS Director appoints the chief of GDEM, with the approval of the Governor, will help alleviate confusion. While Sunset staff found that GDEM is highly regarded, exempting GDEM's capital expenses from DPS' cap on such expenses would ensure GDEM remains prepared for and able to fully respond to disasters. In combination with changes resulting from the management and organizational study recommended earlier in this report, these recommendations will help the State's preparedness and emergency management functions continue as some of the best in the nation.

## Support

### **The Department of Public Safety houses the Governor's Division of Emergency Management.**

- ◆ The Governor's Division of Emergency Management (GDEM) is charged with preparing for all threats to Texas, manmade and natural. The Division's 144 FTEs help local officials across the state prepare for and mitigate disasters; distribute (mostly federal) grant funds to disaster victims; and develop the state emergency management plan. The Division also maintains the State Operations Center, which serves as the State's principal command and control facility during a disaster; and the Border Security Operations Center, which coordinates state law enforcement activities along the Texas-Mexico border with local governments and federal agencies.
- ◆ Texas law specifies that the State's emergency management function is a division of the Governor's Office, and that the Governor appoints its director who, in turn, appoints a state coordinator. In practice, state emergency management has been directed by the Department of Public Safety (DPS) Director, and housed at DPS, since 1963 through executive orders issued by the Governor.<sup>1</sup>

In January 2004, Governor Perry released executive order RP32 that designated the director of the Governor's Office of Homeland Security (OHS) as GDEM's director. The Homeland Security director kept the same state coordinator in place, referred to as the chief of GDEM, who conducts GDEM's day-to-day activities under the direction and guidance of the OHS director. RP32 also specified that GDEM personnel have the same rights and obligations as DPS employees.

- ◆ GDEM's budget appears as four strategies in DPS' portion of the state budget. GDEM passed almost 90 percent of its fiscal year 2007 budget of \$290 million through to local governments, which spent much of it on recovering from Hurricane Rita.

### **The Governor of Texas plays a large role in the State's emergency management function, particularly during a disaster.**

- ◆ Texas law broadly charges the Governor with meeting the dangers that disasters present to the state and to people, and authorizes the Governor to declare a state of emergency if a disaster has occurred or if disaster is imminent.<sup>2</sup> The Governor has numerous powers during a state of emergency, including the ability to suspend procedural laws and rules governing state business if necessary to cope with a disaster, and being commander in chief of state agencies, boards, and commissions having emergency responsibilities.<sup>3</sup>

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*Texas law specifies that the State's emergency management function is a division of the Governor's Office.*

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*GDEM passed almost 90 percent of its fiscal year 2007 budget of \$290 million through to local governments.*

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## **The Legislature caps certain state agency expenditures through the General Appropriations Act.**

- ◆ Texas state agencies are not funded for specific line items, but rather the Legislature funds agencies by establishing goals and strategies in the General Appropriations Act (GAA). The Legislature then holds agencies accountable for achieving specific performance measures. In the current GAA, the Legislature established six goals, 37 strategies, and 26 performance measures for the Department of Public Safety.
- ◆ While state agencies are given funding flexibility to achieve their goals, the Legislature caps certain spending in specific areas to ensure accountability. These caps include travel expenditures, the number of full-time equivalent positions, and capital expenditures. A capital budget project is defined as an item or asset with a unit cost exceeding \$25,000.<sup>4</sup> Examples include buildings, computer hardware, and machinery.
- ◆ For fiscal year 2008, the Legislature granted DPS \$298.3 million in capital expenditures and an additional \$5.8 million in capital budget rider authority. Major components of DPS' capital budget include \$218.4 million for facility construction, \$26.7 million in information resource technology, and \$45 million in transportation items – vehicles and helicopters.
- ◆ The Legislature broadly exempts some state agencies from expenditure caps. For example, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality have exemptions from capital budget rider provisions when they receive federal and other funds in excess of their appropriated capital budget rider amount. The Legislature requires these agencies to notify the Legislative Budget Board and the Governor when receiving such funds, the amount received, and the items the agencies plan to purchase.

## **Lines of authority between DPS, GDEM, and the Governor's Office of Homeland Security are unclear.**

- ◆ While DPS has housed the State's emergency management function for the past 45 years, changes brought about by RP32 have contributed to some confusion and frustration, both at DPS and within the Legislature. For example, DPS staff noted that for several years after RP32's issuance, the authority for DPS to perform internal audits on GDEM or whether DPS' general counsel could sign off on GDEM rules was unclear. Direction from the Governor's Office in December 2007 clarified DPS' authority on these matters, but some operational confusion remains.

For example, DPS staff noted that it is not always clear who should sign certain contracts and grant applications – the director of Homeland Security, the DPS Director, or GDEM's chief. While coordination has improved, and Texas continues to be looked to as an example of a successful emergency management program, should the individuals occupying the

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*The Legislature exempts some state agencies from expenditure caps.*

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*Authority for rules, internal audits, and signing of contracts has been unclear.*

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*Enough conflict has occurred to require better defined roles and expectations.*

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Homeland Security director, GDEM chief, or DPS Director positions change, new conflicts could arise because statute does not establish their responsibilities.

- ◆ Legislative staff have indicated that the unclear relationship between GDEM, DPS, and OHS caused some concern last session among members of the Legislature regarding funding for homeland security efforts. In the end, most homeland security funding went into the Department's budget, where it had more visibility, and less money went directly to GDEM via a rider.
- ◆ Some individuals assert that DPS has been reluctant to carry out the Governor's homeland security priorities, and therefore the Governor placed the director of the Office of Homeland Security in charge of GDEM to carry out those priorities. Others assert that DPS is too constrained by its current structure set by the Legislature – FTE allocation and required performance measures, for example – to carry out those priorities. Without assigning absolute truth to either assertion, Sunset staff determined that enough conflict has occurred to require better defined roles and expectations regarding DPS, GDEM, and OHS cooperation.

#### **GDEM's unpredictable receipt of federal funds contributes to DPS quickly reaching its cap on capital expenses.**

- ◆ GDEM's budget comes almost exclusively from federal funds, with just \$1,279,000 in state funds in fiscal year 2007. GDEM frequently receives unexpected federal grants, but sometimes has difficulty spending the funds because they cause the Department to reach its cap on capital budget expenses.

For example, the U.S. Department of Homeland Security announced in early 2006 that Operation Stonegarden funds would be available to local law enforcement later that year for equipment and operating costs to address border security. While Texas received \$3 million in these funds, which GDEM passed through to local law enforcement agencies, such short notice makes it difficult for GDEM to predict federal funds two and three years in the future when preparing its part of the Department's Legislative Appropriations Request.

- ◆ Agencies must request an exemption from the LBB and the Governor's Office to exceed the cap on capital expenditures. In emergency situations, the time involved in sending requests to those offices to exceed caps may cause critical delays. After Hurricanes Rita and Katrina, a Governor's task force recommended that Texas purchase a system to track the elderly and individuals with special needs during future evacuations. Due to cap restrictions, purchase of the equipment was delayed for months because the Department had reached its cap and had to request an exemption. While in this case the equipment was not needed immediately, speed is often essential with emergency management.

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*GDEM frequently receives unexpected federal grants.*

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## Recommendations

### Change in Statute

- 3.1 Specify that the Department’s Director appoints the chief of GDEM, subject to approval of the Governor, and require coordination between DPS, GDEM, and the Governor’s Office of Homeland Security.**

This recommendation would amend statute to specify that DPS’ Director appoints GDEM’s chief, with the approval of the Governor. DPS, GDEM, and OHS should meet bimonthly to coordinate efforts, prevent overlap of activities, and ensure no gaps exist in the State’s approach to emergency management and homeland security. The Chair of the Homeland Security Council and a state agency representative from the Emergency Management Council, designated by the chair of that Council, should participate in these bimonthly meetings. The coordination meetings would ensure that the Governor’s responsibility for directing Texas’ homeland security strategy would continue to integrate with emergency management. This recommendation would not affect the Governor’s powers during a declared disaster.

- 3.2 Change GDEM’s name to the Texas Division of Emergency Management, and clarify that it is a division of the Department.**

This recommendation would help eliminate confusion surrounding who directs day-to-day emergency management functions in Texas by specifying in statute that the Texas Division of Emergency Management at the Department of Public Safety performs the functions.

### Change in Appropriations

- 3.3 The Sunset Commission should recommend that the Legislature exclude GDEM from the Department’s cap on capital budget expenses paid for with federal funds, with certain precautions.**

This recommendation would express the will of the Sunset Commission that the Legislature exempt GDEM from the Department’s cap on capital budget expenses paid for with federal funds. GDEM should provide the Legislative Budget Board and the Governor with the fund amounts and the items to be purchased to help ensure GDEM spends the money in the State’s best interest.

### Fiscal Implication

While the capital expenditure exemption for federal funds would better ensure the flow of homeland security and emergency management funds to state agencies and local governments, these recommendations would not have a direct fiscal impact to the State.

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<sup>1</sup> Governor John Connally, Executive Order No. 1, January 17, 1963.

<sup>2</sup> Texas Government Code, sec. 418.011 and sec. 418.014.

<sup>3</sup> Texas Government Code, sec. 418.016 and sec. 418.015(c).

<sup>4</sup> Texas Legislative Budget Board, *2008–09 Legislative Appropriations Request Detailed Instructions*, (June 2006) p. 31. Online. Available: [http://www.lbb.state.tx.us/LAR/LAR-80R\\_Agency\\_Instructions\\_0406.pdf](http://www.lbb.state.tx.us/LAR/LAR-80R_Agency_Instructions_0406.pdf). Accessed: April 28, 2008.



## *Responses to Issue 3*

### **Recommendation 3.1**

***Specify that the Department's Director appoints the chief of GDEM, subject to approval of the Governor, and require coordination between DPS, GDEM, and the Governor's Office of Homeland Security.***

#### **Agency Response to 3.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **Affected Agency Response to 3.1**

The Governor's Office of Homeland Security concurs with the recommendations made under Issue 3. (Steve McCraw, Director – Governor's Office of Homeland Security)

#### **For 3.1**

None received.

#### **Against 3.1**

None received.

### **Recommendation 3.2**

***Change GDEM's name to the Texas Division of Emergency Management, and clarify that it is a division of the Department.***

#### **Agency Response to 3.2**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **Affected Agency Response to 3.2**

The Governor's Office of Homeland Security concurs with the recommendations made under Issue 3. (Steve McCraw, Director – Governor's Office of Homeland Security)

#### **For 3.2**

None received.

#### **Against 3.2**

None received.

### ***Recommendation 3.3***

***The Sunset Commission should recommend that the Legislature exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds, with certain precautions.***

#### **Agency Response to 3.3**

DPS management agrees with this recommendation.

#### **Agency Modification**

1. The exemption from the cap on capital expenses paid for with federal funds should apply to DPS as a whole and not just GDEM.

(Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **Affected Agency Response to 3.3**

The Governor's Office of Homeland Security concurs with the recommendations made under Issue 3. (Steve McCraw, Director – Governor's Office of Homeland Security)

#### **For 3.3**

None received.

#### **Against 3.3**

None received.

### ***Commission Decision***



Adopted Recommendations 3.1 through 3.3.

## *Legislative Action*

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House Bill 2730 changes the Governor's Division of Emergency Management to the Texas Division of Emergency Management (TDEM), and clarifies that it is a division of DPS. The bill specifies that DPS' Director appoints TDEM's chief, with the approval of the Governor, and requires coordination between DPS, TDEM, and the Governor's Office of Homeland Security. The Legislature adopted the Sunset Commission's recommendation to exclude TDEM from the Department's cap on capital budget expenses by separating TDEM's capital budget from the Department's in the General Appropriations Act. (Recommendations 3.1 – 3.3)

The Legislature also added provisions that require TDEM to consider implementing a credentialing pilot program for reentry into areas evacuated because of a disaster, and to coordinate with the Texas Department of Transportation to establish additional methods for disseminating emergency public service messages to motorists.



# Issue 4

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## *The Administrative Hearing Process for Suspending Driver Licenses of Individuals Arrested for DWI Wastes Government Resources.*

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### Summary

#### Key Recommendations

- ◆ Require hearings to be held by telephone, and allow witnesses to testify by telephone, unless the judge finds that an in-person hearing or appearance is necessary for the fair administration of justice.
- ◆ Require affidavits of the breath test operators or breath test supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence.
- ◆ Require the defense to request breath test operators and breath test supervisors by subpoena.

#### Key Findings

- ◆ DPS' Administrative License Revocation program reflects the State's interest in keeping impaired drivers off the road.
- ◆ The administrative license suspension process, as currently administered, wastes government resources.
- ◆ Other state agencies hold hearings primarily by phone.

#### Conclusion


Protecting citizens from drunk drivers is paramount for the Texas Legislature. As a result, the Legislature established the Administrative License Revocation (ALR) program in 1995 to discourage drunk driving by authorizing DPS to swiftly suspend the license of a person arrested for driving while intoxicated. The law and rules governing the hearings in which drivers may contest their license suspensions, however, have in some cases led to proceedings where law enforcement officers and employees are routinely requested or subpoenaed as in-person witnesses even when their testimony may not be needed. In fact, having all witnesses appear in person at an administrative hearing is inefficient, and generally unnecessary. Allowing the State Office of Administrative Hearings to conduct more ALR hearings by telephone, and making other statutory modifications to discourage the misuse of law enforcement witnesses, will result in a more efficient ALR system.

## Support

### DPS' Administrative License Revocation program reflects the State's interest in keeping impaired drivers off the road.

- ◆ The Texas Legislature established the Administrative License Revocation (ALR)<sup>1</sup> program in 1995 to discourage drunk driving and prevent drivers arrested for driving while intoxicated from continuing to drive while their criminal cases are pending. State law allows a peace officer to request a breath specimen and arrest any individual the officer has probable cause to believe is operating a motor vehicle or watercraft while intoxicated. Law defines intoxication as having a blood alcohol concentration of 0.08 or higher, or not having the normal use of mental or physical faculties because of alcohol, a controlled substance, or any other drug or combination of substances. Alcohol concentration limits are lower for minors and commercial motor vehicle operators.
- ◆ Peace officers and other individuals certified by DPS can administer breath tests. Technical supervisors, employed by DPS or other governmental entities, maintain and direct the operation of breath test instruments. Currently 53 technical supervisors oversee 5,300 breath test operators from more than 900 law enforcement agencies.
- ◆ With some exceptions, the law requires a peace officer to immediately confiscate the license of a driver who is arrested for driving while intoxicated and whose specimen exceeds the limit; these cases are referred to as *failure cases*, because the individual failed the breath test. The officer must also confiscate the license of an individual who refuses to submit to a test after being arrested, referred to as *refusal cases*. The officer then issues the driver a temporary permit. The arrested driver receives notice of the right to request a hearing to contest the proposed license suspension, including notice that a request for a hearing stays the suspension until the judge rules, and that if the driver does not request a hearing within 15 days the suspension will automatically go into effect in 40 days. DPS charges a \$125 fee to reinstate the license after a suspension expires. The following textbox describes ALR license suspension periods.

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*A peace officer  
must confiscate  
the license of  
someone arrested  
for driving while  
intoxicated.*

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#### **License Suspension Periods\***

Refusal to submit specimen – adult .....	180 days
Specimen of .08 or greater – adult.....	90 days
Refusal to submit specimen – minor .....	180 days
Specimen of .01 or greater – minor .....	60 days
Refusal to submit specimen – commercial motor vehicle operator.....	One year
Specimen of .04 or greater – commercial motor vehicle operator.....	One year

\* Suspension enhancements for subsequent offenses apply in all categories.



- ◆ State law authorizes the State Office of Administrative Hearings (SOAH) to conduct administrative license suspension hearings, presided over by administrative law judges (ALJs). The issues the defendant can challenge at the hearing include: whether the peace officer had reasonable suspicion to stop the individual, probable cause to arrest the individual, the validity of the test results if the individual consented to a test after being arrested, or certain aspects of the arrest in cases where the individual did not consent to provide a breath sample.
- ◆ Hearings take place in regional SOAH offices or by telephone conference call. An attorney represents the Department in the hearings. Defendants have the right to be represented by counsel, but are not required to be present at the hearing. Certain constitutional protections apply to the process for revoking a license to some extent, but not at the level afforded a defendant in a criminal process.
- ◆ DPS issued 100,472 notices of suspension to drivers in fiscal year 2007. Defendants requested hearings in 26,492, or 26 percent of the cases. The outcomes of the hearings appear in the table, *Hearing Dispositions*.

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*Defendants are not required to be present at ALR hearings.*

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***Hearing Dispositions – FY 2007***

<b>Disposition</b>	<b>Explanation</b>	<b>Number</b>	<b>Percent of Hearings</b>
Affirmed, defaulted, or waived	ALJ upholds revocation, or defendant defaults by not appearing or waiving the hearing.	19,512	74%
Dismissed	Case dismissed due to unavailability of witnesses or for other reasons. Defendant wins.	4,842	18%
Negative	ALJ finds DPS did not meet burden of proof. Defendant wins.	2,138	8%

**The administrative license suspension process, as currently administered, wastes government resources.**

- ◆ Texas law does not allow the ALR hearing to be held by telephone unless all the parties consent, regardless of whether a valid need exists for an in-person hearing. In fiscal year 2007, only 5,181 ALR hearings took place by telephone – 20 percent of all cases scheduled and decided. Conducting a hearing in person rather than allowing the parties or witnesses to attend via telephone results in higher travel and hearing expenses for the State, as well as wasting local law enforcement resources when peace officers are taken off patrol or paid overtime to make live appearances. The officers must be compensated for any overtime spent attending hearings, and often must spend hours at the hearing location waiting to be called to testify but then get dismissed without ever being summoned.

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*In fiscal year 2007, only 20 percent of ALR hearings were conducted by telephone.*

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Sunset staff interviews with peace officers reflected their frustration with misuses of the process that may compromise their job as public safety officers by interfering with their scheduled off-duty rest hours. The officers noted that most DWI arrests are made during evening and overnight shifts.

- ◆ Breath test operators and breath test supervisors must attend hearings when requested by the defendant, even if an affidavit could sufficiently attest to the validity of the test or the reliability of the instrument used to analyze the specimen. The law requires DPS to ensure the appearance of the relevant breath test operator or technical supervisor if the defendant in a failure case requests, without a subpoena or showing of need for the testimony. Without the requirement for a subpoena, no controls exist to ensure witnesses are not called as a matter of course in each failure case, whether needed or not.
- ◆ The law allows the operator or supervisor to attest to the reliability of the test and the test equipment by affidavit in lieu of personal appearance at the hearing. If the defendant requests one or both of them in person, however, the witness must attend or the affidavit is not admissible. Without being allowed to admit the affidavit as evidence, the Department cannot put its proof of the defendant's blood alcohol level before the judge, and the case must be dismissed or continued.

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*Judges dismiss  
many cases  
because witnesses  
are unable  
to attend the  
hearings.*

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In 2007, defendants requested the breath test operators and supervisors in 30 percent of all failure hearings; 41 percent of these cases were dismissed. Although DPS does not regularly track data on the reason for case dismissals, numerous individuals interviewed by Sunset staff indicated that ALJs must dismiss many cases because requested witnesses were unavailable to attend the hearing, even though no question regarding the test results or equipment existed. Requesting witnesses without a clear need for their presence suggests defendants hope the witnesses cannot attend and their case will be dismissed.

### **Other state agencies hold hearings primarily by phone.**

- ◆ Unemployment compensation hearings conducted by the Texas Workforce Commission take place by telephone conference call unless the hearing administrator determines that an in-person hearing is necessary. Factors that the administrator may consider include a party with a physical impairment who cannot effectively participate by telephone, evidence a party wishes to present that would make a hearing by telephone impractical, or any other reason in the administrator's discretion.
- ◆ North Dakota allows ALR hearings to be conducted by phone or electronic means as long as each participant has an opportunity to participate in the entire proceeding and if the procedure does not substantially prejudice or infringe on the rights and interests of any party. Hearing officers in

Colorado have discretion whether to conduct ALR hearings in person or by phone, and several other states routinely hold all ALR hearings by phone.

## Recommendations

### Change in Statute

#### **4.1 Require hearings to be held by telephone, and allow witnesses to testify by telephone, unless the judge finds that an in-person hearing or appearance is necessary for the fair administration of justice.**

This recommendation would establish a telephone hearing as the procedure to be used in ALR hearings, unless the judge affirmatively finds that a hearing cannot be fairly held by telephone and a specific situation requires an in-person meeting. If SOAH holds an in-person hearing, the law would allow individual witnesses, including peace officers, to testify by telephone unless the judge finds that such testimony will prejudice one of the parties. Holding hearings by phone would save travel and hearing expenses for the State, increase the hours peace officers may spend on patrol, and reduce the need for local law enforcement departments to pay overtime.

#### **4.2 Require affidavits of the breath test operators or breath test supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence.**

This recommendation would apply to in-person hearings. The Transportation Code would prohibit a party to a hearing from requiring the presence of the breath test operator or supervisor if they submitted properly certified affidavits that contained the information necessary to confirm the breath test results and the reliability of the equipment, unless the administrative law judge determined their presence is necessary. This recommendation would prevent breath test operators and supervisors from being taken off duty to attend hearings where their testimony is not needed, using state and local law enforcement agencies' resources more efficiently.

#### **4.3 Require the defense to request breath test operators and breath test supervisors by subpoena.**

This recommendation would apply to cases where a breath test operator and breath test supervisor were needed at the hearing to provide testimony in addition to their affidavits. The statute would require the defendant to issue a subpoena to request the presence of operators and supervisors, rather than merely filing a request for the witnesses from the Department. Requiring subpoenas would help eliminate the potential for defendants to request breath test operators and supervisors without a clear need for their presence.

### Fiscal Implication

Allowing hearings to be held by telephone would have a positive fiscal impact to the State and local communities. Peace officers, breath test operators, and breath test supervisors would be available to participate in ALR hearings when necessary, but would not frequently be pulled from job-related duties to do so. While ALJs may spend some additional time evaluating requests for live hearings and subpoenas, those costs would be overshadowed by savings in travel and overtime. Also, costs for telephone conferencing would increase. The actual fiscal impact on the State, as well as local governments, cannot be estimated for this report.

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<sup>1</sup> The term administrative license revocation is commonly used to describe the process of administratively suspending a license, so the terms revocation and suspension will be used interchangeably.

## *Responses to Issue 4*

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### **Recommendation 4.1**

***Require hearings to be held by telephone, and allow witnesses to testify by telephone, unless the judge finds that an in-person hearing or appearance is necessary for the fair administration of justice.***

### **Agency Response to 4.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

### **Affected Agency Response to 4.1**

We have reviewed the recommendations for changes in ALR hearings and are in agreement with them. If the proposed changes are adopted, the hearing process would be more efficient for both the State Office of Administrative Hearings and for the witnesses in the hearings. (John H. Beeler, ALR Team Leader – State Office of Administrative Hearings)

### **For 4.1**

Lisa Fondren, Technical Supervisor – Fondren Forensics, Inc., Bedford

### **Against 4.1**

Larry Boyd

Hunter Biederman, Frisco

### **Modification**

1. Authorize administrative law judges to decide whether hearings will be held by telephone. (Sunset staff, at the request of Sunset Advisory Commission Members)

### **Recommendation 4.2**

***Require affidavits of the breath test operators or breath test supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence.***

### **Agency Response to 4.2**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

### **Affected Agency Response to 4.2**

We have reviewed the recommendations for changes in ALR hearings and are in agreement with them. If the proposed changes are adopted, the hearing process would be more efficient for both the State Office of Administrative Hearings and for the witnesses in the hearings. (John H. Beeler, ALR Team Leader – State Office of Administrative Hearings)

#### **For 4.2**

None received.

#### **Against 4.2**

Larry Boyd

Hunter Biederman, Frisco

### ***Recommendation 4.3***

***Require the defense to request breath test operators and breath test supervisors by subpoena.***

#### **Agency Response to 4.3**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

### **Affected Agency Response to 4.3**

We have reviewed the recommendations for changes in ALR hearings and are in agreement with them. If the proposed changes are adopted, the hearing process would be more efficient for both the State Office of Administrative Hearings and for the witnesses in the hearings. (John H. Beeler, ALR Team Leader – State Office of Administrative Hearings)

#### **For 4.3**

None received.

#### **Against 4.3**

Larry Boyd

Hunter Biederman, Frisco

## ***Commission Decision***

Adopted Recommendations 4.2 and 4.3.

## *Legislative Action*

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House Bill 2730 requires the defendant, in administrative license revocation cases, to issue a subpoena to request the presence of breath test operators and supervisors, rather than merely filing a request for these witnesses. (Recommendation 4.2) However, the Legislature did not adopt the Sunset Commission's recommendation to require affidavits of operators or supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence.





# Issue 5

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## *DPS' Law Enforcement Promotion Policy May Impede the Department From Making the Best Use of Its Workforce.*

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### Summary

#### Key Recommendation

- ◆ The Department of Public Safety should modify its promotional policy to provide officers with location options when applying for promotions.

#### Key Findings

- ◆ The State has made a large investment in hiring and training DPS' commissioned officer workforce.
- ◆ DPS is facing a critical personnel shortage, weakening its ability to protect the public.
- ◆ The Department uses a list-based promotion system that does not allow applicants to apply for a specific duty station.
- ◆ The Department's promotion policy does not take into account individual differences in duty stations and can be a disincentive for officers to promote.
- ◆ Most other law enforcement entities in Texas that compete with DPS for personnel do not require commissioned officers to relocate when applying for promotions.

#### Conclusion

The trained troopers working for the Department of Public Safety (DPS) are the critical first responders that Texas looks to when facing disasters, and in controlling crime and highway traffic. As Texas grows, the need for these front-line troops becomes more critical. In recent years, DPS has fallen increasingly behind its recruitment goals, and the agency now projects an 8 percent vacancy rate in commissioned officer ranks at the start of the next legislative session.

In view of legislative interest in increasing the number of commissioned personnel, the Sunset staff review assessed the Department's personnel needs. Although DPS' staffing is affected by an increased national need for security personnel and the agency has placed a great focus on recruitment, the staff review found that DPS' own policies are limiting its ability to make the most of its available staff. Currently, the Department's promotional process does not allow officers any options regarding location at the time of applying for a promotion. From numerous conversations with DPS staff, this policy appears to deprive the agency of personnel who could perform well in the positions but choose to not move their families across the state, and can have an impact on morale. Staff concluded that DPS should make every effort to change its promotion policy, which might relieve some of its shortage in commissioned officers. The Department should seriously question whether doing it the way they have always done it is best in this case.

## Support

**The Department of Public Safety relies on its trained, commissioned officer workforce to protect the public from unsafe drivers and criminal behavior.**

- ◆ The Department of Public Safety (DPS) had a total of 3,458 commissioned officer positions in fiscal year 2007. Most of these officers serve either as Texas Rangers, or officers in the Criminal Law Enforcement, Highway Patrol, or Driver License divisions. The vast majority of these officers are protecting Texans as front-line peace officers or direct supervisors of front-line officers. These officers patrol more than 225,000 miles of rural highways; provide security for the state Capitol and Texas Governor; enforce commercial vehicle and vehicle inspection regulations; assist city, county, state, and federal law enforcement agencies with investigations and intelligence; and enforce criminal laws by investigating unsolved crimes and apprehending suspected criminals.

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*The State has invested more than \$138 million in training DPS' current commissioned officer workforce.*

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**The State makes a large investment in hiring and training DPS' commissioned officer workforce.**

- ◆ Each DPS officer has received extensive, state-funded training through attendance at the 26-week DPS academy, biennial 40-hour continuing education courses, and specialized in-service trainings. As hiring and training a single trooper is estimated to cost \$40,000, the State has invested more than \$138 million, in current dollars, in DPS' commissioned officer workforce.
- ◆ DPS' training and recruitment costs continue to escalate. In fiscal year 2007, DPS spent more than \$5.2 million on recruit schools – an increase of more than double the amount spent in the previous year.

**DPS is facing a critical personnel shortage, weakening its ability to protect the public.**

- ◆ After the last legislative session, the Department reported 248 vacancies among its commissioned officers – 7 percent of all its commissioned positions. The Department's personnel needs have greatly increased through a renewed focus on protecting Texas' border with Mexico. Currently, the Department is attempting to meet this focus with Operation Border Star, a surge tactic that removes troopers from normal duty stations to serve temporarily in the Texas-Mexico border area. Without new personnel, this operation causes a loss of personnel available to focus on traditional law enforcement duties.
- ◆ Increasing DPS' challenge to put 'boots on the ground' are the addition of new commissioned positions through the appropriations act, and increasing turnover. The Legislature authorized 187 new commissioned officer positions for the Department last session. In response, the Department has ramped up its recruiting and training functions and

even conducted two recruit schools simultaneously. However, as DPS is struggling to fill its existing vacancies, the new positions mean that the Department now has a need for about 249 new officers.

In addition, DPS loses officers at a rate of about 150 per year due to retirement and attrition.<sup>1</sup> Internal estimates by DPS project this turnover rate to greatly increase due to pay increases that took effect three years ago and are now becoming an incentive to retire. This trend is expected to peak with a retirement of 100 officers in a single month – August 2008. As a result, despite its best efforts, DPS projects that it will start the next legislative session with 323 commissioned officer vacancies – an increase of 58 percent over the start of the previous session, and a vacancy rate of more than 8 percent.

- ◆ DPS' difficulties in filling vacancies come at a time of a noted decline in interest in applicants pursuing law enforcement careers due to higher paying jobs in the private sector, negative publicity due to high profile incidents of racial profiling and excessive use of force, and an increased need for personnel in the U.S. military.<sup>2</sup> Compounding this decline is an increased demand for security personnel in other federal, state, and local law enforcement agencies, as well as in the private sector.

**The Department uses a list-based promotion system that does not allow applicants to apply for a specific duty station.**

- ◆ DPS' complex promotional process, explained in 23 pages in its General Manual, involves written exams and interview panels to produce a list of candidates eligible for future promotions in unspecified locations. Division chiefs assign troopers from the eligibility list, in the order of their scores, to duty stations in the order that vacancies occur.
- ◆ DPS' promotional process does not consider the location wishes of its staff as promoting troopers must either move to the location of the first available supervisory vacancy or turn down the offer. While DPS does pay actual moving expenses for promotions, costs of buying and selling houses or spouses leaving jobs are not covered. While a trooper may always decline a promotion to an undesirable area, this refusal results in being placed at the bottom of the promotion list. Two refusals result in being dropped from the list altogether.

**The Department's promotion policy does not take into account individual differences in duty stations and can be a disincentive for officers to promote.**

- ◆ DPS' promotional process sometimes deprives the agency of the ability to have the best person in a position. While the Department designed the process to ensure neutrality in its promotional decisions, the rigidity of a single list of eligible candidates for future promotions is a 'one size fits all' strategy that does not consider the special needs of each position, or the unique qualities of each candidate. As supervisors in each region must

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*DPS expects to lose 100 officers to retirement in August 2008.*

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*DPS officers must apply for promotions without knowing the location of the duty station.*

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accept the next candidate in line for a promotion, the supervisor cannot choose the best candidate for a specific position. The Department argues that the system produces the best candidates in the state, but, by ignoring the fact that each position is different, the system does not always match needs of each position and the qualities of the individual.

- ◆ This process also creates situations where people end up in positions where they are not content and therefore not as effective. Since the Department permits promoting officers to apply for lateral transfers any time after assuming a new duty station, Sunset staff also heard frequent anecdotes about troopers who promoted and only held the new duty station for a brief time before seeking a lateral transfer back home.
- ◆ The promotional process also has an impact on morale. Throughout the review, Sunset staff heard repeated complaints about DPS' promotional process from both the officers involved and from their supervisors. One high ranking DPS supervisor characterized the promotional process as "terrible," another highly placed observer referred to the process as being "broken," and a third member of DPS' senior management team said the process is a "waste of a lot of staff resources."

While few officers get to the point of turning down a promotion due to the location of the duty assignment, Sunset staff also frequently heard about officers who would be very good at the next level that never apply for promotions because of family situations that prevent them from relocating across the state. Former DPS officers also cited the promotional process as the reason they left the Department.

**Most other law enforcement entities in Texas that compete with DPS for personnel do not require commissioned officers to relocate when applying for promotions.**

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*Both of Texas' other statewide police forces allow promoting officers to apply for a specific geographic location.*

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- ◆ Within Texas, DPS competes with local police departments and sheriff offices for personnel. As these local police agencies can all offer a pre-determined duty station to promoting employees, the Department's policy requiring troopers to accept assignment anywhere in Texas if promoting can make it a less attractive choice.
- ◆ Both of Texas' two other large statewide police forces – the game wardens at the Texas Parks and Wildlife Department (TPWD) and the agents of the Texas Alcoholic Beverage Commission (TABC) – allow promoting officers to apply for a specific geographic area. TPWD's promotion process is specific for each position and includes the input of the receiving supervisor. Because of its strong commitment to community-oriented policing, TPWD also requires a minimum two-year duty station commitment for promotions.
- ◆ Like DPS, TABC administers a written test for all agents desiring a promotion. Unlike DPS, agents with qualifying test scores are permitted to apply for specific promotions when the duty station becomes available.

While the number of law enforcement personnel assigned to TPWD and TABC are much fewer than DPS, the fact that both agencies structure their promotional processes to allow for greater choice in assignment of duty stations demonstrates that such a system is possible and that it has advantages in a statewide organization.

## Recommendation

### Management Action

#### **5.1 The Department of Public Safety should modify its promotional policy to provide officers with location options when applying for promotions.**

DPS should change its promotional system to allow greater preference in choosing duty stations to its commissioned officers promoting to a higher rank. The Department could implement this recommendation in various ways. One method would be for DPS to open unfilled promotional positions to direct application, allowing troopers who have passed the test to be interviewed by panels that include prospective supervisors for a specific duty station. A second approach the Department could consider is to create a regional approach to promotions and allow supervisors greater choice in picking specific applicants for specific positions. To prevent regions from being isolated from the Department as a whole, DPS should continue its current policy of offering vacancies to lateral transfers within the entire agency first, before opening the vacancy to a promotion. Promoting troopers could also place themselves on one or more regional promotion lists. The Department should also consider other options, based on its experience, to achieve the goal of increased geographic selectivity in promotions. Keeping the current promotions approach simply because it has worked well in the past should no longer be the automatic response to this subject.

### Fiscal Implication

This recommendation would not have a direct fiscal impact to the State. The Department would experience intangible benefits that could not be estimated for this report.

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<sup>1</sup> Department of Public Safety, *Self Evaluation Report*, August 2007, p. 43.

<sup>2</sup> Ibid.



## *Responses to Issue 5*

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### **Recommendation 5.1**

***The Department of Public Safety should modify its promotional policy to provide officers with location options when applying for promotions.***

### **Agency Response to 5.1**

DPS management disagrees with this recommendation. The DPS law enforcement promotional process is specifically designed to identify and promote the best qualified candidates in the state; in the most fair, objective and efficient manner possible. A process that uses an oral board only to evaluate candidates would be viewed with much skepticism and suspicions of favoritism. DPS enjoys excellent participation in the current promotional process; the premise of an insufficient number of individuals putting themselves forward for promotion is incorrect. In 2007, 1,708 written tests were taken during 39 promotion processes. While there are some individuals that decide not to relocate and therefore choose not to participate, there are still ample outstanding candidates promoting in DPS.

Currently, the average cost of a Highway Patrol, Driver License, Texas Ranger or Criminal Law Enforcement sergeant test is about \$48,850 with an average of about 100 troopers competing in each process. Of the 221 DPS promotions, 155 candidates were promoted to sergeant. Unless some new process vastly discourages participation, it would cost millions of taxpayer dollars to have an individual promotional process for each vacancy when there are hundreds of promotions per year. If implemented at DPS, this recommendation would require the ambitious and willing trooper to participate in as many as 155 different sergeant testing processes in one year in order to promote.

Another aspect of vital concern would be a lack of personnel readily available to fill vacancies if an eligibility list is not utilized. Currently, with an eligibility list, vacancies are filled immediately. Requiring a unique process for each vacancy would result in unnecessary delays in filling mission critical positions. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

***Staff Comment:*** The recommendation is designed to give the Department maximum flexibility in implementation and does not recommend a specific promotions process. The Department's response reflects one specific process, having exams and interview boards for each opening, and does not reflect any other alternatives for increasing location options for promoting officers. Many other less disruptive alternatives could be considered.

### **For 5.1**

Curtis Borland, Retired DPS Captain, Lubbock

### **Against 5.1**

Brian Hawthorne, President and Gary Chandler, Vice President – Texas Department of Public Safety Officers Association, Austin

*Commission Decision*



Adopted Recommendation 5.1.

*Legislative Action*



No action needed.



# Issue 6

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## *Key Elements of the Private Security Bureau's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.*

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### Summary

#### Key Recommendations

- ◆ Standardize the Bureau's licensing functions by allowing the Bureau to license by industry class endorsement, and authorize jurisprudence examinations.
- ◆ Provide more flexibility and fairness in application approval by allowing the Private Security Bureau to consider extenuating circumstances in approving or denying occupational licenses due to criminal histories.
- ◆ Update elements relating to enforcement such as allowing appeals of Private Security Board decisions to civil district court under the substantial evidence rule; and increasing the maximum administrative penalty to \$5,000 per violation, per day.

#### Key Findings

- ◆ Licensing provisions of the private security statute do not follow model licensing practices and could potentially allow over-burdensome regulation.
- ◆ Nonstandard enforcement provisions of the private security statute could reduce the Bureau's effectiveness in protecting the public.
- ◆ Certain administrative provisions of the private security statute conflict with standard practice, potentially reducing the Bureau's efficiency.

#### Conclusion

Over the past 31 years, Sunset staff has reviewed more than 90 occupational licensing agencies. In doing so, the staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing the Private Security Bureau, staff found that various licensing, enforcement, and administrative processes in the private security statute do not match these model licensing standards. The Sunset review compared the statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring the Bureau in line with the model standards.

## Support

**Regulating occupations, such as private security, requires common activities that the Sunset Commission has observed and documented over more than 30 years of reviews.**

- ◆ The Private Security Bureau (PSB) is a unit of the Department of Public Safety responsible for administering rules initiated by the Private Security Board and regulating the private security industries. The Private Security Board is a seven-member Board appointed by the Governor to recommend rules for the administration of the Private Security Act and hear appeals by applicants. The Public Safety Commission must give final approval for the rules recommended by the Board.

The industries regulated by PSB include private security companies in addition to alarm, guard dog, armored car, armed courier, electronic access control, and locksmith companies. The Bureau licenses individuals that work for those companies as well as private investigators and personal protection officers. The Bureau regulates these industries by enforcing the Private Security Act, investigating and resolving complaints alleging violations of the Act or rules, and taking disciplinary action when necessary. This oversight responsibility includes more than 60,000 individuals and 4,900 schools and businesses. The Bureau is also responsible for protecting the public from unlicensed security activity.

- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 93 licensing agency reviews.
- ◆ Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the private security statute and rules differ from these model standards, and describes the potential benefits of conforming to standard practices.

**Licensing provisions of the private security statute do not follow model licensing practices and could potentially allow over-burdensome regulation.**

- ◆ *Level of regulation.* Licensing standards suggest implementing regulation at the minimum level necessary to protect the public. State law authorizes nine classes of company licenses and 19 individual licenses for security occupations. Currently, many license holders must have multiple licenses for the same company if they perform multiple functions with the company. For example, an employee of an alarm company who has sales and installation responsibilities must have an alarm salesperson

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*The Private Security Bureau oversees more than 60,000 individuals and 4,900 schools and businesses.*

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*The Sunset Commission has reviewed more than 93 licensing agencies.*

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license and an alarm installer license. A change in statute that would allow the Bureau, by rule, to issue endorsements by class of license would streamline the licensing process and potentially reduce licensing fees for some applicants.


For example, an employee of a company with a Class B company license would have a Class B individual license with endorsements by approved job title instead of a separate license for each position that person is approved to perform. Endorsements added to an existing license would have the same expiration date as the original license and the fee would be pro-rated accordingly.

- ◆ ***Criminal convictions.*** Unlike PSB, the State evaluates the criminal history of most applicants and licensees for regulated occupations through Chapter 53 of the Occupations Code. Chapter 53 permits licensing agencies to revoke, suspend, or deny a license for conviction of a felony or misdemeanor that directly relates to the duties of the licensee, and requires agencies to consider extenuating circumstances in approving or denying a license due to criminal history. These circumstances include an applicant's age at the time the crime was committed, number of years since conviction, work and personal history since conviction, and recommendations of law enforcement officials and work supervisors. Since by statute Chapter 53 does not apply to the Private Security Act, applicants with a felony criminal conviction within the past 20 years or a Class A misdemeanor within the past 10 years may not receive licenses.<sup>1</sup> Applying Chapter 53 to the Private Security Act would give the Bureau more flexibility in reviewing occupational license applications that include criminal history and potentially allow applicants to be treated more fairly.

For example, when the Private Security Board received oversight of the previously unregulated locksmith industry in 2003, law prevented the Board from considering extenuating circumstances when deciding whether to issue a license to a locksmith applicant with a criminal history. As a result, locksmiths who committed crimes unrelated to their occupation many years before, with no subsequent criminal convictions, were unable to receive licenses and had to close their businesses.

- ◆ ***Jurisprudence examinations.*** Licensing agencies should have some assurance that practitioners are familiar with state law and regulations related to the profession. Current statute requires only guard dog handlers, personal protection officers, and company managers to take jurisprudence examinations. Authorizing the Bureau to require other license applicants to pass jurisprudence exams would ensure a better understanding of the laws and rules that guide the applicants' profession.

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*The Bureau lacks flexibility to license individuals with minor criminal histories or those unrelated to private security.*

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*The previously unregulated locksmith industry was added to the Private Security Board's oversight in 2003.*

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**Nonstandard enforcement provisions of the private security statute could reduce the Bureau's effectiveness in protecting the public.**


- ◆ *Appeals.* Board actions relating to appeals should be subject to review in district court under the substantial evidence rule. Under the substantial evidence rule, the appeal allows review of the case record to ensure that evidence presented bears out the ruling. Current statute allows Bureau licensees to appeal to civil court but does not specify the substantial evidence rule requirement. Updating language in the statute to reflect this common practice would save time and expense while providing a sufficient level of protection on appeal.
- ◆ *Complaint investigations.* In general, board members should not be involved in both the investigation of complaints and the determination of disciplinary action. Private Security Board members are not involved in the investigation of complaints, but updating and clarifying statute would ensure that current and future Board members are familiar with this provision, and follow this practice.
- ◆ *Administrative penalties.* An agency's administrative penalty authority should authorize penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. The Bureau has authority to impose administrative penalties of up to \$500 per violation per day.<sup>2</sup> Given the harm that can result from illegal activity, the current administrative penalty amount may not be adequate to deter illegal behavior. Many other occupational licensing programs are authorized to impose a penalty amount of up to \$5,000 per violation per day for violations of state law, including those under the Texas Department of Licensing and Regulation. Increasing the maximum administrative penalty amount to \$5,000 per violation per day for a violation of the private security statute or rules would give the Bureau flexibility to address the potentially severe nature of illegal behavior. The Bureau would only impose a penalty of \$5,000 for the most egregious violations.

Agencies that use administrative penalties should also use a penalty matrix to establish penalties for specific violations in a way that is fair and consistent for all violators. While PSB currently has a penalty matrix on its website, a matrix should be recommended by the Board in rule so that opportunity exists for public comment.

**Certain administrative provisions of the private security statute conflict with standard practice, potentially reducing the Bureau's efficiency.**


- ◆ *Compensation.* Board members should be subject to reasonable standards for travel reimbursement, which should be reflected in statute. While the General Appropriations Act indicates that reimbursement for policy body members includes transportation, meals, lodging, and incidental expenses, the private security statute prohibits compensation for travel expenses

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*Updating requirements in the Private Security Bureau appeals process would save time and expense during appeals.*

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*Increasing the Bureau's administrative penalty maximum to \$5,000 per day would help deter serious violations.*

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other than transportation.<sup>3</sup> In practice, the Private Security Bureau reimburses Board members according to the General Appropriations Act. Eliminating the prohibition on travel reimbursement would make the statute consistent with the General Appropriations Act.

- ◆ **Flexible fees.** A licensing agency should have authority to set fees. The ability to set fees allows for greater administrative flexibility and reduces the need for the Legislature to continually update agency statutes to accurately reflect the costs of providing services. The private security statute currently establishes that fees should produce revenue sufficient to offset expenses without producing unnecessary funds, but also contains specific fee amounts. Removing the fee caps would give the Board the ability to recommend fees in response to changing conditions.

## Recommendations

### Licensing – Change in Statute

#### **6.1 Authorize the Bureau to license by endorsement to streamline the licensing process and reduce regulation.**

This recommendation would allow the Private Security Bureau to streamline its licensing process by eliminating overlapping license requirements for individual licenses by allowing the Bureau to issue industry class licenses with individual endorsements. The endorsements would correspond with job titles that the individual is approved for and would expire with the industry license. Key industry class licenses would include alarm company license with endorsements for installer, salesperson, and monitor; and security company license with endorsements for owner, manager, salesperson, and consultant.

#### **6.2 Apply Occupations Code, Chapter 53 to the Private Security Act to provide flexibility and fairness in licensing applicants with criminal histories.**

Applying Chapter 53 of the Occupations Code to the Private Security Act would give the Bureau the flexibility to consider extenuating circumstances when considering license applicants with criminal histories. These circumstances include age at the time the crime was committed, work and personal history since conviction, whether the crime was related to the industry being applied for, and recommendations of law enforcement officials and work supervisors familiar with the applicant. This recommendation would also require the Board to develop rules, under the provisions of Chapter 53, defining which crimes relate to each private security license and would affect the licensees' ability to practice.

#### **6.3 Authorize the Bureau to require jurisprudence examinations for all security licensees.**

Authorizing the Bureau to require jurisprudence exams would ensure that licensees have a clear understanding of the laws and rules that guide their profession. This recommendation builds on existing licensure requirements by allowing the Bureau to require all applicants to pass a jurisprudence exam to be eligible for licensure. The Bureau would have the flexibility to design and administer the exams to minimize impact on licensees. The Board would also establish rules regarding examination development, fees, administration, re-examination, grading, and notice of results.

## **Enforcement – Change in Statute**

### **6.4 Require appeals of Board actions to district civil court under the substantial evidence rule.**

Under substantial evidence, the appeal allows review of the case record to ensure that evidence presented bears out the ruling. Updating language in the private security statute to reflect this common practice would save time and expense while providing a sufficient level of protection on appeal.

### **6.5 Prohibit Board members from being involved in both the investigation of complaints and the determination of disciplinary action.**

Private Security Board members are not involved in the investigation of complaints, but updating and clarifying statute would ensure that current and future Board members will be familiar with this provision and follow this practice.

### **6.6 Increase the amount of the Bureau’s administrative penalty authority, and require the Private Security Board to recommend an administrative penalty matrix in rule for adoption by the Public Safety Commission.**

The amount of an administrative penalty the Bureau is able to impose on an individual who violates the Private Security Act or rule would be increased to \$5,000 per violation per day, from the current \$500 per violation per day. The provision that each day a violation continues or occurs is a separate violation for purposes of imposing the penalty would continue to apply. The Act would require the Board to recommend an administrative penalty matrix in rules to ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Act or rules. By requiring the Board to recommend the matrix in rule, for final adoption by the Public Safety Commission, the public would have the opportunity to comment.

## **Administration – Change in Statute**

### **6.7 Authorize Board members to receive reimbursement for travel expenses.**

Eliminating the prohibition on travel reimbursement other than transportation would make the Board’s statute consistent with the General Appropriations Act. As a result, Board members would have clear authority to receive reimbursement for all travel expenses, including transportation, meals, and lodging expenses, incurred while conducting Board business.

### **6.8 Allow the Private Security Board to recommend fee levels.**

This recommendation would eliminate statutory language that sets and caps fees and give the Board the flexibility to recommend fees at the level necessary to recover costs as conditions change. All fees would be set by rule allowing for public comment on any fee adjustments. The Legislature would maintain control over fees by setting spending levels in the General Appropriations Act.

## **Fiscal Implication**

Using endorsements to streamline the licensing process could allow the Bureau to reduce fees on some licenses after evaluation of the new licensing structure and procedures. The Bureau would experience a cost to develop jurisprudence exam questions, but this cost would be recovered through examination fees.

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<sup>1</sup> Texas Occupations Code, sec. 1702.004(b) and 1702.113.

<sup>2</sup> Texas Occupations Code, sec. 1702.402.

<sup>3</sup> Texas Occupations Code, sec. 1702.028.





## *Responses to Issue 6*

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### **Recommendation 6.1**

***Authorize the Bureau to license by endorsement to streamline the licensing process and reduce regulation.***

#### **Agency Response to 6.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 6.1**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

#### **Against 6.1**

None received.

### **Recommendation 6.2**

***Apply Occupations Code, Chapter 53 to the Private Security Act to provide flexibility and fairness in licensing applicants with criminal histories.***

#### **Agency Response to 6.2**

DPS management does not agree with this recommendation. Due to the sensitive nature of the professions of individuals licensed under the Act and their potential effect on the safety of the citizens of Texas, they should be held to a higher standard than other types of license holders. Further, we do not believe that allowing the consideration of extenuating circumstances would result in more fairness to applicants. Rather, this would create the possibility of similarly situated applicants being treated differently based on the personal sentiments of the decision makers as has happened in the past with this program. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

***Staff Comment:*** The recommendation would require DPS to adopt rules governing the application of extenuating circumstances in the licensure process. Rules would allow, for example, DPS to have stricter standards for an armed security guard than for a locksmith.

**For 6.2**

None received.

**Against 6.2**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

Randy Kildow, President – Texas Association of Licensed Investigators, Arlington

Rodney Hooker, Vice President/Legislative Chairman – Texas Burglar and Fire Alarm Association, San Antonio

**Modifications**

1. The Private Security Board should have the authority in its enabling statute to make criminal history determinations on a case-by-case basis. (Randy Kildow, President – Texas Association of Licensed Investigators, Arlington and Dan Flores, President – Associated Security Services and Investigators of the State of Texas, Brownsville)
2. Change law to allow the Private Security Board to consider the age of an individual and type of crime committed when issuing a license. (John E. Chism, Board Chair – Private Security Board, Irving)
3. Amend the Private Security Act to state that “notwithstanding any of the above” the Board may use its discretion in issuing a license. (Michael Samulin, Past Vice Chair – Private Security Board, San Antonio and George Craig, Past Chair – Private Security Board, Corpus Christi)

**Recommendation 6.3**

***Authorize the Bureau to require jurisprudence examinations for all security licensees.***

**Agency Response to 6.3**

While DPS has no objection to this recommendation, there will be some resource issues if DPS is required to give an examination to all applicants and process the results of the examinations; however, this can be mitigated to some extent by specifying the manner in which the examination shall be given (such as requiring online testing). Further, we believe the regulated professions will object to this recommendation. Even a small examination fee will increase the cost of doing business for regulated companies, many of whom are very small operations. Also, many of the regulated professions have a substantial difficulty attracting and retaining job applicants, and any additional licensing requirements will exacerbate the problem. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**Agency Response to 6.3** (continued)

*Staff Comment:* The recommendation does not *require* the Private Security Board to administer a jurisprudence exam for all license categories, but *authorizes* the Board to decide which occupations would benefit from a jurisprudence exam.

**For 6.3**

None received.

**Against 6.3**

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

Randy Kildow, President – Texas Association of Licensed Investigators, Arlington

Dan Flores, President – Associated Security Services and Investigators of the State of Texas, Brownsville

**Recommendation 6.4**

***Require appeals of Board actions to district civil court under the substantial evidence rule.***

**Agency Response to 6.4**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**For 6.4**

None received.

**Against 6.4**

None received.

**Recommendation 6.5**

***Prohibit Board members from being involved in both the investigation of complaints and the determination of disciplinary action.***

**Agency Response to 6.5**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**For 6.5**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

**Against 6.5**

None received.

**Modification**

4. Clarify that Board members can report alleged violations of private security rules or statute to the commander of the Private Security Bureau or the commander's representative and still participate in determining any necessary disciplinary action. (John E. Chism, Board Chair – Private Security Board, Irving)

**Recommendation 6.6**

***Increase the amount of the Bureau's administrative penalty authority, and require the Private Security Board to recommend an administrative penalty matrix in rule for adoption by the Public Safety Commission.***

**Agency Response to 6.6**

While DPS has no objection to this recommendation, we believe the regulated professions will object to the increase. Until the most recent legislative session, when HB 2833 raised the maximum administrative penalty to \$500 per violation per day, the maximum penalty was only \$200, so this would be a significant change. Even if the recommendation is enacted, it is unlikely that we would impose a penalty of \$5,000 for a violation except in the most serious of circumstances. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**For 6.6**

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

Dan Flores, President – Associated Security Services and Investigators of the State of Texas, Brownsville

**Against 6.6**

None received.

**Recommendation 6.7**

**Authorize Board members to receive reimbursement for travel expenses.**

**Agency Response to 6.7**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**For 6.7**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

**Against 6.7**

None received.

**Recommendation 6.8**

**Allow the Private Security Board to recommend fee levels.**

**Agency Response to 6.8**

While DPS has no objection to this recommendation, we believe the regulated professions will object. It also has the potential to create at least the appearance of a conflict of interest for Board members who are also members of the regulated professions. It is more appropriate for the Legislature to set fee levels, however fees should be reappropriated to fund the program, thus allowing the agency some flexibility to address any increase in demand for licensure. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**For 6.8**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

**Against 6.8**

None received.

## **Modification**

5. Ensure that Private Security Board funds are not swept as has happened in the past. The agency can stand on its own feet without excessive fees if the fees are allowed to be kept within the agency. (Michael Samulin, Past Vice Chair – Private Security Board, San Antonio and George Craig, Past Chair – Private Security Board, Corpus Christi)

## *Commission Decision*

Adopted Recommendations 6.1 through 6.8.

## *Legislative Action*

House Bill 2730 contains numerous provisions to conform Private Security Bureau functions with standard licensing practices, including:

- ◆ authorizing the Bureau to license by endorsement to streamline the licensing process and reduce regulation; (Recommendation 6.1)
- ◆ applying Occupations Code, Chapter 53 to the Private Security Act to provide flexibility and fairness in licensing applicants with criminal histories; (Recommendation 6.2)
- ◆ authorizing the Bureau to require jurisprudence examinations for all security licensees; (Recommendation 6.3)
- ◆ requiring appeals of Board actions to district civil court under the substantial evidence rule; (Recommendation 6.4)
- ◆ prohibiting Board members from being involved in both the investigation of complaints and the determination of disciplinary action; (Recommendation 6.5)
- ◆ increasing the amount of the Board's administrative penalty authority, and requiring the Board to adopt an administrative penalty matrix in rule; (Recommendation 6.6)
- ◆ authorizing Board members to receive reimbursement for travel expenses; and (Recommendation 6.7)
- ◆ allowing the Private Security Board to recommend fee levels. (Recommendation 6.8)

# Issue 7

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## *Texas Has a Continuing Need to Regulate the Private Security Industry Through the Private Security Bureau.*

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### Summary

#### Key Recommendations

- ◆ Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.
- ◆ Prohibit Private Security Bureau troopers from having outside employment as security officers.

#### Key Findings

- ◆ Texas has a continuing need to regulate the private security industry.
- ◆ The Private Security Bureau is the most appropriate organization to license and regulate the private security industry in Texas.
- ◆ Allowing Private Security Bureau troopers to work part time as security officers is a potential conflict of interest.

#### Conclusion

The Private Security Bureau (PSB) protects the public by ensuring that only qualified individuals, businesses, and schools become licensed to provide private security services in Texas. The Private Security Bureau is a unit of the Department of Public Safety (DPS) charged with administering the Private Security Act and rules recommended by the Private Security Board and adopted by the Public Safety Commission. The Bureau licenses and regulates private security companies and guards, private investigators, personal protection agents, locksmiths, alarm businesses, and others.

Sunset staff's evaluation of PSB's functions and structure found a continuing need to regulate the private security industry due to the potential risk to public safety of an unregulated security industry. Sunset staff also found that PSB's public safety expertise makes it the appropriate organization to regulate the private security industry. The Board, however, does not need a separate Sunset date and should be included as part of future DPS Sunset reviews. The review also noted a potential for conflicts of interest when troopers that regulate the private security industry also work part time in that industry. DPS should eliminate this potential conflict.

## Support

**The Private Security Bureau protects the public by regulating individuals and companies involved in the private security industry.**

- ◆ In 1969, the Legislature created the Texas Board of Private Detectives, Private Investigators, Private Patrolmen, and Private Guard Watchmen, and gradually added other private security occupations to its jurisdiction. The Legislature changed the name of the agency over the years and in 2003 abolished the Texas Commission on Private Security as a stand-alone agency and transferred its functions to DPS as the Department's Private Security Bureau (PSB).
- ◆ The Private Security Board is a seven-member board appointed by the Governor to hear appeals by applicants under the Private Security Act, and to recommend rules necessary for the administration of the Act. After the Board takes public comments on proposed rules and makes recommendations, the Public Safety Commission has final approval over the rules.
- ◆ The Private Security Bureau seeks to protect the public by ensuring that only qualified individuals become licensed and by sanctioning violators of the private security statute or rules. To achieve this goal, the Bureau performs two core functions: licensing and enforcement. The Bureau has 57 employees with 27 located at DPS' Austin headquarters, and 30 investigators, who are plainclothes commissioned officers, located around the state. The Bureau oversees more than 60,000 individual licensees and 4,900 private security schools and businesses. See the table, *Private Security Board Regulated Titles*, for numbers and types of individual licenses.

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*The Public Safety Commission has final approval over Private Security Bureau rules.*

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***Private Security Board Regulated Titles***

Occupational License	Number of Licensees	Occupational License	Number of Licensees
Noncommissioned Security Officer	36,145	Instructor	588
Commissioned Security Officer	9,303	Employee of License Holder	453
Owner/Partner/Shareholder/Officer	4,213	Electronic Access Control Device Installer	391
Alarm Installer	2,955	Security Salesperson	290
Alarm Salesperson	1,992	Personal Protection Officer	201
Alarm System Monitor	1,734	Branch Office Manager	122
Private Investigator	1,638	Security Consultant	94
Locksmith	614	Guard Dog Trainer	46
<b>Total number of licensees</b>			<b>60,779</b>



## Texas has a continuing need to regulate the private security industry.

- ◆ Regulation of the private security industry continues to be important due to the potential risk untrained licensees or unlicensed activity pose to public safety. For example, commissioned private security officers may carry guns and are properly trained in their use. Both commissioned and noncommissioned security officers protect critical infrastructure such as power plants, seaports, and major medical centers. Locksmiths and alarm installers work inside homes and have access to sensitive security information and keys.

After investigating more than 1,000 cases in fiscal year 2007 of armed security guards working either without a license or with a suspended license, PSB investigators focused on more priority inspections which involve critical infrastructure facilities such as petrochemical companies, major ports, and metropolitan medical centers. During priority inspections from August 2007 through January 2008, PSB inspected 15 companies, 60 facilities, 66 individuals, and made four arrests. Investigations and complaints involving unlicensed individuals who are in the country illegally may involve other government agencies such as Immigration and Customs Enforcement.

- ◆ The Bureau's large enforcement caseload further illustrates the need to regulate private security activities. In fiscal year 2007, the Bureau issued 952 administrative penalties and 534 reprimands. See the textbox, *Private Security Bureau Enforcement Activity*, for more information.

### ***Private Security Bureau Enforcement Activity – FY 2007***

- ◆ 8,400 complaints resolved
- ◆ 948 complaints received from public
- ◆ 3,700 complaints initiated by agency
- ◆ 952 administrative penalties issued
- ◆ 534 reprimands issued

## The Private Security Bureau is the most appropriate organization to license and regulate the private security industry in Texas.

- ◆ While other agencies perform functions similar to the Bureau's, they lack the expertise to perform the needed functions of PSB. For example, the Texas Department of Licensing and Regulation (TDLR) performs licensing and regulatory functions for more than 20 types of businesses, industries, trades, and occupations licensed by the State. However, TDLR has little public safety expertise and does not have commissioned officers to investigate and make criminal arrests of unlicensed security guards who may be armed.

The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) establishes minimum competency for public peace officers and regulates law enforcement academies and curricula used to instruct these peace officers. However, TCLEOSE's functions relate to public law enforcement officials and not the private investigations and private security industries. TCLEOSE does not investigate complaints

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*The Private  
Security Bureau  
has the expertise  
in licensing and  
enforcement  
needed to regulate  
the industry.*

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against officers and only initiates enforcement action after the employing police agency investigates and takes action. The Bureau, on the other hand, directly investigates all complaints. Consolidating the functions of PSB with TCLEOSE would not provide a significant benefit to the State as merging the responsibilities would require similar resources at TCLEOSE as needed to operate the program at PSB.

- ◆ The Private Security Bureau has the expertise needed to regulate the private security industry through its licensing and enforcement procedures. DPS trains PSB troopers in criminal law enforcement techniques, investigative techniques, managing surveillance situations, and working in a plainclothes environment. The investigators also receive training on how to detect possible high risk terrorist targets when working investigations in industrial settings such as refineries or chemical plants.
- ◆ The Legislature has shown confidence in PSB in recent years by increasing its responsibilities to include regulation of the locksmith industry and by increasing its funding by \$3.4 million over the last two fiscal years. The Bureau used this increased funding to eliminate much of the complaint and licensing backlog inherited from its predecessor, the Texas Commission on Private Security.

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*Private security services are regulated in 49 of 50 states.*

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**Almost all states regulate the private security industry although organizational structures vary.**

- ◆ Twenty-six states, including Texas, use their public safety or justice departments for oversight of private security entities. Eighteen states regulate private security occupations through various licensing agencies. These agencies include economic development, occupational licensing, and labor departments. Five states do not regulate the private security industry statewide but allow regulation through county or city public safety organizations. One state, Rhode Island, has no regulation of private security at all.

***Private Security Regulation in the United States***

Structure	Number of States	Key States
State – Public Safety	26	Arizona, New Jersey, Ohio, Oklahoma, Virginia
State – Licensing Agency	18	California, Florida, Illinois, Michigan, New Mexico
Counties, Cities – Public Safety	5	Missouri, Colorado, Pennsylvania, Wyoming, Idaho

**Allowing Private Security Bureau troopers to work part time as security officers is a potential conflict of interest.**

- ◆ The Bureau has 30 commissioned DPS troopers and sergeants who work as investigators to enforce the Private Security Act. According to PSB management, about half of these troopers work during their off time as part-time security officers. For example, troopers may work as

security officers at events like football games or other large gatherings. This part-time employment could be perceived as a conflict of interest as the troopers are working in an industry that they also regulate and could potentially treat licensees unfairly. The Bureau has not received any official complaints or allegations of unfair treatment related to troopers' outside employment. The Board and the Bureau have addressed this issue at Board meetings and requested that licensees bring any allegations of wrongdoing to the Board's attention.

DPS recognized the potential conflicts of interest when it gained oversight of these industries, and developed policies intended to prevent problems from occurring. For example, DPS policy does not allow its employees to perform any function that requires licensing under the private security statute. DPS troopers, including PSB troopers, may not work for security companies directly, but must work as independent contractors. All DPS troopers are also prohibited from soliciting security employment, but PSB troopers receive more individual scrutiny from management in approval of off-duty employment than other DPS troopers. Nevertheless, in this highly competitive environment, some security contractors perceive allowing this part-time employment as unfair competition.

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*About half of the  
Private Security  
Bureau's 30  
troopers work  
during their off  
time as part-time  
security officers.*

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## Recommendations

### Change in Statute

#### **7.1 Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.**

This recommendation would continue the Private Security Board but not have a separate Sunset review in the future. The Sunset Commission would review the Bureau as part of its review of DPS.

### Management Action

#### **7.2 Prohibit PSB troopers from having outside employment as security officers.**

This recommendation would eliminate the appearance of and the potential for conflicts of interest in DPS' regulation of the private security industry. The change would prevent PSB troopers from working part time in the security industry they regulate. While DPS has taken steps to prevent conflicts of interest, and has not received any formal allegations of abuse, without this change the potential for misuse of authority remains.

### Fiscal Implication

If the Legislature continues the Private Security Act using the existing organizational structure, the State would continue to need the Bureau's annual appropriation of \$4.05 million.



## *Responses to Issue 7*

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### **Recommendation 7.1**

***Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.***

#### **Agency Response to 7.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 7.1**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

Randy Kildow, President – Texas Association of Licensed Investigators, Arlington

Rodney Hooker, Vice President/Legislative Chairman – Texas Burglar and Fire Alarm Association, San Antonio

#### **Against 7.1**

Lauro Garza, MPO, Vice President – Fraternal Order of Security Professionals, Katy

### **Recommendation 7.2**

***Prohibit PSB troopers from having outside employment as security officers.***

#### **Agency Response to 7.2**

DPS management does not agree with this recommendation. We believe that the Department's policy regarding secondary employment is sufficient to ensure no misuse of authority occurs. Further, PSB investigators, and all DPS employees, may only work secondary employment in fields that do not require licensing under the Private Security Act. To exclude PSB investigators from secondary employment in other fields just because they are also open to licensed individuals would place them in a detrimental position compared to all other identically ranked DPS troopers, as well as all other full-time law enforcement officers in the state, although they are required to meet the same standards and have identical training. We believe this would make it more difficult for the Department to attract qualified individuals for the investigator positions and would be detrimental to the program. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

**For 7.2**

None received.

**Against 7.2**

John E. Chism, Board Chair – Private Security Board, Irving

Michael Samulin, Past Vice Chair – Private Security Board, San Antonio

George Craig, Past Chair – Private Security Board, Corpus Christi

Randy Kildow, President – Texas Association of Licensed Investigators, Arlington

Dan Flores, President – Associated Security Services and Investigators of the State of Texas, Brownsville

*Commission Decision*



Adopted Recommendation 7.1.

*Legislative Action*



House Bill 2730 continues the Private Security Board but removes its separate Sunset date. The Sunset Commission would review the Board as part of its review of DPS. (Recommendation 7.1)

# Issue 8

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## *Texas Has a Continuing Need for the Department of Public Safety.*

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### **Summary**

#### **Key Recommendation**

- ◆ Continue the Department of Public Safety for 12 years.

#### **Key Findings**

- ◆ Performing statewide law enforcement and other public safety activities continues to be needed.
- ◆ No substantial benefit or savings would result from transferring the Department's functions to other agencies.
- ◆ While organizational structures vary widely, all 50 states have some form of public safety department.

#### **Conclusion**

The Department of Public Safety's (DPS) mission to provide statewide law enforcement and other public safety services continues to be important to Texas, more than 70 years after the agency's establishment. Sunset staff's evaluation of DPS' functions and structure found that while other agencies could potentially perform DPS' duties, no significant benefit would be realized by transferring the Department's programs, and DPS should be continued for 12 years.

## Support


### **The Department of Public Safety seeks to protect individuals through statewide law enforcement and other public safety activities.**

- ◆ To provide statewide law enforcement, the Legislature created the Department of Public Safety (DPS) in 1935 by merging the Texas Rangers and the Texas Highway Patrol. Since that time, the Legislature has gradually added to the agency's responsibilities though its mission to provide public safety services largely remains unchanged. Today, DPS accomplishes its mission through four main functions: traffic law enforcement; criminal law enforcement; license regulation; and emergency management.
- ◆ In fiscal year 2007, DPS spent \$851 million, primarily derived from the State Highway Fund and federal funds. That year the agency had 7,776 employees at its Austin headquarters and in field offices throughout the state. Of this total, 3,458, or 45 percent, were commissioned law enforcement officers.

### **Performing statewide law enforcement and other public safety activities continues to be needed.**

- ◆ While many cities and counties perform functions similar to DPS, only a statewide organization can coordinate law enforcement and public safety activities across jurisdictional boundaries. Texas continues to need the Department's four main functions.
- ◆ Motor vehicle crashes injure and kill motorists every day on Texas public roadways, with an average of 3,500 motorists dying each year.<sup>1</sup> DPS' Texas Highway Patrol enforces all manner of highway safety laws on rural highways to protect motorists. In 2007, Texas Highway Patrol made more than 85,000 arrests and investigated almost 73,000 crashes. While no one enjoys receiving a speeding ticket, excessive speed is a major cause of highway crashes.<sup>2</sup> In 2007, Texas Highway Patrol issued more than 500,000 citations for speeding. The Department also ensures the safe operation of commercial motor vehicles, as more than 3 million trucks travel across Texas highways every day. Commercial vehicle enforcement staff conducted more than 300,000 roadside inspections in 2007, and put 71,000 vehicles out of service for serious safety violations.
- ◆ The State's efforts to control criminal activities by assisting local law enforcement agencies continue to be needed. For example, DPS operates programs to stop narcotics trafficking and automobile theft rings. While the crime rate in Texas went down 5 percent from 2005 to 2006 (the most recent data available), more than 1 million major violent and property crimes occurred in Texas in 2006.<sup>3</sup> An agency with statewide jurisdiction is essential to plan and coordinate effective crime prevention and detection and provide technical assistance. For example, DPS provides a

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*Only a statewide organization can coordinate law enforcement and public safety activities across jurisdictional boundaries.*

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statewide law enforcement communications system, training for criminal investigators, and extensive crime lab services.

- ◆ Through its licensing programs, DPS provides an essential public safety function by ensuring that only qualified Texans receive driver licenses, concealed handgun licenses, or private security occupational licenses. In 2007, more than 16 million Texans had driver licenses and almost 300,000 had concealed handgun licenses. The Department also regulated more than 60,000 private security licensees.
- ◆ The effects of Hurricanes Katrina and Rita are fading to a memory for most Texans, but the need to prepare for the next hurricane, wildfire, or even an act of terrorism remains present. The Governor's Division of Emergency Management (GDEM), a division of DPS, helps state and local governments prepare for disasters and coordinates the State's response when disasters occur. In fiscal year 2007, GDEM helped almost 90 percent of local governments achieve acceptable levels of preparedness and coordinated the response to more than 10,000 emergency incidents. In addition, federal guidelines require a State Administrative Agency, currently located within GDEM, to receive funds from the U.S. Department of Homeland Security. In fiscal year 2007, Texas received \$92 million of these funds.

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*In 2007, more  
than 16 million  
Texans had driver  
licenses and  
almost 300,000  
had concealed  
handgun licenses.*

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### **No substantial benefit or savings would result from transferring the Department's functions to other agencies.**

- ◆ While other state agencies perform some similar functions, none perform the range of public safety functions provided by DPS. For example, the state's other agencies with major law enforcement components, the Texas Alcoholic Beverage Commission (TABC) and the Texas Parks and Wildlife Department (TPWD), also train and commission peace officers to enforce state laws, but the missions of those agencies are much more limited than the Department's – TABC regulates the alcoholic beverage industry and TPWD enforces wildlife laws. No substantial benefit could be achieved by transferring DPS' law enforcement programs.
- ◆ The Texas Department of Licensing and Regulation regulates a wide variety of occupations and could potentially handle DPS' regulatory programs, including private security regulation and concealed handgun licensing. However, both programs benefit from being housed at DPS. For example, commissioned DPS officers investigate and may arrest, if necessary, armed private security guards acting illegally, and Texas Highway Patrol troopers perform in-depth background checks on concealed handgun license applicants across the state.
- ◆ Although the Texas Department of Transportation handles vehicle registrations in partnership with counties and could potentially absorb the driver license program from DPS, staff found no compelling reason for such a major transfer. Housing the State's driver license function at DPS has also provided benefits as Texas prepares to meet the requirements

of the federal REAL ID Act, including the physical security that DPS already has in place at its headquarters where it produces driver licenses and ID cards, and at its driver license offices across the state.

**While organizational structures vary widely, all 50 states have some form of public safety department.**

- ◆ Each state recognizes that ensuring public safety is an essential and appropriate state-level function, although other state organizational structures vary widely. Some states, like Texas, have single agencies dedicated to public safety, while others use a combination of agencies to provide statewide services. For example, California performs its criminal investigation function in its Attorney General’s Office, traffic safety in California Highway Patrol, and driver license in the Department of Motor Vehicles. Other states also separate their highway patrol functions from criminal law enforcement activities. Ten states, including Texas, house their driver license function at public safety agencies.

## Recommendation

### Change in Statute

#### 8.1 Continue the Department of Public Safety for 12 years.

While the previous issues in this report show that DPS has significant opportunities for improvement, the agency is still clearly needed to provide public safety services at the statewide level. This recommendation would continue the Department for 12 years.

### Fiscal Implication

If the Legislature continues the Department of Public Safety using the existing organizational structure, the need for the agency’s annual appropriation of \$851 million for operations would continue.

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<sup>1</sup> Interview with Texas Department of Transportation, Traffic Operations Division staff (Austin, Texas, April 16, 2008).

<sup>2</sup> Ibid.

<sup>3</sup> Department of Public Safety, *Crime in Texas 2006* (Austin, Texas), p. 10.

## *Responses to Issue 8*

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### **Recommendation 8.1**

**Continue the Department of Public Safety for 12 years.**

#### **Agency Response to 8.1**

DPS management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

The Public Safety Commission is in general agreement with all of the Sunset Commission staff recommendations. (Allan B. Polunsky, Chairman – Public Safety Commission)

#### **For 8.1**

None received.

#### **Against 8.1**

None received.

## *Commission Decision*

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Adopted Recommendation 8.1.

## *Legislative Action*

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House Bill 2730 modifies the Sunset Commission recommendation to continue DPS for 12 years and instead continues the agency for six years. (Recommendation 8.1)



# Issue 9

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## *Transfer the Regulation of Polygraph Examiners to the Department of Licensing and Regulation.*

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### Summary

#### Key Recommendations

- ◆ Abolish the Polygraph Examiners Board (Board) and transfer its functions to the Texas Department of Licensing and Regulation.
- ◆ Establish a polygraph advisory committee to assist with the regulation of polygraph examiners.
- ◆ Conform elements of polygraph licensing and regulation to commonly applied licensing practices.

#### Key Findings

- ◆ Regulation of polygraph examiners continues to be needed.
- ◆ Portions of the Board's licensing exam for polygraph examiners are overly subjective, and the Board inconsistently applies grading standards.
- ◆ The Board's enforcement efforts do not adequately protect the public.
- ◆ The Board has made several decisions potentially based on interests of Board members rather than on the protection of the public, and has adopted rules that create the appearance of a conflict of interest.
- ◆ The function of polygraph regulation is not well placed at DPS.
- ◆ Consolidating the agency's functions with the Texas Department of Licensing and Regulation (TDLR) will resolve problems with licensing and enforcement, and remove potential conflicts of interest.

#### Conclusion

The Legislature has charged the Polygraph Examiners Board (Board) with licensing and regulating polygraph examiners in Texas for the protection of the public. The Sunset review evaluated the effectiveness of regulation at the agency and found that the Board's ability to protect the public is compromised by the real and potential conflicts of interest inherent in the Board's processes and administrative placement, its licensing examination procedures, and the small size of the agency and number of licensees.

The review concluded that transferring the agency's functions to the Texas Department of Licensing and Regulation (TDLR) would improve the regulation of the industry. Creating a separate advisory committee at TDLR devoted to giving technical and rulemaking advice would ensure that licensees and the public continue to have a voice, while improving current regulation.

## Support

### **The mission of the Polygraph Examiners Board is to protect the public by regulating polygraph examiners.**

- ◆ The Texas Legislature passed the Polygraph Examiners Act (Act) in 1965, created the Polygraph Examiners Board (Board) in 1981, and appropriated funds for implementation of the Act beginning in 1984. Of the seven members on the Board, two must be law enforcement examiners, two must be private (commercial) examiners, and three must represent the public. The Board enforces the Polygraph Examiners Act by licensing qualified examiners, investigating complaints against licensees, and taking disciplinary action when necessary.
- ◆ The Board currently has two FTEs, employing an Executive Officer and an administrative assistant. The Board's fiscal year 2007 appropriation was \$94,440, supported by licensing fees. The Board is an independent agency administratively housed at the Department of Public Safety (DPS) – DPS provides administrative support of about \$600 annually. In 2007, the Board issued 16 new licenses and renewed 227 licenses for polygraph examiners.
- ◆ In 2007, the Board approved 13 polygraph schools in the United States as having a curriculum that meets minimum Board standards. Texas has two of the approved schools: the DPS Law Enforcement Polygraph School in Austin and a privately owned school in Corpus Christi. The Board administers the polygraph licensing examination four times a year in Austin, at regularly scheduled Board meetings. The exam has three parts, described in the textbox, *Polygraph Licensing Exam*.

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*The Board is  
administratively  
housed at the  
Department of  
Public Safety.*

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#### ***Polygraph Licensing Exam***

The polygraph licensing exam includes:

- ◆ an academic section with objective questions about state law, anatomy, physiology, chart interpretation, and other aspects of polygraph;
- ◆ a scenarios section which requires a candidate to draft polygraph examinations for hypothetical situations where polygraph exams might be used; and
- ◆ an oral interview where Board members review the candidate's actual, completed polygraph exam results and interpretation.

- ◆ Board staff estimate that approximately 70 percent of licensed examiners in Texas are employed by law enforcement agencies, including DPS. Police agency examiners test crime witnesses, suspects, peace officers or fire fighters in internal investigations, candidates for certain types of law enforcement jobs, and other populations. Commercial polygraph examiners conduct exams for private-pay customers such as defendants

in criminal cases; civilly committed sex offenders; private employers who are investigating employee theft or fraud (cases exempt from the federal Employee Polygraph Protection Act of 1988<sup>1</sup>); parties to civil actions, such as divorcing couples; sports and tournament competitors; or police agencies that do not have their own examiners. Many examiners employed by law enforcement agencies also work part time performing commercial exams.

### **Regulation of polygraph examiners continues to be needed.**

- ◆ Sunset Commission staff did not attempt to evaluate the validity or reliability of polygraph examinations in its review of the Board. The U.S. Supreme Court wrote in 1998 that, “To this day, the scientific community remains extremely polarized about the reliability of polygraph techniques. Some studies have concluded that polygraph tests overall are accurate and reliable...Others have found that polygraph tests assess truthfulness significantly less accurately.”<sup>2</sup> Instead, staff studied whether Texas continues to need the Board and the Act.
- ◆ While courts in Texas generally do not allow parties to offer polygraph examinations as evidence because of doubts about their reliability, their frequent use in situations where the exam results can have serious consequences for the examinee requires the continued regulation of the industry to ensure basic qualifications of examiners and oversight.
- ◆ For example, Sunset staff interviewed numerous individuals who said that in many instances, one of the chief purposes of a polygraph exam is to pressure an allegedly guilty party into making a confession – an event that could have a significant impact on many aspects of the individual’s life, including their employment, reputation, or freedom from imprisonment. Although submitting to a test is voluntary, some populations can be required or pressured to take an exam under certain conditions. Some examples follow.
  - Juvenile justice agencies and courts may require a juvenile to submit to polygraph exams as a condition of release for purposes of evaluating treatment progress.
  - Convicted sex offenders often must submit to polygraph exams as a condition of community commitment or release. Failing an exam can result in a revocation of probation or parole.
  - DPS requires applicants for peace officer or police communications operator positions to submit to a polygraph exam, although the law prohibits a DPS peace officer from being required to take an exam once commissioned. Most local police agencies require an exam before hiring.

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*Sunset did not attempt to evaluate the validity or reliability of polygraph examinations.*

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*Regulation of polygraph examiners continues to be needed.*

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**Portions of the Board’s licensing exam for polygraph examiners are overly subjective, and the Board inconsistently applies grading standards.**

- ◆ Two of the three sections of the Board’s licensing exam are potentially biased. The scenarios and oral interview sections of the exam are subjective, and are graded by whichever Board members are present at the meeting where the exam is given. Board members have a checklist to use while evaluating a candidate’s work, but are not given scoring guidelines that could help standardize the actual grading of the exam.
- ◆ Differing approaches among Board members and the Executive Officer regarding proper polygraph test construction and administration can lead to inconsistent grading practices. As an illustration, during the past years when the Executive Officer graded the scenarios section of the exam, passing rates were generally above 90 percent. The Board took over grading the scenarios section of the licensing exam during the August 2007 test administration and failed 11 of 13 candidates. In some cases, different Board members assigned widely divergent scores to the same examinees. Although subsequent licensing exam sessions have not resulted in the same elevated failure rate, the percentage of candidates who failed the exam after the transition to the new grading system raised concerns regarding the subjectivity of the test and the grading process.

**The Board’s enforcement efforts do not adequately protect the public.**

- ◆ The agency is inconsistent in its method of investigating, classifying, and reporting the complaints it receives, preventing it from effectively analyzing the amount and type of complaints. Without such standardized complaint data, the Board is unable to conduct trend analyses and direct relevant, targeted information to the licensed examiners.
- ◆ In fiscal year 2007, the agency received six complaints, all of which the Executive Officer investigated with oversight from one Board member designated as the complaint officer. The Board held three of the complaints to be unfounded because the allegations were not supported by the facts. Three complaints were dismissed because the agency was unable to investigate the allegations – one of which because it went “stale,” an unusual classification that implies inaction by the Board. When asked why the Board was unable to investigate the complaints, agency staff could not provide a clear explanation. The Board classified numerous other inquiries from the public as *concerns* and investigated them to some degree, but did not track them in the complaint system.
- ◆ Depending solely on the limited complaint process currently in place does not adequately protect the public. In many cases, the “consumer” of polygraph services is not a truly voluntary participant nor the person that purchased the services of the polygraph examiner. The consumer may not know what constitutes appropriate examiner behavior, or how

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*The Board  
received and  
investigated six  
complaints in  
fiscal year 2007.*

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to file a complaint. Without methods of enforcement other than the current complaint procedures, the Board may not be aware of instances of inappropriate practice.

- ◆ The Board takes almost no disciplinary action. The Act authorizes the Board to discipline a licensee who violates the Polygraph Examiners Act or rules, including issuing a reprimand or denying, suspending, or revoking the examiner's license. In the last 10 years, the agency has taken just two enforcement actions – revoking one license because the examiner was convicted of a felony, and suspending one for 90 days when the examiner temporarily practiced with an expired license. While such a low number of actions does not necessarily indicate a problem, it is unusual among licensing agencies.

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*The Board  
takes almost  
no disciplinary  
action.*

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**The Board has made several decisions potentially based on interests of Board members rather than on the protection of the public, and of adopting rules that create the appearance of a conflict of interest.**

- ◆ The Act requires most polygraph examiner candidates to graduate from a Board-approved polygraph school, and rules outline the Board's mechanism to approve schools. In 2001, Board rules stipulated that, in addition to the school's training schedule, approval would be based on American Polygraph Association (APA) accreditation. In August of 2003 a private polygraph school owned by a Board member lost its APA accreditation. In June of 2006, the Board amended its rules to allow the Board to approve a school even if it had not met APA accreditation. As owner of the school that had lost accreditation, the then-Presiding Officer voted in favor of proposing the rule change at the February 2006 Board meeting, though he voted "present" on final adoption at the May 2006 meeting.

The Board's rationale for amending its rules was that requiring school accreditation by an outside entity might "limit proprietorship." However, numerous agencies, licensing boards, and educational systems rely on accreditation by a regional or national organization to ensure standardization and quality of schools, including the Texas Medical Board, the State Board of Dental Examiners, the State Board of Podiatric Medical Examiners, and the University of Texas System.

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*Current rules  
allow Board  
members to  
grade exams  
of their interns  
or students.*

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- ◆ Current rules allow Board members to grade the exams of their interns, and a Board member who owns a polygraph school may grade the exams of its graduates. An intern sponsored by a Board member, or one who attended a school owned by a Board member, could potentially have an advantage during the exam process since Board members have access to exam questions and grade the exams. From 2003 to 2006, Board rules prohibited Board members from even sponsoring interns; the Board amended those rules to allow Board sponsorship after a Board member, who later became the Presiding Officer, sued the Board protesting the policy.

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*Polygraph  
examiner  
licensing fees are  
among the highest  
of any profession  
licensed in Texas.*

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### **The Board's staffing is not sufficient to effectively regulate a licensed occupation.**

- ◆ The Board has only two employees and has difficulty keeping up with agency responsibilities. For example, agency staff struggled to get requested information to Sunset staff in a timely manner and has required several deadline extensions. Should the Executive Officer need to be out of the office for any extended period, such as an illness or vacation, agency operations would effectively shut down.
- ◆ Polygraph initial licensing and renewal fees are currently set at \$500 and \$450, respectively. These fees are among the highest of those paid by any other profession in Texas subject to occupational licensing, including physicians, podiatrists, dentists, and attorneys. Because of the small number of licensees, however, even with these high fees, the agency has difficulty operating efficiently. Economies of scale are absent when only a small number of licensees are regulated. An umbrella agency would merge the licensing and enforcement functions with those of other occupations, taking advantage of economies of scale.

### **The function of polygraph regulation is not well placed at DPS.**

- ◆ DPS both operates a polygraph school and houses the agency that licenses the school's graduates, creating the potential for a conflict of interest. Most polygraph school graduates who seek licensure from the Polygraph Examiners Board graduated from the DPS polygraph school, at times creating a possible conflict between the licensing agency and the school administration if the interests of the two entities differ.
- ◆ Numerous stakeholders interviewed by Sunset staff commented on the increasingly antagonistic relationship between the Board and DPS. As an example, in September 2007, DPS made a Public Information Act request to the Board for documents related to the August 2007 licensing exam administration. The Board did not send the requested documents to DPS for more than four months, and in February of 2008 DPS filed a complaint against the Board with the Office of the Attorney General for failing to respond appropriately to its request. At one point, the Polygraph Board submitted a bill to DPS to produce the documents, in essence charging its administering agency for the records. In late April 2008, the Attorney General ruled that the Polygraph Examiners Board violated the Public Information Act.

### **Consolidating the agency's functions with the Texas Department of Licensing and Regulation (TDLR) will resolve problems with licensing and enforcement, and remove potential conflicts of interest.**

- ◆ TDLR effectively regulates a wide variety of occupational licensing programs and offers an opportunity to improve the current regulation of polygraph examiners. TDLR's functional alignment and use of technical

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*The Texas  
Attorney General  
ruled that the  
Board violated  
the Public  
Information Act.*

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advisory committees allow the agency to oversee appropriate and efficient regulation of its programs. The Legislature has recognized TDLR as the State's model for occupational licensing, continuously adding new programs and relying on the agency's licensing expertise to help with start-up licensing programs. TDLR's ability to successfully incorporate new programs sets the stage for continued consolidation of smaller licensing agencies.


- ◆ TDLR has the existing framework to absorb this agency and ensure overall effectiveness. The Department currently oversees more than 20 types of businesses, industries, trades, and occupations, and is organized along workflow functions – licensing, enforcement, and administration and support services – to achieve streamlined processes for each of its programs. TDLR's licensing process is already efficient and offers many examinations remotely and electronically. TDLR also has the financial and technological support functions in place to meet the agency's needs.
- ◆ The Commission on Licensing and Regulation (Commission), TDLR's policymaking body, is comprised of seven public members appointed by the Governor. The Commission receives assistance from 15 advisory committees which provide rulemaking and technical advice. Typically, agency staff presents draft rules to the specialized advisory committees for development and comment. After the advisory committee approves the rules for recommendation to the full Commission, the agency publishes the rules for public comment, and then the Commission votes on them.

Creating a new advisory committee to address polygraph regulation would ensure that the Commission would receive technical expertise from stakeholders in policy and rulemaking, as well as ensuring public input when proposed changes go to the full Commission. Having the TDLR Commission make the final decisions on polygraph matters removes the potential for conflicts of interest in the current board setup.

**Elements of polygraph licensing and regulation do not conform to commonly applied licensing practices.**

- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Sunset Commission in 1977. Since then, the Sunset Commission has completed more than 93 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies.
- ◆ *Licensure application.* Licensure processes should not overburden applicants or unreasonably restrict entry into practice. Currently, the Act requires applicants to notarize applications to ensure the accuracy of information.<sup>3</sup> This notarization requirement is an unnecessary burden on applicants because other state law already prohibits a person from knowingly making a false entry in a government record.<sup>4</sup> Removing the requirement would simplify the licensure process.


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*The Department  
of Licensing  
and Regulation  
has the ability  
to absorb the  
Polygraph  
Examiners Board.*

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*Examiners should  
be required to  
inform a person  
undergoing a  
polygraph test  
how to file a  
complaint.*

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- ◆ ***Criminal convictions.*** Chapter 53 of the Occupations Code permits a licensing agency to revoke, suspend, or deny an occupational license for conviction of a felony or misdemeanor that directly relates to the duties of the licensee. The Polygraph Examiners Act contains a general statutory provision that permits denial of a license for a felony conviction or a crime that involves moral turpitude, but the Board does not have rules identifying specific convictions that could affect a polygraph examiner's ability to practice safely.<sup>5</sup> Amending the Act to direct the Board, or its successor agency, to adopt rules that specify the type of criminal offenses that directly relate to the duties and responsibilities of a polygraph examiner would provide licensees and their governing board the clarity needed to determine which offenses warrant the denial of a license.
- ◆ ***Consumer complaints.*** The Board should have processes in place to inform polygraph consumers of its complaint procedures. Although the agency's website provides clear information for the public on how to file a complaint against a polygraph examiner, and the Act requires examiners to inform test subjects of the Board's mailing address and phone number, the Act does not specifically require a licensee to inform a person undergoing a polygraph test how to file a complaint with the Board. Requiring licensees to provide this information would help ensure the agency receives complaints about inappropriate polygraph exams.
- ◆ ***Appeals.*** Board actions relating to appeals should be subject to review in district court under the substantial evidence rule. Under the substantial evidence standard, the appeal allows review of the case record to ensure that evidence presented supports the ruling. Current statute allows licensees to appeal to civil court but does not specify the substantial evidence standard. Updating language in the Act to reflect this common practice would save time and expense while generally providing a sufficient level of protection on appeal.
- ◆ ***Flexible fees.*** A licensing agency should have authority to set fees by rule. The ability to set fees allows for greater administrative flexibility and reduces the need for the Legislature to continually update agency statutes. The Polygraph Examiners Act specifies fee caps that are routinely exceeded by General Appropriations Act rider.<sup>6</sup> Removing fee caps from the Act would allow the Board or its successor agency to adopt appropriate fee schedules.

## Recommendations

### Change in Statute

#### 9.1 Abolish the Polygraph Examiners Board and transfer its functions to the Texas Department of Licensing and Regulation.

Under this recommendation, the Polygraph Examiners Board would cease to exist as an independent agency, and its testing and regulatory functions transferred to TDLR. The recommendation would align all regulatory provisions in the Polygraph Examiners Act with TDLR's enabling statute to streamline

administration. This recommendation would also remove the Sunset provision in the Polygraph Examiners Act, as it would be subject to TDLR's existing Sunset provision.

### **9.2 Establish a polygraph advisory committee to assist with the regulation of polygraph examiners.**

This recommendation would create a polygraph advisory committee at TDLR to advise the Commission on Licensing and Regulation regarding rules and standards related to the profession, educational curricula for applicants, licensing examination content, and other technical issues related to the industry. For example, the advisory committee could provide critical input to TDLR regarding methods for modifying the polygraph licensing exam to ensure the exam is as objective as possible while still accurately assessing an examiner's proficiency to practice.

The presiding officer of the Commission, with the Commission's approval, would appoint five members to the advisory committee for six-year staggered terms, and would designate one member of the committee as the presiding officer. The membership would include two commercial polygraph examiners, two law enforcement examiners, and one public member.

### **9.3 Eliminate notarization requirements for individuals applying for licensure.**

This recommendation would remove requirements from the Polygraph Examiners Act that applicants must notarize polygraph examiner license applications. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

### **9.4 Clarify that the Act must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.**

This recommendation would require the Board or its successor agency to follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by requiring the Board or agency to develop rules, under the provisions of Chapter 53, defining which specific types of crimes affect the licensee's ability to administer polygraph exams.

### **9.5 Require Polygraph examiners to inform consumers of complaint procedures.**

This recommendation would amend the Polygraph Examiners Act to require a polygraph examiner to inform an individual undergoing a polygraph exam of the process for filing a complaint against the examiner with the Board or its successor agency. Requiring this specific notice to individuals subject to polygraph services would help ensure the agency receives complaints from individuals who feel that the examiner or the exam process was inappropriate.

### **9.6 Require appeals of Board actions to district court to be reviewed under the substantial evidence standard.**

This recommendation would require appeals of actions of the Board or its successor agency in district court to be reviewed under the substantial evidence standard. Updating language in the Polygraph Examiners Act to reflect this common practice would save time and expense while providing a sufficient level of protection on appeal.

### **9.7 Remove fee caps in statute.**

This recommendation would remove the schedule of fees for polygraph licensing activities currently found in the Polygraph Examiners Act and authorize the Board or its successor agency to establish

fees in rule. This allows for greater administrative flexibility and is consistent with a provision in the General Appropriations Act that requires agencies to set fee amounts necessary to recover the cost of regulation.

### **Fiscal Implication**

Transferring the functions of the Polygraph Examiners Board to the Texas Department of Licensing and Regulation would result in an estimated annual savings to the State of \$41,740. This recommendation would result in a reduction of one FTE, based on eliminating the administrative support position. The reduction of this FTE would result in an annual savings of about \$32,740 based on the average salary and fringe benefits for the position. The recommendation would also result in a savings of approximately \$9,000 due to a reduction of travel costs for Board members, based on average travel reimbursements for fiscal year 2007.

The Polygraph Board’s current appropriation and FTE level, less the reductions discussed above, would be continued and transferred to the Texas Department of Licensing and Regulation.

<i><b>Fiscal Year</b></i>	<i><b>Savings to the General Revenue Fund</b></i>	<i><b>Change in Number of FTEs From FY 2007</b></i>
2010	\$41,740	-1
2011	\$41,740	-1
2012	\$41,740	-1
2013	\$41,740	-1
2014	\$41,740	-1

.....  
<sup>1</sup> The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2006, prohibits most private employers from using polygraph tests either for pre-employment screening or during the course of employment.

<sup>2</sup> U. S. v. Scheffer, 523 U.S. 303 (1998).

<sup>3</sup> Texas Occupations Code, sec. 1703.202 (1).

<sup>4</sup> Texas Penal Code, sec. 37.10.

<sup>5</sup> Texas Occupations Code, sec. 1703.203 (a)(1).

<sup>6</sup> Texas Occupations Code, sec. 1703.102 (a).

## *Responses to Issue 9*

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### **Recommendation 9.1**

***Abolish the Polygraph Examiners Board and transfer its functions to the Texas Department of Licensing and Regulation.***

#### **Agency Response to 9.1**

The Polygraph Examiners Board disagrees with this recommendation. The highly technical nature of the polygraph examination, instrumentation, and highly specialized training necessitate more than mere consultation from an advisory committee whose input could be ignored by the TDLR Commission without further appeal. The agency understands the financial savings that could be realized by streamlining the agency's administrative and clerical functions with that of TDLR. However, the potential harm that the public would suffer because of an untrained or unscrupulous polygraph examiner would trump the minimal economic benefit of full implementation of this recommendation.

The examination of license applicants requires not only knowledge of subject matter, but also a demonstrated ability to construct, administer, and properly evaluate a polygraph exam. Although the agency has advised the Sunset Commission it is receptive to considering ways to make the oral and scenario phases more objective, it should not be anticipated that these phases can be made absolutely so. The agency agrees that standardization of grading criteria in those areas is necessary, and has taken steps to increase standardization of the scenario grading, which phase was the major point of criticism.

The agency has been said to be independent; however, its agency code (405) is the same as DPS. The agency is simply a line item on the DPS budget code. The agency used to have financial autonomy before its budget was absorbed by DPS.

#### **Agency Modification**

1. The Polygraph Examiners Board has indicated its desire to be placed with a larger state agency that has no direct interest in the polygraph industry (i.e. Department of State Health Services). Even so, the agency would like to have its own budget code as it did when funds were appropriated for it in the 1980s.

(Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

#### **Affected Agency Response to 9.1**

The Department of Public Safety management agrees with this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

Recommendation 9.1 to align all regulatory provisions in the Polygraph Examiners Act will facilitate a successful transfer of the current licensing and regulatory functions to the Texas Department of Licensing and Regulation. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

**For 9.1**

Mark Robinson, Vice President – LaCosta Data Service, Addison

Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie

**Against 9.1**

James W. (Jim) Morgan – Just Polygraph Services, North Richland Hills

Stuart W. Ervin, polygraph examiner – Central Texas Polygraph Associates, Bryan

Janice Marshall Harrison, police officer and polygraph examiner – Port Arthur Police Department, Port Arthur

Bryan M. Perot, polygraph examiner – Texas Association of Polygraph Examiners, Arlington

**Modification**

2. If the Polygraph Board's conflict with DPS can not be properly resolved, then move the Board's office to the Texas Commission on Law Enforcement Officer Standards and Education. (Stuart W. Ervin, polygraph examiner – Central Texas Polygraph Associates, Bryan)

**Recommendation 9.2**

***Establish a polygraph advisory committee to assist with the regulation of polygraph examiners.***

**Agency Response to 9.2**

While the Polygraph Examiners Board agrees that, at the very least, an advisory committee would be needed to give input into rulemaking and licensing examination issues, there remains the fearful prospect of having a Commission of non-polygraph personnel make decisions about which the advisory committee appears to have no appeal. The technical nature of the polygraph industry necessitates that polygraph examiners be in a position to actually vote on rule changes and licensing issues. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

**Affected Agency Response to 9.2**

The Department of Public Safety management does not have an opinion on this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

Recommendation 9.2 will assure that the licensing and regulation of polygraph examiners will fit in with the Texas Department of Licensing and Regulation business model. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

**For 9.2**

None received.

**Against 9.2**

None received.



**Recommendation 9.3**

***Eliminate notarization requirements for individuals applying for licensure.***

**Agency Response to 9.3**

The Polygraph Examiners Board agrees with this recommendation. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

**Affected Agency Response to 9.3**

The Department of Public Safety management does not have an opinion on this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

Recommendation 9.3 will assure that the licensing and regulation of polygraph examiners will fit in with the Texas Department of Licensing and Regulation business model. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

**For 9.3**

None received.

**Against 9.3**

None received.

**Recommendation 9.4**

***Clarify that the Act must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.***

**Agency Response to 9.4**

The Polygraph Examiners Board agrees with this recommendation. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

**Affected Agency Response to 9.4**

The Department of Public Safety management does not have an opinion on this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

**For 9.4**

None received.

**Against 9.4**

None received.

**Recommendation 9.5**

**Require Polygraph examiners to inform consumers of complaint procedures.**

**Agency Response to 9.5**

The Polygraph Examiners Board is not opposed to a statute requiring a licensee to inform consumers of complaint procedures. Current statute requires a licensee to have the agency's address and phone number on any waiver of release signed by the examinee. Additionally, the agency has relied on a 1986 Attorney General Opinion (JM-437) that stated an examiner need not display this information. The agency has also relied on and referred the public to its website, where directions and forms for filing complaints can be found. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

**Affected Agency Response to 9.5**

The Department of Public Safety management does not have an opinion on this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

**For 9.5**

None received.

**Against 9.5**

Stuart W. Ervin, polygraph examiner – Central Texas Polygraph Associates, Bryan

**Recommendation 9.6**

**Require appeals of Board actions to district court to be reviewed under the substantial evidence standard.**

**Agency Response to 9.6**

The Polygraph Examiners Board agrees with this recommendation. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

**Affected Agency Response to 9.6**

The Department of Public Safety management does not have an opinion on this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

**For 9.6**

None received.

**Against 9.6**

None received.

### ***Recommendation 9.7***

#### ***Remove fee caps in statute.***

#### **Agency Response to 9.7**

The Polygraph Examiners Board agrees with this recommendation. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)

#### **Affected Agency Response to 9.7**

The Department of Public Safety management does not have an opinion on this recommendation. (Thomas A. Davis, Jr., Director – Department of Public Safety)

Recommendation 9.7 will assure that the licensing and regulation of polygraph examiners will fit in with the Texas Department of Licensing and Regulation business model. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

#### **For 9.7**

None received.

#### **Against 9.7**

Stuart W. Ervin, polygraph examiner – Central Texas Polygraph Associates, Bryan

### ***Commission Decision***

Adopted Recommendations 9.1 through 9.7.

### ***Legislative Action***

Senate Bill 1005 abolishes the Polygraph Examiners Board as an independent agency and transfers its testing and regulatory functions to the Texas Department of Licensing and Regulation (TDLR). The bill standardizes regulatory provisions in the Polygraph Examiners Act to match TDLR's enabling statute and allow more streamlined administration. The Legislature added further provisions to fully integrate polygraph with the other professions TDLR regulates. The bill creates a polygraph advisory committee at TDLR to advise the Commission on Licensing and Regulation on polygraph standards related to educational curricula for applicants, licensing examination content, and other technical issues. Finally, the bill removes the Sunset provision from the Polygraph Examiners Act, as it is subject to TDLR's existing Sunset provision. (Recommendations 9.1 through 9.7)



# ACROSS-THE-BOARD RECOMMENDATIONS



## *Department of Public Safety*

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Not Applicable	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Apply	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

### *Commission Decision*



Adopted staff recommendations.

### *Legislative Action*



Adopted Commission decision.

### ***Private Security Board***

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency's policymaking body.
Already in Statute	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

### ***Commission Decision***



Adopted staff recommendations.

# AGENCY INFORMATION

(MAY 2008)





# Agency Information

## Department of Public Safety

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### Agency at a Glance

The Legislature created the Department of Public Safety (DPS) in 1935 by consolidating the Texas Rangers from the Adjutant General, and the Texas Highway Patrol from the State Highway Department. The Rangers trace their history to 1823 when Stephen F. Austin hired 10 men to protect the colonists, and the Highway Patrol dates back to the late 1920s. Today, DPS' mission is to enforce laws to protect public safety, and to prevent and detect crime. The agency accomplishes its mission through four main functions: traffic law enforcement; criminal law enforcement; license regulation, including driver licenses; and emergency management.

#### Key Facts

- ◆ **Funding.** In fiscal year 2007, DPS spent \$851 million, primarily derived from the State Highway Fund and federal funds.
- ◆ **Staffing.** DPS had 7,776 employees in fiscal year 2007. Of this total, 3,458, or 45 percent, are commissioned law enforcement officers.
- ◆ **Texas Highway Patrol.** DPS' largest and most visible division, Texas Highway Patrol enforces traffic laws on more than 225,000 miles of rural highways, provides security for the state Capitol, enforces commercial vehicle regulations, and oversees operation of the vehicle inspection program.
- ◆ **Criminal Law Enforcement.** The Criminal Law Enforcement Division works in cooperation with city, county, state, and federal law enforcement agencies with investigations and intelligence involving drug trafficking, auto theft, organized crime, terrorism, gambling, and other criminal activity.
- ◆ **Texas Rangers.** Texas' 134 Rangers assist local law enforcement agencies in enforcing criminal laws by investigating unsolved crimes and apprehending suspected criminals.
- ◆ **Driver Licenses.** DPS issues more than six million driver licenses and identification cards annually and maintains more than 21 million records.
- ◆ **Governor's Division of Emergency Management.** DPS coordinates Texas' response to natural and manmade disasters and assists cities, counties, and state agencies in planning and implementing emergency management programs.

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*DPS' mission is to enforce laws to protect public safety and to prevent and detect crime.*

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## Major Events in Agency History

- 1935 The Legislature creates the Department by consolidating the Texas Highway Patrol and the Texas Rangers.
- 1937 The Legislature gives DPS responsibility for licensing drivers and creates the Narcotics Section.
- 1951 The Legislature gives DPS responsibility for enforcing the Motor Vehicle Inspection Act.
- 1952 Passage of the Safety Responsibility Act requiring motor vehicle owners to pay for damages caused to others.
- 1963 Collocation of the Governor's State Civil Defense Office, responsible for disaster relief preparations, with DPS.
- 1989 Establishment of the Automated Fingerprint Identification System to provide rapid identification of arrested persons and analysis of latent prints found at crime scenes.
- 1994 DPS Crime Laboratory begins DNA analysis.
- 2004 The Governor, by executive order, designates the director of the Governor's Office of Homeland Security as the director of the Governor's Division of Emergency Management.
- 2007 Expansion of the Public Safety Commission from three to five members.

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*The five-member  
Public Safety  
Commission  
oversees the  
Department.*

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## Organization

### Policy Body

The five-member Public Safety Commission oversees the Department. The Governor appoints members to serve six-year terms and selects the chair. Members of the Commission must be selected because of their knowledge of laws, experience in law enforcement, honesty, integrity, education, training, and executive ability. The table, *Public Safety Commission*, provides information about each member.

The Commission sets policies for enforcement of state criminal, traffic, and safety laws, and prevention and detection of crime; organizes the Department; and adopts rules.

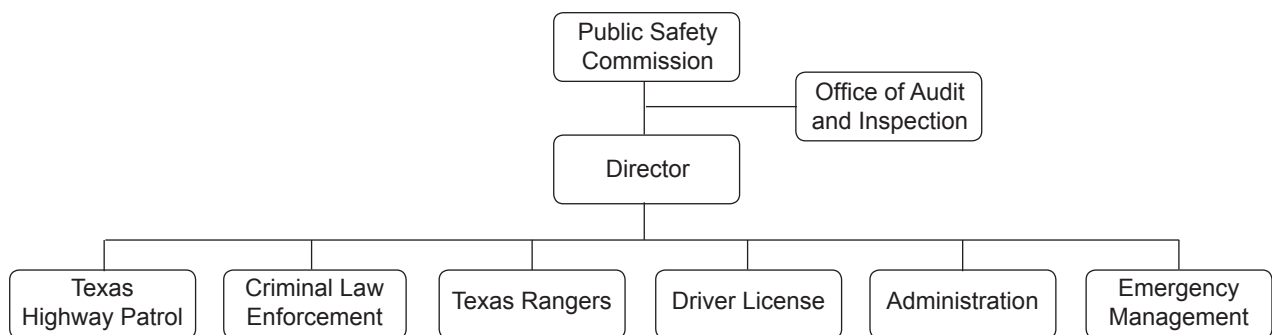
**Public Safety Commission**

Member	City	Term Expires
Allan B. Polunsky Chairman	San Antonio	2009
Elizabeth Anderson	Dallas	2011
Carin Marcy Barth	Houston	2013
C. Tom Clowe, Jr.	Waco	2010
Vacant		

## Staff

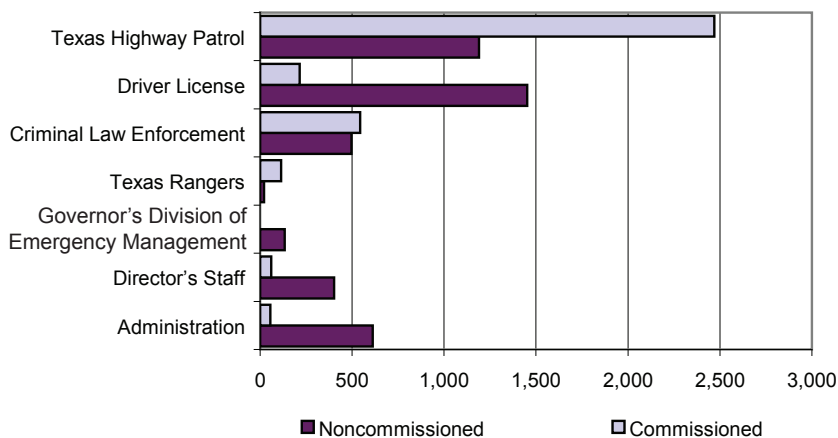
The Commission appoints a Director to administer the daily operations of the Department. The Director must be a citizen of Texas and have five years of experience in police or public administration. The Director adopts rules for the control of the Department, subject to Commission approval; issues law enforcement commissions to the Department's officers; appoints assistant directors and division heads; and reports expenditure information to the Commission and the Governor. The *Department of Public Safety Organizational Chart* depicts the basic structure of the agency's 7,776 employees.

**Department of Public Safety  
Organizational Chart**



The agency employs both commissioned and noncommissioned staff. The distribution of staff across divisions is shown in the graph, *Divisional Breakdown of Commissioned and Noncommissioned Employees*.

**Divisional Breakdown of Commissioned  
and Noncommissioned Employees**



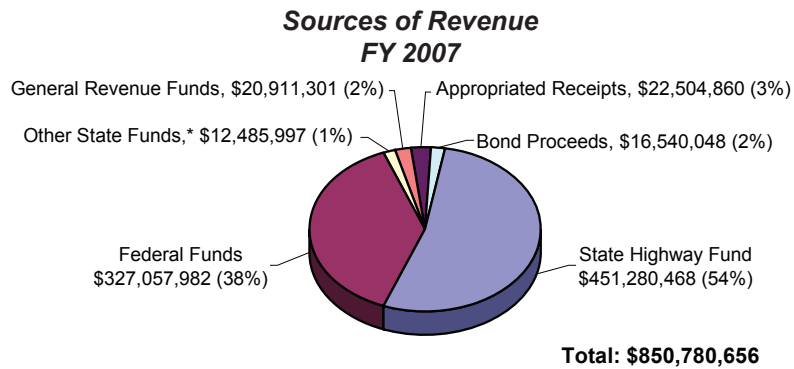
Appendix A compares the agency's workforce composition to the minority civilian labor force. The agency has had a mixed record over the past three years, performing well in some categories while falling short in others.

# Funding

## Revenues

The Department receives the majority of its revenue, \$851 million in fiscal year 2007, from two sources – the State Highway Fund and federal funds which comprise 54 percent and 38 percent, respectively. The Department’s remaining funds come from general revenue, appropriated receipts, bond proceeds, and other state funds. The pie chart, *Sources of Revenue*, shows total revenue by funding source during fiscal year 2007.

*The State Highway Fund supported 54 percent of DPS’ budget in fiscal year 2007.*



\* Other state funds include Criminal Justice Grants and Interagency Contracts.

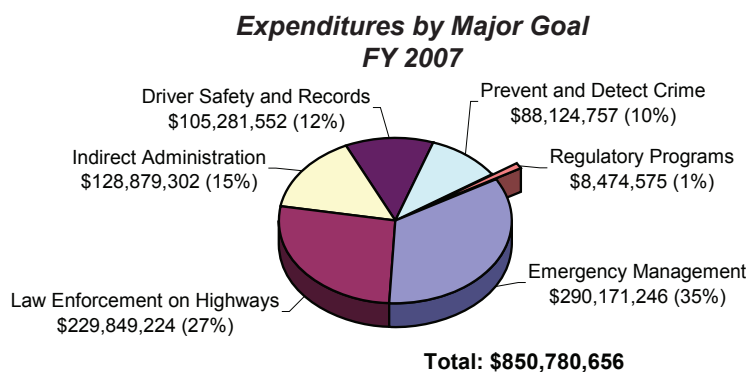
The Department collects more than 80 different fees that generated more than \$530 million in revenue for the State in fiscal year 2007. Fee revenue is deposited in the General Revenue Fund, Texas Mobility Fund, State Highway Fund, and other funds. The table, *Selected DPS Fees*, provides detail on the five fees that generated about 80 percent of the revenue during fiscal year 2007.

**Selected DPS Fees – FY 2007**

Description	Fee Collected by DPS	Number of Payers	Amount Collected	Revenue Deposited To
Driver Responsibility Program	\$100 – \$2,000	1,296,056	\$77,037,534	Trauma Fund
			\$77,037,534	General Revenue
			\$1,556,314	General Revenue (appropriated to DPS)
Driver License Fees	\$5 – \$60	5,201,764	\$95,295,744	General Revenue
Driver Record Fees	\$4 – \$22	11,683,300	\$60,808,697	General Revenue
Motor Vehicle Safety Inspection Fees	\$3.50	14,661,657	\$51,315,800	Texas Mobility Fund
	\$2	14,661,657	\$29,285,700	Clean Air Fund
Motor Vehicle Emissions Inspection Fees	\$6	4,980,457	\$29,841,270	Low Income Repair Replacement Assistance Program Fund

## Expenditures

The pie chart, *Expenditures by Major Goal*, shows the amounts DPS spent on its five major appropriations goals during fiscal year 2007. Emergency Management spending consumed the largest portion of the agency's budget at 35 percent. Much of the \$290 million spent on Emergency Management was federal funding to help the state continue to recover from Hurricane Rita, and DPS passed almost all of the funds through to local governments. The table on the following page, *Expenditures by Division*, details expended amounts by DPS division during fiscal year 2007.



Appendix B describes the Department's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. During the last four years, the agency has fallen short of the goals for special trade and other services. The agency has had mixed success achieving the statewide goals for building construction and professional services, and has exceeded the goal for commodities purchasing.

## Agency Operations

The Department of Public Safety provides a range of services to Texans including traffic law enforcement on rural highways, criminal law enforcement, regulatory programs, and emergency management. The Department provides some services directly to the public, such as driver licenses, while it provides other services, such as criminal histories and crime labs, to law enforcement jurisdictions. The following section discusses the Department's major functions by program area.

### Texas Highway Patrol Division

With more than 3,650 staff and an annual budget of \$249 million, the Texas Highway Patrol (THP) is the largest division in the Department. THP's major duties include enforcing criminal and traffic laws on Texas' 225,000 miles of rural highways, administering the State's vehicle inspection program, and enforcing commercial vehicle regulations.

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*With more than  
3,650 staff, the  
Texas Highway  
Patrol is the  
largest division in  
the Department.*

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### Expenditures by Division – FY 2007

Division	Expenditure
<b>Highway Patrol Division</b>	
Highway Patrol	\$152,407,183
Commercial Vehicle Enforcement	\$46,172,253
Vehicle Inspection	\$15,208,977
Breath Alcohol Testing	\$2,239,173
Capitol Complex Security	\$13,821,638
Communications Service	\$8,715,592
Regional Administration	\$10,872,482
<b>Highway Patrol Subtotal</b>	<b>\$249,437,298</b>
<b>Criminal Law Enforcement Division</b>	
Narcotics	\$33,284,021
Motor Vehicle Theft	\$10,941,979
Criminal Intelligence Service	\$15,594,555
Crime Labs	\$17,923,728
<b>CLE Subtotal</b>	<b>\$77,744,283</b>
<b>Texas Rangers Division</b>	
<b>Texas Rangers</b>	<b>\$10,380,474</b>
<b>Driver License Division</b>	
Driver License and Records	\$83,521,147
Driver License Reengineering	\$15,127,433
Traffic Accident Records	\$1,316,767
Crash Records Information Systems	\$4,555,553*
<b>Driver License Subtotal</b>	<b>\$104,520,900</b>
<b>Administration Division</b>	
Motorcycle Operator Training	\$760,530
Concealed Handgun Licensing	\$5,488,349
Private Security Bureau	\$2,891,786
Crime Records	\$27,003,466
Fleet Operations	\$2,640,169
Training Academy	\$7,466,593
Physical Plant	\$27,306,983
<b>Administration Subtotal</b>	<b>\$73,557,876</b>
<b>Governor's Division of Emergency Management</b>	
<b>Emergency Management</b>	<b>\$290,171,246</b>
<b>Director's Staff</b>	
Central Administration	\$11,621,887
Information Resources	\$23,228,195
Aircraft Operations	\$4,745,503
Other Support Services	\$5,278,554
<b>Director's Staff Subtotal</b>	<b>\$44,874,139</b>
<b>Polygraph Examiners Board</b>	<b>\$94,440</b>
<b>TOTAL</b>	<b>\$850,780,656</b>

\* Crash Records Program moved to the Texas Department of Transportation on October 1, 2007.

The Division has eight field regions, as shown in the map, *Texas Highway Patrol Regions*. Each region is overseen by a regional commander with the rank of major, and is divided into districts, each led by a captain. Among other duties, captains serve as Disaster District Committee chairs during emergencies, responsible for validating requests for state assistance from local governments, and coordinating delivery of the resources. The *Highway Patrol Division Organizational Chart* depicts THP's structure.

### Highway Patrol Service

The Highway Patrol Service is the largest component of the Division and includes 1,990 troopers conducting traffic and criminal law enforcement on rural highways, along with crash investigations. Troopers seek to prevent violations by maintaining a visible presence in marked police cars along the roadways and by ticketing or arresting violators. Enforcement priorities include violations of laws prohibiting driving while intoxicated, speeding, and failure to use seatbelts. Highway Patrol troopers also educate the public on traffic safety and crime prevention. The table on page 76, *Highway Patrol Activity*, provides detail on troopers' activities in 2007.

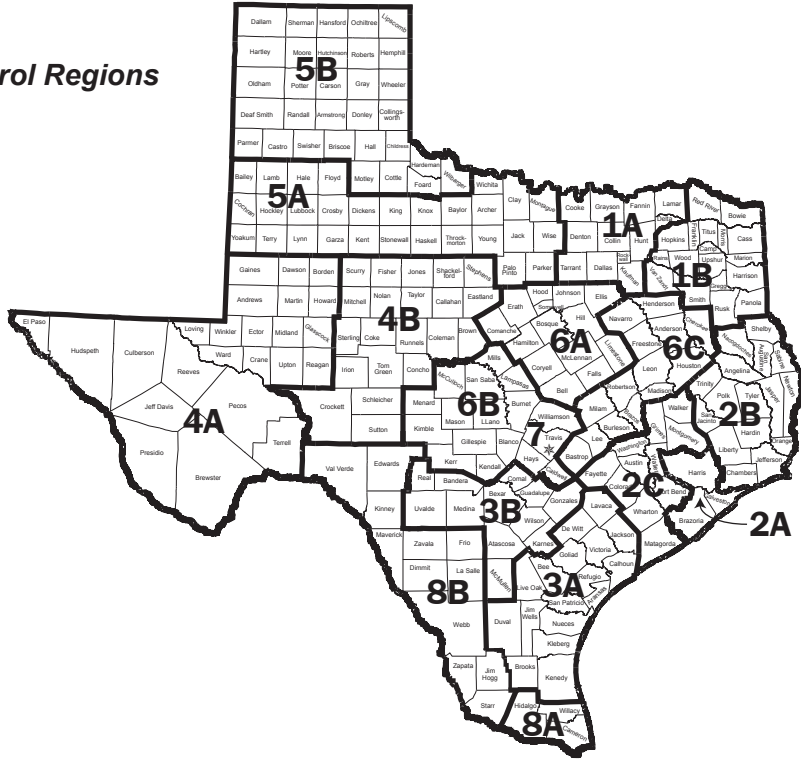
Highway Patrol Region 7, the smallest region, only covers the 46 blocks in downtown Austin that make up the Capitol Complex. Region 7 staff seeks to provide a safe environment for individuals within the Capitol Complex, enforces traffic laws and parking regulations, and investigates criminal activity. The Governor's Protective Detail, based in Region 7, provides security for the Governor, the Governor's family, and the Governor's Mansion.

### Vehicle Inspection Service

The objectives of the Vehicle Inspection Service are to contribute to traffic safety and improve air quality in Texas by ensuring that vehicles comply with the State's safety inspection and emissions testing program. Emissions testing is performed in 17 counties to comply with federal requirements for improving air quality in Texas. The Texas Commission on Environmental Quality determines the type of vehicle emissions testing needed, and DPS implements the emissions testing in conjunction with annual vehicle safety inspections.

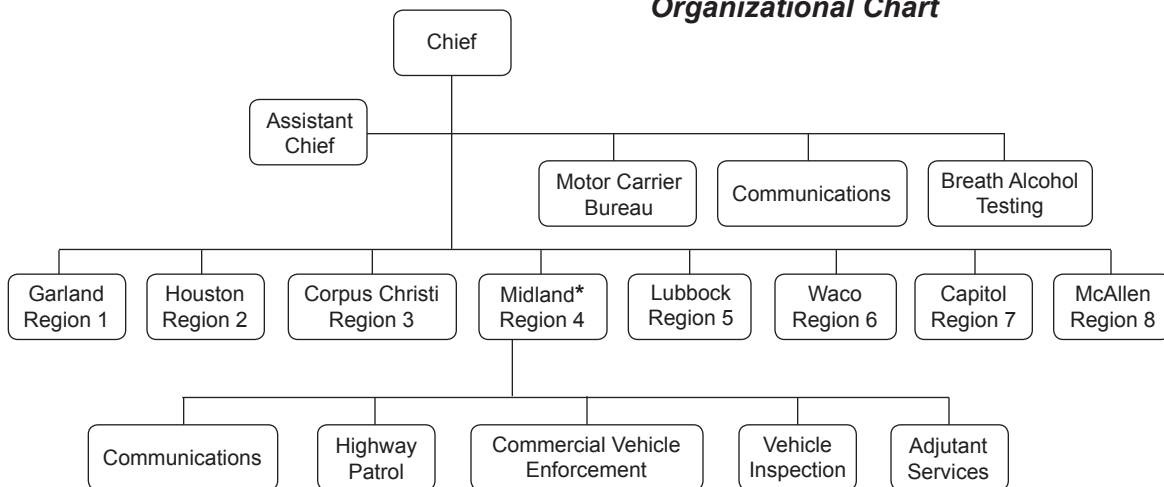
## Texas Highway Patrol Regions

Region	Location	District
1	Garland Tyler	A
		B
2	Houston Beaumont Conroe	A
		B
		C
3	Corpus Christi San Antonio	A
		B
4	Midland Abilene	A
		B
5	Lubbock Amarillo	A
		B
6	Waco Austin Bryan	A
		B
		C
7	Austin Capitol	*
8	McAllen Laredo	A
		B



More than 32,000 DPS-certified vehicle inspectors perform inspections at 10,000 privately owned vehicle inspection stations across the state. DPS oversees inspection operations by training and testing inspectors, conducting routine and covert quality control checks, and investigating complaints. The Department may take administrative enforcement action, such as license revocation, against inspection stations and certified inspectors who violate vehicle inspection laws or rules. Staff issued 1,996 citations and warnings in fiscal year 2007, and suspended 589 licenses.

## Highway Patrol Division Organizational Chart



\* All regions have substantially the same organization

## **Commercial Vehicle Enforcement Service**

The Commercial Vehicle Enforcement (CVE) Service seeks to reduce commercial motor vehicle crashes and highway damage by enforcing safety and weight regulations. CVE staff, composed of both troopers and noncommissioned staff, inspects and weighs commercial trucks at border checkpoints and 102 inspection stations statewide. CVE staff also patrols roadways and conducts inspections using portable scales. When finding a violation, staff may issue a warning or citation, or take the truck or driver out of service.

### **Highway Patrol Activity – 2007**

Speeding tickets issued	527,915
Crashes investigated	72,775
Concealed handgun applicants investigated	68,987
Criminal arrests	49,851
DWI arrests	35,249
Safety programs presented	16,408
Pounds of marijuana seized	57,631
Pounds of cocaine seized	1,948
Value of currency seized	\$10,931,452

To augment CVE staff, certain local law enforcement officers may go through DPS training to become certified to conduct roadside inspections. As of January 2007, DPS certified

125 local officers from 31 police and sheriffs' departments across the state to conduct inspections. Cities and counties may keep fine revenue from enforcement actions performed by local authorities – up to 110 percent of the cost to perform the inspections, and the remainder of the fines go to the State. The table, *Commercial Vehicle Enforcement Activity*, details actions taken by CVE staff in 2007.

### **Commercial Vehicle Enforcement Activity – 2007**

Vehicles checked	491,050
Vehicles weighed	759,902
Roadside inspections	328,294
Vehicles placed out of service	71,638
Drivers placed out of service	15,588
Speeding tickets issued	39,105
DWI arrests	2,065

The Motor Carrier Bureau supports THP's enforcement efforts by maintaining files and developing safety profiles on motor carriers, or trucking companies, using information from crash and violation reports. The Bureau reports to a federal database that maintains information on safety violations by trucking and transportation companies. Using information from the safety profiles, the Bureau also audits motor carriers at their place of business to review compliance with requirements on commercial driver licenses, alcohol and drug testing policies, hours of service, and vehicle maintenance. Although investigators conducted more than 1,100 audits in fiscal year 2007, this represents less than 1 percent of Texas' 220,000 motor carriers. The Bureau also

assesses administrative penalties and conducts informal hearings to settle disputed enforcement cases. The Bureau collected more than \$2 million in administrative penalties in 2007.

## **Breath Alcohol Testing Bureau**

The Breath Alcohol Testing Bureau regulates both the forensic breath alcohol testing program and the breath alcohol ignition interlock program. DPS certifies more than 5,300 DPS troopers and other peace officers throughout the state to administer breath alcohol tests to drivers they believe to be intoxicated, and those tests may be admitted as evidence in driving while intoxicated (DWI) legal proceedings and administrative license revocation




hearings. The Bureau also regulates 53 technical supervisors who oversee certified breath test operators. About half of the technical supervisors work for DPS while the others work for various agencies including police and sheriffs' departments, medical examiners, colleges, or private contractors. About 100,000 motorists are arrested for DWI annually, and, of those arrested, 56,000 voluntarily submit to a breath alcohol test.

Courts have ordered some 16,000 drivers with DWI convictions to have an ignition interlock installed in their cars. An ignition interlock prevents the car from operating when detecting alcohol on the driver's breath. DPS regulates about 250 ignition interlock installers who work at 120 service centers statewide.

### **Communications Service**

The Communications Service operates a statewide network of 32 communications facilities on a 24-hour-a-day basis to serve DPS and other law enforcement agencies. The Service uses radio, telephone, and landline connections to the Texas and National Law Enforcement Telecommunications Systems to transmit information on wanted persons, criminal histories, driver licenses, concealed handgun licenses, and vehicle registrations to DPS troopers and other law enforcement officers who do not have in-car computers. The facilities also play an important role in the State's disaster management plan by providing communications during disasters.

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*The  
 Communications  
 Service operates  
 a statewide  
 communications  
 network 24 hours  
 a day for DPS  
 and other law  
 enforcement  
 officers.*

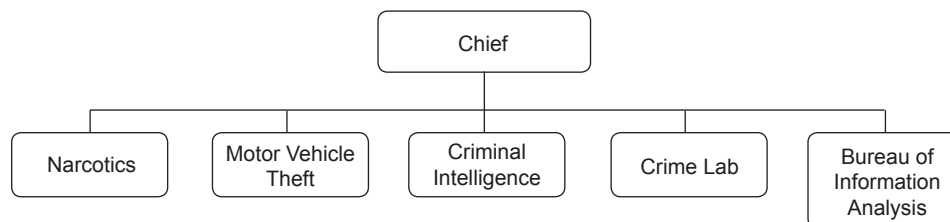
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### **Criminal Law Enforcement Division**

The Criminal Law Enforcement Division (CLE) works in cooperation with city, county, state, and federal law enforcement agencies with investigations and intelligence involving drug trafficking, auto theft, organized crime, terrorism, gambling, and other criminal activity. The Division has five components: Narcotics, Motor Vehicle Theft, Criminal Intelligence, Crime Laboratory, and the Bureau of Information Analysis. CLE also supervises the state Special Weapons and Tactics (SWAT) Team composed of 20 commissioned officers from the Driver License, Texas Highway Patrol, and CLE divisions.

In fiscal year 2007, the Division had 543 commissioned employees, 497 noncommissioned employees, and a budget of \$77.7 million. The *Criminal Law Enforcement Division Organizational Chart* depicts CLE's structure.

**Criminal Law Enforcement Division  
 Organizational Chart**



## Narcotics Service

The Narcotics Service works to enforce state and federal drug laws and administers three regulatory programs: Prescription Drug Program, Controlled Substances Regulation, and the Precursor Chemical/Laboratory Apparatus Program. The Service has 285 commissioned officers and 132 regulatory and support staff.

Narcotics personnel are stationed at the Austin DPS headquarters and across the state in DPS field offices. Officers initiate investigations of drug trafficking and respond to requests for assistance from local police departments, the Drug Enforcement Administration, and other law enforcement entities. With a focus on long-term investigations to determine the underlying source of trafficking, Narcotics officers perform undercover operations, collect information, disseminate it to other law enforcement agencies, and arrest criminal violators.

Narcotics regulatory programs register doctors, pharmacists, and healthcare facilities that prescribe or dispense controlled substances. State law requires doctors to use forms issued by DPS to write prescriptions for controlled substances. Pharmacists who dispense the drugs must electronically transmit a record of the prescription to DPS, where the agency monitors prescribing patterns and investigates suspected prescription abuse or misuse. The Department may inspect any registered facility, take enforcement action against an individual or facility's registration, and report health professionals to the appropriate licensing board when finding illegal activity. The Precursor Chemical/Laboratory Apparatus Program issues permits to entities that legitimately use equipment and chemicals that could be diverted for use in the illegal manufacture of drugs.

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*DPS Narcotics officers perform undercover operations, collect information and disseminate it to other law enforcement agencies, and arrest criminal violators.*

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## Motor Vehicle Theft Service

The Motor Vehicle Theft Service (MVTS) works with public and private agencies to investigate thefts involving automobiles, aircraft, watercraft, farm machinery, construction equipment, and trailers. More than 100 commissioned

**Motor Vehicle Theft Service Activities  
FYs 2005 – 2007**

Fiscal Year	Arrests	Vehicles Recovered	Recovered Value
2005	1,680	4,238	\$66,866,735
2006	1,815	4,049	\$69,929,067
2007	1,659	4,135	\$77,213,793

officers based in five districts throughout Texas coordinate with local automobile theft prevention authorities and task forces to help prevent theft, identify and arrest motor vehicle theft suspects, break up auto crime smuggling rings, and recover stolen vehicles. The table, *Motor Vehicle Theft Service Activities*, shows the number of arrests, vehicles, and amounts recovered for the past three fiscal years.

The Service coordinates agency participation in the Border Auto Theft Information Center (BATIC), a grant-funded program which attempts to locate and recover stolen vehicles crossing the border with Mexico. In 2007, 3,133 additional vehicles were recovered through the BATIC system, with a recovered value of more than \$49.7 million.

The Service also coordinates fugitive apprehension of the Texas Ten Most Wanted, and works with the Texas Racing Commission to investigate violations of law at horse and greyhound pari-mutual racetracks.

### **Criminal Intelligence Service**

The Criminal Intelligence Service (CIS) collects intelligence on terrorism and organized criminal activity. CIS personnel initiate investigations, locate and arrest fugitives, execute search warrants, conduct interviews and polygraph exams, participate in surveillance and undercover operations, and provide investigation support to other law enforcement agencies and DPS divisions. Staff also assists local police agencies with tracking and monitoring civilly committed sex offenders, and with providing protection for the Governor and visiting dignitaries. In fiscal year 2007, CIS had 153 commissioned and 79 support personnel. The DPS polygraph school, established in 1995, trains about 25 polygraph examiners a year from DPS and local law enforcement agencies.

### **Crime Laboratory Service**

The Crime Laboratory Service operates 13 DPS crime labs across the state that analyze forensic evidence and DNA for DPS investigators and local police agencies. Texas law requires DPS accreditation of crime laboratories that submit evidence to Texas courts. DPS currently accredits 72 labs, including all DPS labs, 20 Texas local law enforcement labs, nine federal labs, and 30 private labs used by Texas law enforcement agencies.

More than 100 forensic scientists work in the DPS lab system helping police with crime scene investigations, analyzing physical evidence in criminal cases, and testifying in court regarding findings. Areas of analysis include DNA, drugs, blood alcohol, firearms, toxicology, latent fingerprints, and trace evidence from murders, rapes, hit-and-run traffic accidents, arsons, and other crimes. Labs generally accept evidence specimens from police agencies within a 150-mile radius, although not all labs perform all types of testing. DPS also maintains the Combined DNA Indexing System (CODIS) database, which attempts to match DNA blood samples from crime scene evidence against convicted offender DNA profiles. Only labs that meet FBI standards can participate in CODIS.

The Legislature allocated \$1.7 million in additional funding to the DPS crime lab system in 2007 to hire 64 employees, but an evidence processing backlog still remains. See the table, *2007 Crime Lab Backlog*, for numbers of samples tested and waiting.

**2007 Crime Lab Backlog**

Type of Evidence	Cases Received	Cases Tested	Case Samples Waiting	Average Wait Time
Blood Alcohol	6,279	6,105	669	1 month
Controlled Substances	53,558	54,165	4,440	1 month
DNA	4,663	4,479	1,897	5 months
Firearms	1,011	692	1,111	19 months
Toxicology	4,044	2,937	2,948	12 months
Trace Evidence	655	685	369	6.5 months

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*Texas law  
requires DPS to  
accredit crime  
labs that submit  
evidence to  
Texas courts.*

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## **Bureau of Information Analysis**

DPS created the Bureau of Information Analysis in late 2007 by transferring all DPS crime analysts from the Texas Rangers, Driver License Fraud Unit, Criminal Intelligence, Motor Vehicle Theft, and Narcotics into one unit. Previously, each of these areas conducted its own analysis, which sometimes hindered information sharing and crime trend identification. The Bureau has 158 positions in Austin headquarters and in field offices across the state.

The Bureau seeks to provide two types of analysis for criminal justice agencies in Texas and throughout the United States: tactical case support such as analyzing photos and fingerprints, wiretapping, and conducting background checks; and strategic analysis which includes identifying trends regarding terrorist or criminal groups, and developing threat assessments and long-term action plans. The Bureau also includes the Post-Seizure Analysis Team, which develops and disseminates intelligence on drug trafficking organizations, and the Missing Persons Clearinghouse, which tracks information on missing children and adults in Texas. The Clearinghouse also coordinates with other services in issuing Amber Alerts, to help locate abducted children, and Silver Alerts, to help locate lost Texans 65 or older.

### **Texas Rangers**

Texas Rangers assist local law enforcement agencies with investigations on major crimes including murder, rape, and public corruption, and also help suppress prison riots and locate escaped convicts. Rangers investigate all shootings involving DPS officers, and upon request will investigate shootings involving other law enforcement officers. Rangers coordinate their investigations with local, state, and federal law enforcement agencies, and may use polygraph tests, forensic hypnotists, and forensic artists to help solve crimes. The Unsolved Crimes Investigation Team, formerly centralized in San Antonio but now dispersed throughout the state, focuses on investigating unsolved murders and other major crimes.

DPS recently tasked the Rangers with coordinating the Joint Operations Intelligence Centers (JOICs) established along the Texas-Mexico border. The six JOICs function as centralized command posts and regional hubs for coordinating local, state, and federal agencies in border security initiatives.

The Texas Rangers Division had 114 commissioned officer positions in fiscal year 2007 divided into seven field companies, including the recently created Company G that encompasses the border region. In fiscal year 2007, the Rangers conducted 5,347 criminal investigations, made 2,212 arrests, and recovered property and contraband worth more than \$18,350,000.

### **Driver License**

The Department created the Driver License Division in 1998 by consolidating activities from Highway Patrol, Administration, and Legal Services. The major responsibilities of the Division are to issue Texas driver licenses and identification cards; collect, maintain, and provide driver records; and

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*DPS created the Bureau of Information Analysis in late 2007 to bring together all case support and strategic analysts into one unit.*

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*Texas Rangers assist local law enforcement agencies with investigations on major crimes including murder, rape, and public corruption.*

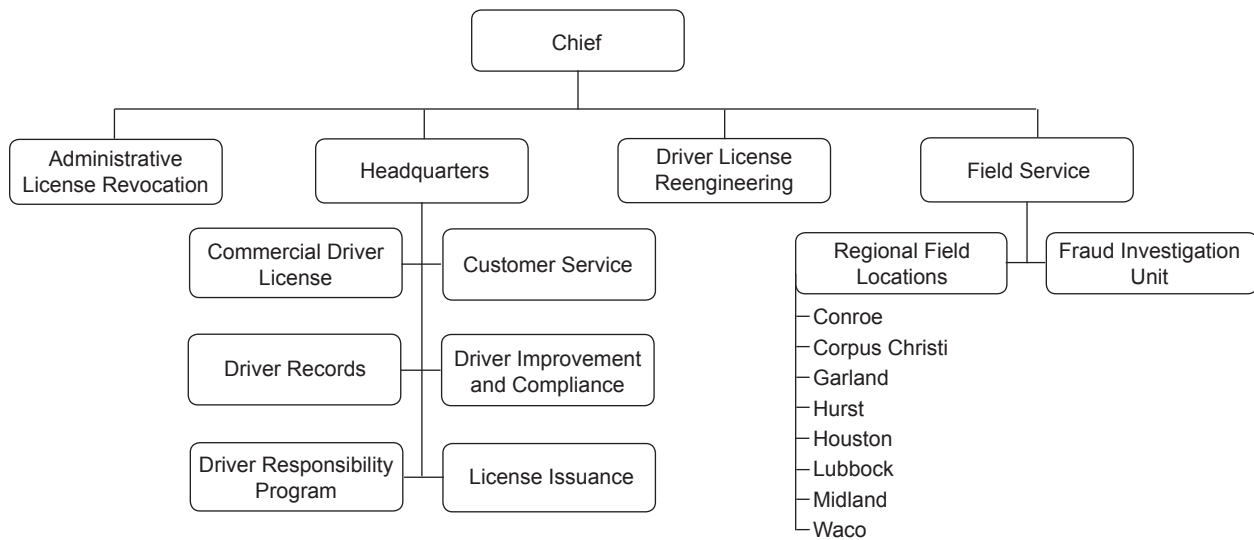
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investigate and prevent identity fraud related to licenses and identity cards. The table, *Driver License Division Workload*, shows some of the Division's output. The Division has 1,667 employees, including 215 commissioned officers and 1,452 noncommissioned personnel, and had a fiscal year 2007 budget of \$104 million. The Division's components appear in the graphic, *Driver License Division Organizational Chart*.

**Driver License Division Workload**

Total valid licenses, FY 2007	16,330,825
Average number of licenses issued each year	5,099,748
Average number of identification cards issued each year	759,725


**Driver License Division Organizational Chart**



**Field Service**

Field Service operates 256 driver license (DL) offices across the state. This unit's major responsibilities are to accept and review driver license and identification card applications, and to test new applicants on both written and driving tests. Field Service operates a DL mobile unit that can process simple transactions such as renewals and duplicate licenses remotely on college campuses or workplaces. Other field customer service initiatives include automated driver license testing in 96 DL offices and the use of auto-queuing systems where customers receive numbers upon arrival and are directed to the appropriate customer service station. DPS uses these systems in high volume locations, such as the Gessner Road office in Houston, and can route customers to any of several specialized work stations areas depending on need.

Field Service's commissioned troopers receive training to detect fraud associated with driver license issuance, perform road tests on applicants, and provide security in DL offices. The troopers also make frequent arrests of applicants with outstanding criminal warrants who attempt to get licenses. In 2007, DL troopers made 1,673 felony arrests and 4,809 misdemeanor arrests

  
*DPS operates  
 256 driver license  
 offices across  
 the state.*

on driver license office premises. Driver license troopers also supplement the Highway Patrol's efforts in traffic law enforcement 16 hours per month, during holidays, and during daily commutes to and from duty stations. In 2007, DL troopers issued 18,216 traffic tickets and 7,377 warnings while on patrol.

### **Headquarters Service**

Headquarters Service has four functions that support driver license activities: customer service, driver improvement and compliance, license issuance, and driver records. In addition, Headquarters Service oversees special projects to implement process changes within the Division, including the project described in the textbox, *Driver License Reengineering*.

#### **Driver License Reengineering**

Initiated in 2003, the \$45 million project will completely revamp outdated driver license technology and better position DPS to meet criteria of the federal REAL ID Act. After a series of delays, DPS plans to install new equipment in DL offices across the state by the end of 2008.

Customer service staff assists the public and field service personnel in driver license and records matters. DPS handles more than 70,000 customer service calls and more than 6,000 e-mails per month. During business hours, customer service staff answers the DPS main telephone switchboard.

Driver improvement and compliance personnel evaluate certain traffic convictions involving Texas drivers to identify potentially dangerous drivers and take corrective action that may result in license revocation. DPS refers reported medical conditions that could affect driving performance to a medical board under the Department of State Health Services for further evaluation. This bureau collects reinstatement fees paid to the Department for withdrawing driver license suspensions, and administratively enforces Texas statutes requiring motorists to have liability insurance coverage on vehicles registered in Texas.

The License Issuance Bureau has multiple responsibilities including verification of an applicant's eligibility to be issued a Texas driver license or identification card before mailing. Staff monitors the production, quality, and automated mailing of driver licenses and identification cards, in addition to assisting the public and DL field offices with administrative and technical issues.

The Driver Records Bureau administers, processes, and maintains records on all driver licenses and identification cards issued by the Division. The Bureau's major responsibilities are maintaining microfilm records for each driver license or identification card holder and updating traffic conviction information on each record. The Bureau also sells driver records and certifications to eligible requestors including insurance companies and the general public.

Headquarters Service also manages the commercial driver license program. Texas had more than 767,000 licensed commercial drivers in fiscal year 2007, which is about 5 percent of the total number of licenses issued. Texas has reciprocity agreements with other states to issue a Texas commercial license if

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*DPS handles more than 70,000 customer service calls and about 6,000 e-mails per month.*

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a driver holds a valid commercial license from another state. Since states must follow federal guidelines in commercial licensing, reciprocity is fairly simple. For example, if an out-of-state commercial driver is ticketed in Texas, the issuing state receives notice. The table, *Commercial License Types*, shows the different classes of commercial licenses and the number of each license type issued in fiscal year 2007. Drivers may supplement these license types with endorsements that allow for transport of passengers, tank trailers, hazardous materials, and other options.

**Commercial License Types**

Type	Description	Number of Valid Licenses FY 07
Class A	tractor trailer vehicles with 18 wheels	543,557
Class B	small combination units where a truck pulls a certain type of trailer	211,777
Class C	small delivery vehicles	12,264

The Legislature created the Driver Responsibility Program to prevent the repeated behavior of problem drivers and to improve traffic safety through the assessment of surcharges for various traffic violations. The agency retains 1 percent of surcharges collected with the remainder divided between state trauma centers and the General Revenue Fund. The program has exceeded \$1 billion dollars in total assessments to more than 1 million drivers since inception in September 2004. However, as of February 2008, the agency has collected about 34 percent of the total assessments. See the table, *Driver Responsibility Program Assessments*, for more details.

**Driver Responsibility Program Assessments**

Violation	Surcharge Amount*	Number of Notices	Amount Billed	Amount Collected	Collection Rate
Points for Moving Violations	\$100	99,540	\$11,116,291	\$7,329,795	66%
DWI	\$1,000	409,071	\$431,134,900	\$146,995,330	34%
No Insurance / Driving With Invalid License	\$250	1,912,624	\$520,914,227	\$185,868,362	36%
No Driver License	\$100	908,908	\$106,482,805	\$25,791,343	24%
<b>Total</b>		<b>3,330,143</b>	<b>\$1,069,648,223</b>	<b>\$365,984,830</b>	<b>34%</b>

\* Excluding points for moving violations, DPS assesses surcharges annually for three years, and the surcharge amount increases with additional violations.

**Administrative License Revocation**

In Texas, drivers may have their driver licenses suspended if they refuse to submit to a breath test or if they provide a specimen with an alcohol concentration of .08 or greater. Youth can have driver licenses suspended for any detectable amount of alcohol concentration, while commercial drivers cannot exceed .04. DPS suspends licenses for driving or boating while intoxicated, and presents breath alcohol test failure or refusal to test evidence

  
 SOAH held more than 32,000 license suspension hearings in fiscal year 2007 for DWI cases.

at the subsequent State Office of Administrative Hearings (SOAH) hearings. DPS has 40 staff attorneys spread across the state who participated in more than 32,000 contested SOAH hearings in fiscal year 2007.

### Administration Division

The Administration Division supports the five major divisions and provides information and assistance to the public. The Division consists of 669 staff who work in Crime Records, Staff Support, and Regulatory Licensing as shown in the *Administration Division Organizational Chart*. The Division had a fiscal year 2007 budget of \$73.5 million.

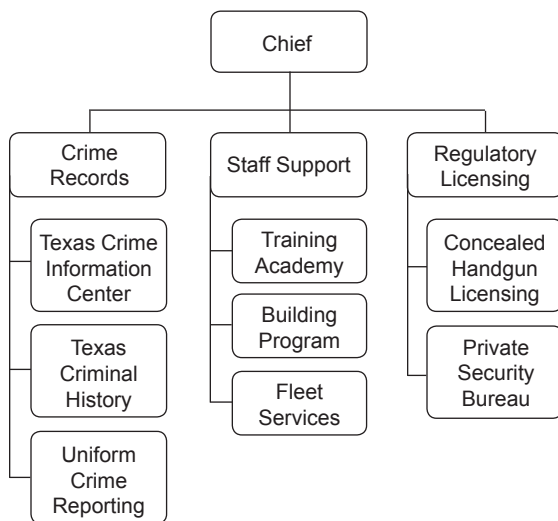
### Crime Records

The Crime Records Service has two major functions: keeping criminal history records and providing information on crime. Through these activities, the Service maintains arrest records, fingerprint files, criminal justice information, and statistical data on crime in Texas that serve the law enforcement community and the public.

In 2007, Crime Records maintained more than 7 million fingerprint files in its Automated Fingerprint Identification System (AFIS) and is preparing to expand the database up to a capacity of 15 million sets of fingerprints.

The Department also keeps records of fingerprints that have been found at crime scenes, but have not been identified. These fingerprints, known as latent fingerprints, comprise 105,000 fingerprint records, and the Department is working to expand the capacity for unsolved latent fingerprint records to a total of two million. The AFIS computer has largely replaced the manual classification, search, and verification of fingerprints and has a newly expanded capacity to process 12,000 sets of fingerprints per day. In recent years, DPS has emphasized the electronic capture and submission of fingerprints, and now about 80 percent of all fingerprints are recorded on live scan devices. The graph, *Submissions of Fingerprints From Arrest and Court Dispositions*, shows the relative distribution of electronic and paper submission of fingerprints from 2000 to 2006.

**Administration Division Organizational Chart**



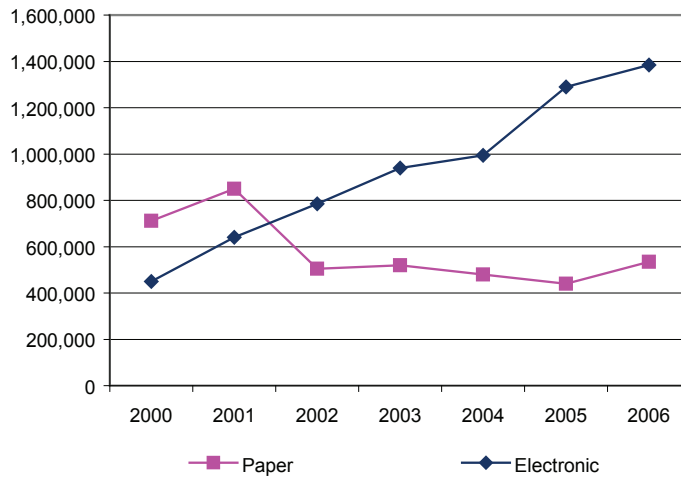
Major users of the computerized criminal history records and fingerprint data include law enforcement officials, licensing agencies, criminal justice agencies, and other authorized non-law enforcement agencies. DPS currently maintains about 1.5 million records submitted by persons applying for licensure or employment by one of these authorized submitters.

Crime Records also maintains records on specific crime information for law enforcement agencies and general records that provide trend information for research purposes. The Texas Crime Information Center (TCIC)



is a computerized filing system of information on wanted criminals, missing persons, and stolen vehicles and property. TCIC also maintains a link with the Federal Bureau of Investigation whose National Crime Information Center provides Texas law enforcement agencies with similar information from other states. The Texas Data Exchange (TDEx) is an information sharing system that maintains records on crime information and jail activities for investigative purposes. Crime Records maintains TDEx through a Memorandum of Understanding with the Governor's Office, which originally began the system. The Uniform Crime Reporting function collects statistical data about the crimes committed in Texas from local law enforcement agencies. DPS compiles the data to provide information on crimes committed in Texas. DPS also forwards the data to the U.S. Department of Justice to track crime rates across the nation.

**Submissions of Fingerprints From Arrest and Court Dispositions**



### **Staff Support Services**

Staff Support Services provides human resources, training, supplies, building and grounds maintenance, and fleet services to the Department.

The DPS Training Academy provides training to DPS personnel and other Texas law enforcement agencies. The Academy operates a 26-week trooper school that each DPS recruit must successfully complete. Subjects taught include firearm use, communication equipment skills, use-of-force laws, advanced first aid, DWI detection, and fundamental Spanish. The Academy also trains DPS employees in management skills, concealed handgun instructors, and motorcycle operators.

DPS' building program provides for construction and maintenance of 1.9 million square feet of space in 132 office buildings and 35 leased facilities. The program includes facility design, construction, and repair of office space as well as underground fueling tanks, telephone systems, electrical systems, HVAC, and housekeeping. DPS is under oversight of the Texas Facilities Commission for construction of new facilities but not the renovation of existing buildings.

The Department's fleet operations purchases all the vehicles used by DPS, installs equipment into the cars, and repairs disabled vehicles. DPS currently has about 3,700 vehicles. To support this number of vehicles, DPS operates a full-service auto shop in Austin capable of all types of mechanical and body repair; and a smaller satellite shop in Houston. DPS plans two more satellite shops in Lubbock and Hidalgo County.

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*DPS operates a 26-week trooper school that each DPS recruit must successfully complete.*

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## Regulatory Licensing Service

The Regulatory Licensing Service provides two programs – Concealed Handgun and Private Security licensing. Concealed Handgun Licensing (CHL) issues licenses to persons wanting to carry handguns in public places and to handgun instructors. CHL receives and evaluates applications for instructors and licensees. To obtain a license, a person must meet the requirements shown in the textbox, *Major Requirements for a Concealed Handgun License*. The Department began taking applications for concealed handgun licenses in November 1995 and by the end of fiscal year 2007 had 288,900 licensees.

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*The Department  
issued 288,900  
concealed  
handgun licensees  
by the end of  
fiscal year 2007.*

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### **Major Requirements for a Concealed Handgun License**

- ◆ 21 years of age, or a member or honorable discharge of the U.S. military and 18 years of age
- ◆ No felony convictions
- ◆ No Class A or Class B misdemeanor convictions within five years
- ◆ Not in arrears for child support, student loans, or taxes
- ◆ Completion of a handgun training class with demonstrated proficiency

The Private Security Bureau regulates the private security industry in Texas, including armed (commissioned) and unarmed security guards, and several related occupations and companies. The Bureau has 27 employees located at the Department’s Austin headquarters, as well as 30 investigators located throughout the state. Full-time employed peace officers working second jobs while off-duty are exempt from some provisions of the Private Security Act. The table, *Private Security Licensing Program*, lists the occupational licenses issued by this program to more than 60,000 individuals in fiscal year 2007.

### **Private Security Licensing Program – FY 2007**

Occupational License	Number of Licensees	Occupational License	Number of Licensees
Noncommissioned Security Officer	36,145	Instructor	588
Commissioned Security Officer	9,303	Employee of License Holder	453
Owner/Partner/Shareholder/Officer	4,213	Electronic Access Control Device Installer	391
Alarm Installer	2,955	Security Salesperson	290
Alarm Salesperson	1,992	Personal Protection Officer	201
Alarm System Monitor	1,734	Branch Office Manager	122
Private Investigator	1,638	Security Consultant	94
Locksmith	614	Guard Dog Trainer	46

## **Private Security Board**

In 1969, the Legislature created the Texas Board of Private Detectives, Private Investigators, Private Patrolmen, and Private Guard Watchmen, and gradually added other private security occupations to its jurisdiction. The Legislature changed the name of the agency over the years, and in 2003, abolished the Texas Commission on Private Security as a stand-alone agency and transferred its functions to DPS as the Department's Private Security Bureau.

The Private Security Board (formerly the Commission) is a seven-member Board appointed by the Governor to hear appeals by applicants under the Private Security Act, in addition to recommending rules necessary for the administration of the Act.

Of the seven members, one must be a licensed private investigator, one must be employed by a licensed alarm system company, one must be licensed as the owner or operator of a guard company, and four must be public members. The current membership of the Private Security Board is listed in the table, *Texas Private Security Board*. The Board is separately subject to the Texas Sunset Act and is abolished September 1, 2009, unless continued by the Legislature.

***Texas Private Security Board***

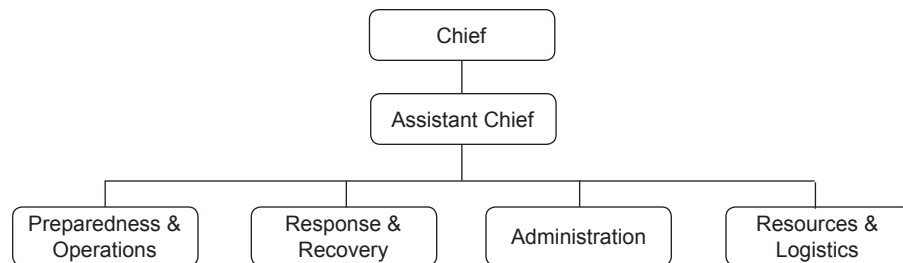
<b>Member</b>	<b>City</b>	<b>Qualification</b>	<b>Term Expires</b>
John E. Chism Chairman	Irving	Private Investigator	2009
Stella Caldera	Houston	Public Member	2011
Charles E. Crenshaw	Austin	Alarm Systems Company	2013
Howard H. Johnsen	Dallas	Public Member	2011
Mark L. Smith	Dallas	Guard Company	2011
Harold G. Warren	Austin	Public Member	2009
Doris Davis Washington	Arlington	Public Member	2013

## **Governor's Division of Emergency Management**

The Governor's Division of Emergency Management (GDEM) seeks to protect the public from natural and manmade disasters by providing a system for planning, mitigation, response, and recovery. State law establishes GDEM as part of the Governor's Office, though it has been administratively located at DPS since the 1960s, and its 144 staff are DPS employees. An Executive Order by the Governor designates the director of the Governor's Office of Homeland Security as the director of the Division, while the DPS Division Chief manages day-to-day operations. The Division had a fiscal year 2007 budget of \$290 million, much of which was federal funding passed through to local governments and other entities. The Division also serves as Texas' State Administrative Agency, a requirement to receive grant funds from the U.S. Department of Homeland Security. The graphic on the following page *Governor's Division of Emergency Management Organizational Chart*, illustrates GDEM's structure.

GDEM staff develops and maintains state-level emergency and hazard mitigation plans, and assists local governments with developing their plans. Staff provides numerous emergency management, hazardous materials, and hazard mitigation training courses for emergency responders; state, regional, and local officials; and volunteer groups. GDEM also employs 28 Regional Liaison Officers across the state who work closely with local officials planning and carrying out emergency preparedness programs, and helping coordinate state resources during an emergency. After disasters have struck, GDEM recovery staff coordinates damage surveys and the recovery process with local and federal agencies.

**Governor’s Division of Emergency Management  
Organizational Chart**



The Division maintains the State Operations Center (SOC), the State’s principal command and control facility during a disaster. The SOC is staffed 24 hours a day, seven days a week and is located in a reinforced concrete bunker three stories below ground level. During major emergencies, the SOC houses the State Emergency Management Council, composed of 30 representatives from state agencies and two nonprofit organizations. The textbox on the following page, *State Emergency Management Council Members*, provides a list of members. The Director of the Governor’s Office of Homeland Security chairs the Council. Council members convene to mobilize and deploy resources in response to emergencies. The SOC also broadcasts Silver and Amber Alerts, with 19 Silver Alerts helping recover 15 senior citizens since the program’s inception in 2007, and 36 Amber Alerts helping recover 41 children since 2002.

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*Operation Border Star is a high intensity, multi-agency effort focused on reducing crime in targeted regions along the Texas-Mexico border.*

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A separate Border Security Operations Center (BSOC), collocated with the SOC, monitors activity along the Texas-Mexico border and coordinates state law enforcement activities in that area with local governments and federal agencies. BSOC is currently coordinating Operation Border Star, a high intensity, multi-agency effort focused on reducing crime in targeted regions along the border. BSOC’s 20 staff are primarily private, civilian contractors.

**Director’s Staff**

The Director’s Staff includes 463 personnel that prepare and supervise the Department’s budget, manage legal affairs, operate the Department’s aircraft, perform internal affairs and audit functions, manage information technology, and manage employee relations. The Director’s Staff operated with a fiscal year 2007 budget of \$44.9 million.

### **State Emergency Management Council Members**

#### State Agencies

Adjutant General's Department Agriculture, Texas Department of Animal Health Commission, Texas Attorney General, Office of Comptroller of Public Accounts Criminal Justice, Texas Board and Department of Education Agency, Texas Engineering Extension Service, Texas Environmental Quality, Texas Commission on Facilities Commission, Texas Fire Protection, Texas Commission on Forest Service, Texas Governor's Division of Emergency Management General Land Office, Texas	Health and Human Services Commission, Texas Aging and Disability Services, Department of Assistive and Rehabilitative Services, Department of Family and Protective Services, Department of Health Services, Department of State Housing and Community Affairs, Texas Department of Information Resources, Department of Insurance, Texas Department of Parks and Wildlife Department, Texas Public Safety, Department of Railroad Commission of Texas Rural Community Affairs, Office of State Auditor's Office Transportation, Texas Department of Workforce Commission, Texas
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#### Nonprofit Organizations

American Red Cross  
 Salvation Army

The Office of General Counsel (OGC) advises the Director and agency management on laws and policies affecting DPS. DPS attorneys also represent the Department in SOAH hearings. During fiscal year 2007, OGC oversaw 73 active lawsuits; processed 2,830 open records requests; assisted in handling 83 subpoenas; and processed 225 contested cases.

The DPS Aircraft Section uses eight planes and nine helicopters to support local and state law enforcement and public safety operations. Missions include investigations; searches for suspects, evidence, and victims; and search-and-rescue flights. DPS helicopters flew a total of 3,703 hours and the planes flew 2,533 hours in fiscal year 2007. See the table, *DPS Aircraft Selected Duties and Hours Flown*, for detail on operations. DPS currently has 29 pilots in nine locations, but will add five helicopters, 17 pilots, and 10 tactical flight officers as a result of action by the 80<sup>th</sup> Legislature. The Department is also increasing the number of aircraft duty stations to 14, with new stations in Amarillo, El Paso, Alpine, Del Rio, and Laredo.

***DPS Aircraft Selected Duties and Hours Flown – FY 2007***

Duty	Helicopters	Planes
Investigations	2,048	638
Traffic Enforcement	1,154	112
Criminal Searches	1,126	190
Search and Rescue	94	3

Internal Affairs conducts investigations of complaints made against DPS personnel as assigned by the Director, Assistant Director, or Public Safety Commission. Internal Affairs investigates all employee firearm discharges resulting in injury or death. Internal Affairs staff review investigations and inquiries conducted by field management for completeness, investigative thoroughness, and sufficiency of evidence.

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*The Employee  
Relations Office  
reviews all  
discrimination  
and sexual  
harassment  
complaints.*

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The Office of Audit and Inspection seeks to conduct independent, objective reviews and appraisals of DPS operations and procedures. Staff report findings and recommendations from these reviews to the Public Safety Commission, executive management, and appropriate program managers. Audit and Inspection staff also perform standard internal audit functions, including evaluating the existence of assets and proper safeguards for their protection.

The Information Management Service provides information technology services to DPS, including network management, application development, and systems support. DPS also provides law enforcement agencies across the state and country with access to critical systems 24 hours a day, 365 days a year. In addition, staff seeks to formulate policies and procedures to ensure effective use of agency information systems and automation technologies.

The Employee Relations Office manages two agency programs: conflict management and dispute resolution, and discrimination and sexual harassment complaint investigation. These programs provide training, one-on-one conflict resolution coaching, interest-based problem solving, workplace facilitation, and mediation to all employees and managers. Through discrimination and sexual harassment complaint investigation, the Office reviews all complaints and investigations involving unprofessional conduct, discrimination, sexual harassment, and related retaliation.

# Agency Information

## Polygraph Examiners Board

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### Agency at a Glance

To protect the public from untrained polygraph examiners, the Legislature has provided, since 1965, that only persons licensed by the Polygraph Examiners Board may use instruments designed to detect deception or verify truth. Originally part of the Engineering Extension Service at Texas A&M University, since 1981 the licensing of polygraph examiners has been housed within the Department of Public Safety (DPS) with a stand-alone Board. The Board's primary function is to test, license, and take enforcement action against violators of the Polygraph Examiners Act.

#### Key Facts

- ◆ **Funding.** In fiscal year 2007, the Polygraph Examiners Board operated on a budget of \$94,440.
- ◆ **Staffing.** The Board had two employees in fiscal year 2007.
- ◆ **Licensing.** In 2007, the Board issued 16 new licenses and renewed 227 licenses for polygraph examiners.
- ◆ **Enforcement.** The Board investigated and resolved six complaints in fiscal year 2007.

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*Only persons licensed  
by the Polygraph  
Examiners Board may  
use instruments designed  
to detect deception  
or verify truth.*

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### Major Events in Agency History

- 1965 The Legislature creates the Polygraph Examiners Board within the Engineering Extension Service at Texas A&M.
- 1969 The Texas Supreme Court declares the Polygraph Examiners Act as unconstitutional because of an insufficient bill caption that did not give proper notice of the Act's intent. In this same year, the Legislature reenacted the legislation with few modifications.
- 1981 The Board's first Sunset review continues the agency with an administrative attachment to the Department of Public Safety.

### Organization

#### Policy Body

The Polygraph Examiners Board consists of seven members appointed by the Governor for six-year terms. The Board includes two polygraph examiners employed by law enforcement agencies, two commercial polygraph examiners, and three members of the public. No two Board members may be employed by

### ***Polygraph Examiners Board***

<b>Member</b>	<b>City</b>	<b>Qualification</b>	<b>Term Expires</b>
Andy Sheppard Presiding Officer	Fate	Commercial Examiner	2009
Horace Ortiz Assistant Presiding Officer	Corpus Christi	Commercial Examiner	2007
Priscilla Kleinpeter Secretary	Amarillo	Public Member	2009
Elizabeth P. "Liz" Bellegarde	El Paso	Public Member	2007
Gory Loveday	Winona	Law Enforcement Examiner	2011
Lawrence D. Mann	Plano	Public Member	2009
Donald Kevin Schutte	Hooks	Law Enforcement Examiner	2011

the same person. The Board elects a presiding officer. The table, *Polygraph Examiners Board*, contains information on each Board member.

The Board adopts rules to enforce the Polygraph Examiners Act, and develops and grades the licensing exam. Board rules specify that all Board members act as complaint officers on a rotating basis to assist the Executive Officer with complaint investigations, though in practice, complaints are usually processed by the staff. The Board generally meets four times a year.

### **Staff**

The Board has two staff, both based in Austin at the DPS headquarters. Employees perform two main functions – licensing and enforcement. The Executive Officer, under the direction of the Board, manages the agency’s day-to-day operations and implements Board policy. Generally, the agency’s staff processes license applications, renewals, and fees, and investigates complaints. DPS performs administrative functions for the Board, such as accounting and financial reporting. Because of the agency’s small number of staff, Sunset staff did not prepare an analysis of the agency’s workforce composition compared to the overall civilian labor force.

### **Funding**

The Board receives its funding through a line-item appropriation in DPS’ bill pattern in the General Appropriations Act. In fiscal year 2007, the regulation of polygraph examiners generated total revenues of \$119,345 through various fees and assessments. That same year, the Board spent \$94,440 on licensing and enforcement. The Board deposits its revenue to the credit of the General Revenue Fund. The administrative functions DPS performs for the Board cost about \$600 annually. Because the Board’s budget is incorporated in DPS’ budget, Sunset staff did not separately analyze the Board’s use of Historically Underutilized Businesses in its purchases of goods and services.

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*The Board receives its funding through a line-item appropriation in DPS’ bill pattern.*

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### **Agency Operations**

The Polygraph Examiners Board regulates polygraph examiners in Texas through two core functions – licensing and enforcement.



## Licensing

The Board issues licenses for polygraph examiners who meet statutory requirements, as described in the textbox, *Polygraph Examiner License Requirements*. Once licensed, polygraph examiners may conduct polygraph tests in accordance with the Act and applicable federal law. In 2007, the Board issued 16 new licenses and renewed 227 licenses.

### ***Polygraph Examiner License Requirements***

- ◆ Bachelor's degree from an accredited college, or five years of active investigative experience
- ◆ Graduation from an approved polygraph school and completion of a six-month internship, or a 12-month internship
- ◆ No felony convictions or convictions for misdemeanors involving moral turpitude
- ◆ Pass licensing exam

The Board approves polygraph schools based on the school's training curriculum, but does not require the school to meet any accreditation standards. In 2007, the Board approved 13 polygraph schools in the U.S. Two of the recognized schools are in Texas: the DPS Law Enforcement Polygraph School and a privately owned school in Corpus Christi. Graduates must complete 432 hours of instruction in the history and development of the polygraph exam, law and ethics, physiology, psychology, interrogation and interviewing techniques, chart interpretation, question formulation and test construction, and instrumentation.

The required polygraph internship can begin while the applicant is in polygraph school. The applicant must pay a \$150 internship license application fee, pass the criminal background check, obtain a surety bond or insurance policy for \$5,000, and have an approved intern sponsor. Sponsors must monitor an intern's polygraph exams and make regular reports to the Board.

Board members and staff conduct and grade the three-part licensing exam. Portions of the exam requiring polygraph subject matter knowledge are graded by Board members who are licensed polygraph examiners; public members grade two of five parts of the oral exam; and agency staff grades the academic section. A candidate pays a \$150 fee to take the exam and must pass all three parts to be licensed. Individuals who fail the test more than three times must wait 12 months to retest. A grade of 70 percent is required for passing. The textbox, *Polygraph Licensing Exam*, outlines the three components of the exam.

### ***Polygraph Licensing Exam***

The polygraph licensing exam includes:

- ◆ an *academic* section which includes objective questions about state law, anatomy, physiology, chart interpretation, and other aspects of polygraph;
- ◆ a *scenarios* section which requires a candidate to draft polygraph examinations for hypothetical situations where exams might be used; and
- ◆ an *oral* interview where Board members review the candidate's actual, completed polygraph exam results and interpretation.

### **Polygraph Examiner Fees**

Type	Fee
Internship License Application	\$150
Examination	\$150
Polygraph Examiner License	\$500
Examiner License Renewal	\$450

The Board issues new licenses for \$500, and licensees must renew annually for a fee of \$450. Licensees must also register in the county where the examiner maintains a business address. State law does not require continuing education.

The table, *Polygraph Examiner Fees*, shows a summary of fees applicable to polygraph examiners, excluding late fees.

### **Enforcement**

The agency administratively enforces the Polygraph Examiners Act and Board rules by investigating complaints and taking enforcement action against violators if necessary.

A person who alleges a violation of the Act or Board rules must file a written complaint using a form available from the agency. The agency notifies the examiner against whom the complaint is filed and investigates the complaint. The Board does not have authority to perform unannounced, on-site inspections of polygraph examiners or instruments, but may request information relevant to the complaint from the examiner.

If investigation shows that the subject of the complaint is not a matter over which the Board has authority, the Board closes the nonjurisdictional complaint. In fiscal year 2007, the Board received and investigated six complaints. Three complaints were held to be unfounded because the allegations were not supported by the facts. Three complaints were dismissed because the Board was unable to investigate the allegations.

The Board may take disciplinary action against those who violate the Polygraph Examiners Act or Board rules, including issuing a reprimand or denying, suspending, or revoking an examiner's license. The licensee is entitled to an administrative hearing, and may appeal a Board decision to district court. Selected violations for which the Board can take action are included in the textbox, *Examples of Causes for Disciplinary Action*.

#### **Examples of Causes for Disciplinary Action**

- ◆ Allowing a license to be used by an unlicensed person.
- ◆ Falsifying information submitted to the Board for licensing purposes.
- ◆ Failing to follow prescribed procedures for conducting a polygraph exam.
- ◆ Using instrumentation that does not meet standards.
- ◆ Demonstrating unworthiness or incompetency to act as a polygraph examiner.

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*In fiscal year  
2007, the Board  
received and  
investigated six  
complaints.*

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# APPENDICES

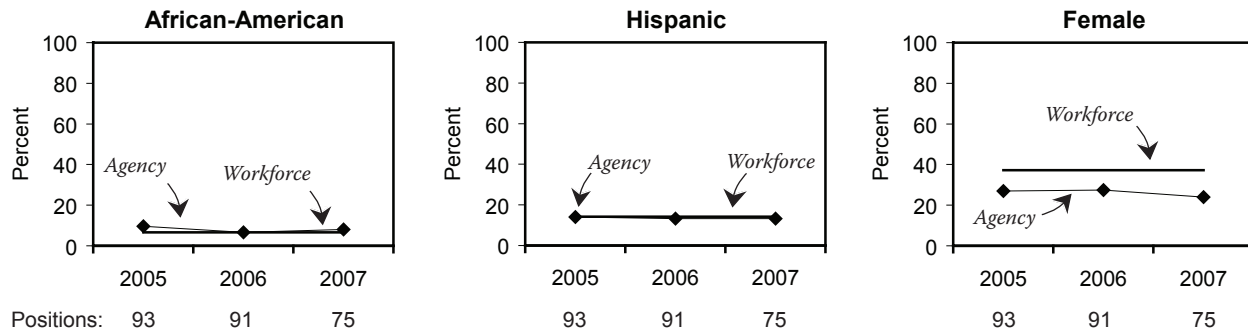


# Appendix A

## Equal Employment Opportunity Statistics 2005 to 2007

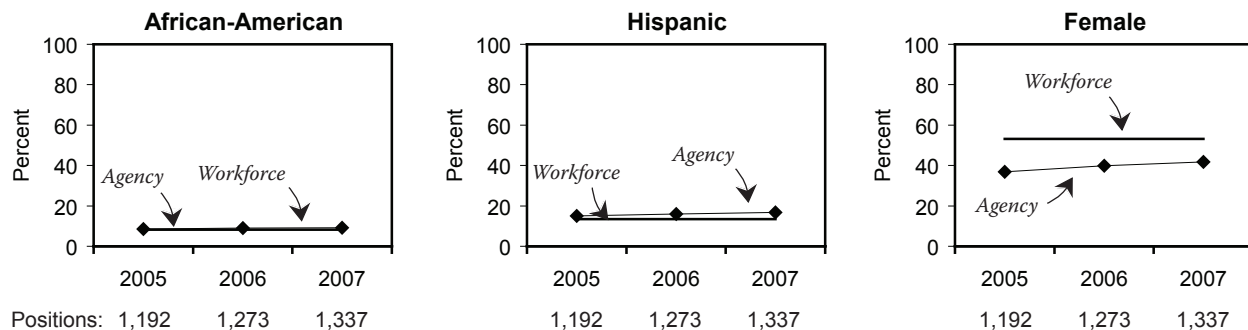
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Department of Public Safety's (DPS) employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2005 to 2007. The agency met or exceeded statewide civilian labor force percentages for African-Americans in five of the six categories in all three years. The agency had mixed results with the Hispanic and female categories.

### Administration



The agency met the statewide civilian workforce percentages for African-Americans and Hispanic employees in this category, but fell below for females.

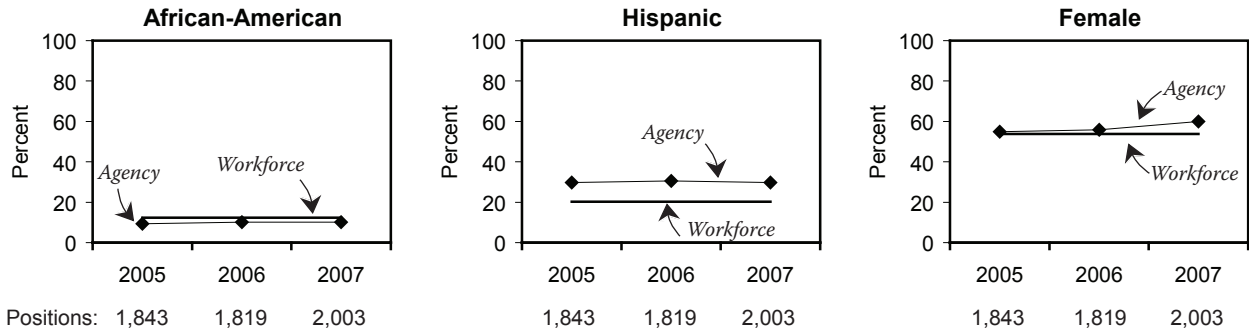
### Professional



DPS met or exceeded the percentages for African-Americans and Hispanics in this category, but fell short of percentages for female employment in all three years.

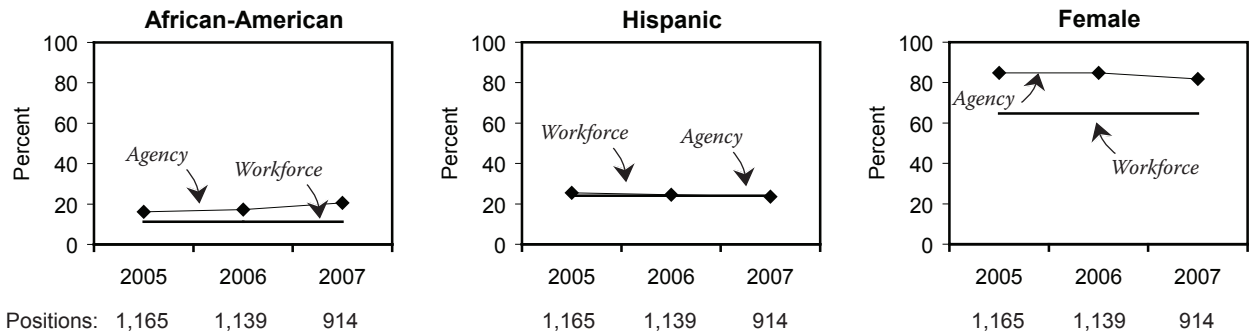
# Appendix A

## Technical



The agency fell short of percentages for African-Americans in all three years in this category, but consistently met or exceeded the goals for Hispanics and females.

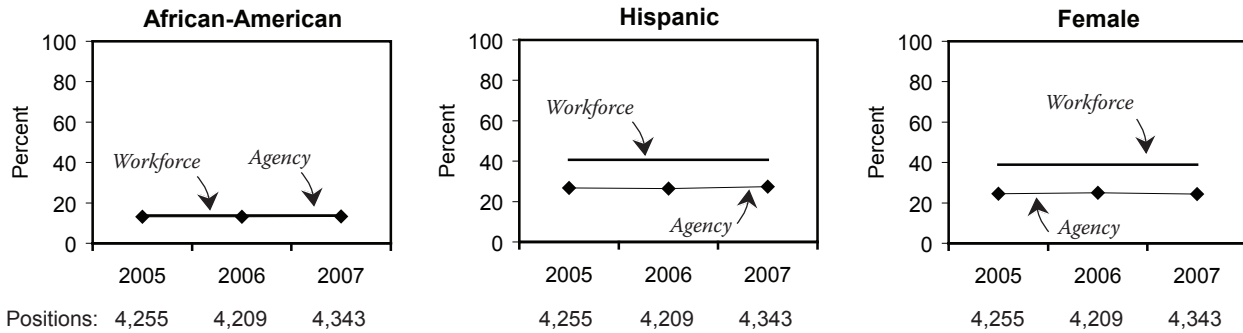
## Administrative Support



DPS has consistently exceeded statewide percentages for African-Americans and females in this category, and consistently met the percentages for Hispanics.

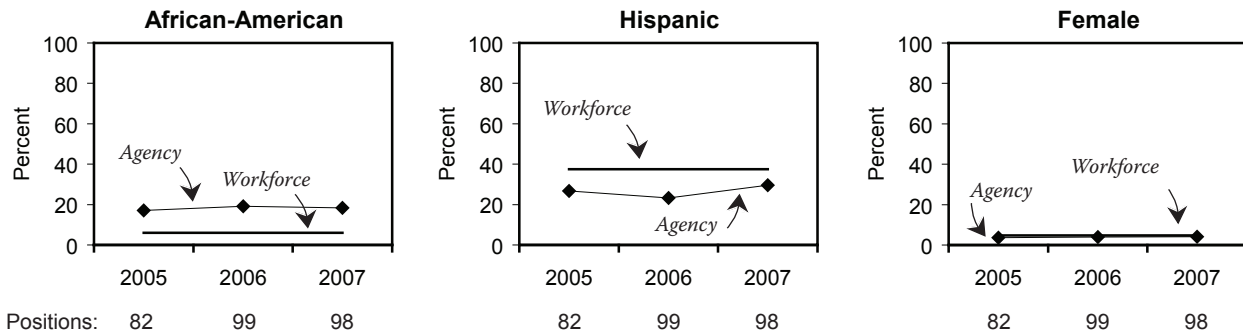
# Appendix A

## Service/Maintenance<sup>3</sup>



DPS met the percentages for African-Americans in all three years in this category, but consistently fell below in the Hispanic and female categories.

## Skilled Craft



The agency has consistently exceeded the percentages in the African-American category. Percentages for females have been met in all three years but consistently not met in the Hispanic category.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501.

<sup>3</sup> The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.



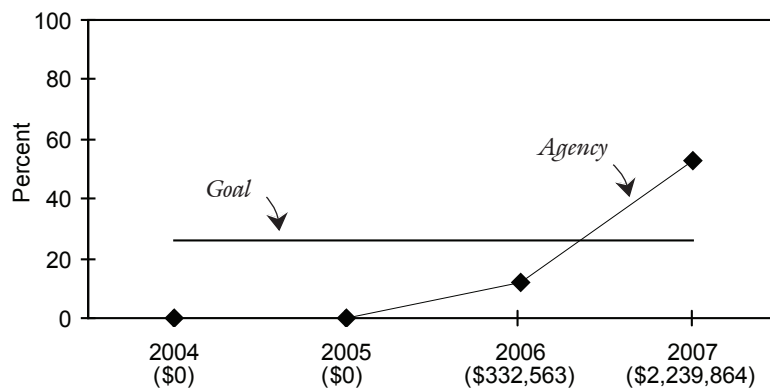
# Appendix B

## Historically Underutilized Businesses Statistics 2004 to 2007

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Department of Public Safety's (DPS) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. Over the last four years, the agency has fallen short of the goals for special trade and other services. The agency has had mixed success achieving the statewide goals for building construction and professional services, and has exceeded the goal for commodities purchasing.

### Building Construction

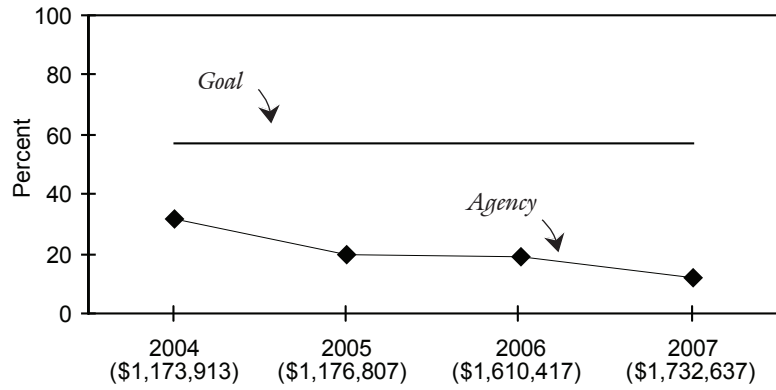


DPS exceeded the goal for building construction in 2007, the first year it spent a significant amount of funding in that category.



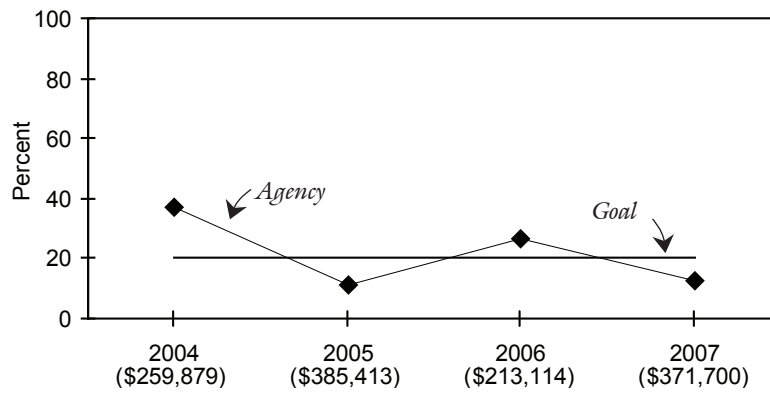
## Appendix B

### Special Trade



The agency fell below the statewide special trade goal in all four years.

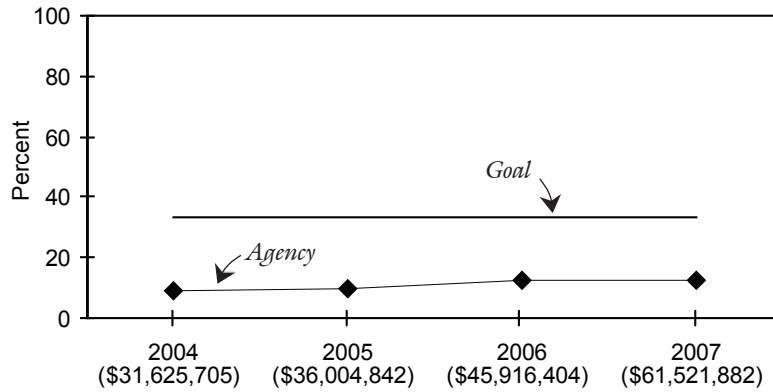
### Professional Services



DPS has exceeded the statewide professional services goal twice in the past four years.

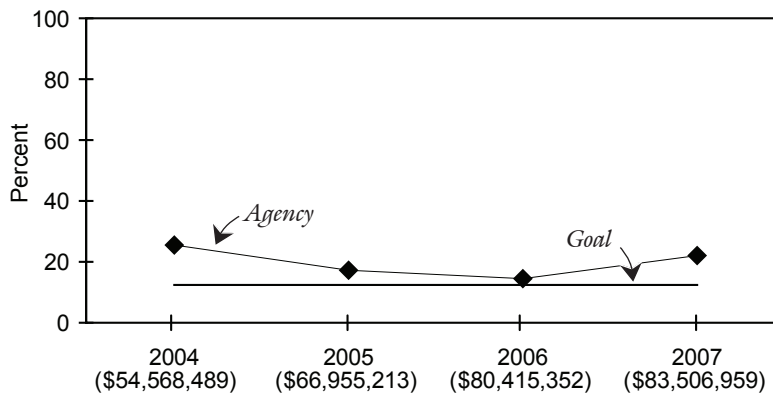
# Appendix B

## Other Services



DPS has not achieved this goal in the past four years.

## Commodities



DPS has met or exceeded the commodities goal in the past four years.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.



# Appendix C

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## Staff Review Activities

During the review of the Department of Public Safety, the Private Security Board, and the Polygraph Examiners Board, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency.

- ◆ Attended meetings and interviewed individual members of the Public Safety Commission, the Private Security Board, and the Polygraph Examiners Board.
- ◆ Interviewed staff from the Legislative Budget Board, State Auditor's Office, Texas State Office of Administrative Hearings, Texas Department of Licensing and Regulation, Texas Department of Information Resources, Texas Commission on Law Enforcement Officer Standards and Education, Governor's Office of Homeland Security, Texas Parks and Wildlife Department, and the Texas Alcoholic Beverage Commission.
- ◆ Interviewed officials of law enforcement agencies from other states.
- ◆ Interviewed law enforcement consultants and academics.
- ◆ Interviewed regional and local officials involved in emergency management.
- ◆ Attended a Governor's Division of Emergency Management Homeland Security conference in San Antonio.
- ◆ Toured DPS regional offices in Houston, McAllen, and Lubbock, including crime laboratories, and visited with representatives of the different services in those regions. Also visited driver license offices in Levelland, Lubbock, McAllen, and Houston-Gessner.
- ◆ Toured the DPS commercial vehicle inspection facility in Pharr.
- ◆ Toured U.S. Border Patrol facility and Joint Operations Intelligence Center in Edinburg.
- ◆ Toured the DPS firing range and site of future vehicle training track in Florence.
- ◆ Observed DPS Training Academy tactical simulation drill.
- ◆ Accompanied DPS Highway Patrol Troopers on patrol and observed traffic stops.
- ◆ Accompanied vehicle inspection technician on field inspections of licensed inspection stations and inspectors.
- ◆ Attended meeting of vehicle inspection regional supervisors.

## Appendix C

- ◆ Accompanied Texas Racing Commission and DPS investigators on an unannounced racetrack inspection in Schertz.
- ◆ Observed a polygraph examiner administering an abbreviated exam to a volunteer test subject, and observed the Polygraph Examiners Board administering the oral boards portion of the polygraph licensing exam.

# NEW ISSUES



# New Issues

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The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

## **Sunset Commission Members' New Issues**

10. Conduct a limited scope sunset review of DPS in 2011 to study the agency's response to the information technology audit currently in process and to Recommendation 1.2 requiring a civilian business management model for the Driver License Program. (Senator Glenn Hegar Jr., Vice Chair – Sunset Advisory Commission)
11. DPS should reconsider its policy that prohibits troopers from living more than 20 miles from their duty stations, and any other outdated policies that are hindrances to employee retention. (Senator Glenn Hegar Jr., Vice Chair – Sunset Advisory Commission)
12. Strengthen the internal affairs function at DPS regarding investigation of potential wrongdoings by DPS employees and crimes committed on DPS property. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
- 13a. Create a new and separate state agency by removing the Driver License Division and Vehicle Inspection Program from DPS, and combining them with the Vehicle Titles and Registration Division, the Motor Vehicle Division, and the Automobile Burglary and Theft Prevention Authority from TxDOT. The primary mission of this agency would be to deal with the licensing of drivers and registering and inspecting their vehicles, leaving DPS to maintain its primary mission in law enforcement and TxDOT to maintain its primary functions regarding infrastructure development and engineering projects. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)
- 13b. Create a new Texas Department of Motor Vehicles by combining the Driver License Division and Vehicle Inspection Program from DPS with the Vehicle Titles and Registration Division, the Motor Vehicle Division, and the Automobile Burglary and Theft Prevention Authority from TxDOT. This combined agency would centralize the public's vehicle-related interactions with state government while allowing DPS and TxDOT to better focus on their primary responsibilities. (Senator Kim Brimer, Member – Sunset Advisory Commission)
14. The Sunset Advisory Commission should recommend that the appropriate legislative committees consider whether technology specialists who engage in computer forensics and analysis should be registered or otherwise set apart with separate qualifications to distinguish them from performing the traditional role of private security personnel or investigators. Also, computer maintenance and repair technicians and businesses should have those services excluded from the scope of agency oversight regarding private investigators. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

## **DPS Driver License**

15. DPS should eliminate its parent-taught driver's education course because the packets are time-consuming and costly for DPS driver license staff to issue, and most likely teenage drivers are teaching themselves to drive, not their parents. (Anonymous)

16. DPS should overhaul its Driver License Receiving and Microfilm departments at Austin headquarters to ensure that phone calls and information requests from field staff are answered more quickly. (Anonymous)
17. DPS should have the Safety Responsibility Compliance centers in large city Driver License offices answer their own phone calls to alleviate phone calls to DPS headquarters in Austin that are going unanswered. (Anonymous)
18. DPS should have telephone operators in all large city Driver License offices who are trained to answer all calls, including Safety Responsibility Compliance and Driver Improvement Bureau calls. (Anonymous)
19. DPS should have Driver License offices in large cities rotate staying open from 7 a.m. to 7 p.m., with the first shift from 7 a.m. to 4 p.m., and the second shift from 11 a.m. to 8 p.m. (Anonymous)

### **DPS Promotions Policy**

20. DPS' promotional system should be completely revamped. (Edward H. Duran)
21. DPS should consider the following suggestions from a recent court judgment to increase the fairness of the Department's promotions process:
  - (a) DPS should assign all promotional board members from a "lottery" system similar to the system used by the disciplinary review boards. A different board chairperson is to be randomly selected during each interview process. Once the board chairperson is selected, other board members should be randomly selected by computer from all departmental bureaus or divisions.
  - (b) DPS should allow no more than two of the six board members of a higher rank than the position sought to participate on the board. The remaining four board members should be of the same rank as the position sought.
  - (c) DPS should reduce the total possible points to be awarded in the oral interview board to one-half the number of points to be awarded in the written examination.
  - (d) DPS should assign a maximum value for each question asked by the interview board and require board members to ask a minimum number of questions.
  - (e) DPS should require each board member to document how each candidate answers a question and treat this documentation as a government record.
  - (f) DPS should require each board member to review at least three of the most recent past evaluation reports for each candidate.
  - (g) DPS should allow a candidate to address issues of recommendations by supervisors during the interview.
  - (h) DPS should follow its own written policy of giving a test one time a year and create an eligibility list containing 10 to 25 candidates. An additional test should be authorized in the same year only after all candidates have either been promoted, are removed for disciplinary purposes, or have declined to accept a promotional assignment.



(i) DPS should record the promotional-interview process and retain the recordings for the same period as their standard document-retention period.

(j) DPS should not disclose the high and low written score to board members or publish them within DPS until after the board has finally scored the oral examination (DPS administrative staff may have access to the score to determine who to send to the oral promotions boards on a need-to-know basis).

(k) DPS should conduct – and publish – a study of ways to improve the promotional opportunities for women in the Criminal Law Enforcement Division, and Narcotics Service in particular.

(Jack B. Krona, Jr. – Pezzulli Kinser LLP, Dallas)

### **Vehicle Inspection**

22. Make sure vehicle inspection stations get a fair return for performing inspections for the State. Fees haven't increased since 1999 and the \$7 that stations may retain no longer covers cost. (Charissa Barnes, President – Official Vehicle Inspection Station, San Antonio)
23. Give inspection stations and inspectors the ability to defend themselves before being shut down by DPS for violations. (Charissa Barnes, President – Official Vehicle Inspection Station, San Antonio)
24. Look at who DPS vehicle inspection technicians are and ensure vertical accountability. (Charissa Barnes, President – Official Vehicle Inspection Station, San Antonio)
25. We recommend a review of DPS' use of SOAH for vehicle inspection enforcement actions. (C.E. "Ed" Martin – Texas State Inspection Association, Plano)
26. DPS' process for developing vehicle inspection rules needs to be more transparent, and proposed inspection rule updates need to be made on a predictable schedule. (C.E. "Ed" Martin – Texas State Inspection Association, Plano)

### **Private Security Board**

27. The Private Security Board needs to be a separate, stand-alone agency. (William S. Marks – Piper Protection & Investigations, Cleveland; Lauro Garza, MPO, Vice President – Fraternal Order of Security Professionals, Katy)
28. Create a new, separate licensing act and agency for testing, licensure, and enforcement for persons performing computer forensics. (Debra Martinez, Channel Sales Manager – Global Data Finder, San Antonio)
29. Remove commercial liability insurance requirements for private security guards to make playing field more level with police officers working part time security. (Juan C. Acosta, Owner/Manager – Metro Houston Security and Patrol, Houston)
30. Exempt TCLEOSE-certified peace officers from the Private Security Act if they work as detention officers, rather than law enforcement officers, at least 32 hours a week. (David Kilcrease, Sergeant – Bexar County Sheriff's Office, San Antonio)

### **Polygraph Examiners Board**

31. Amend statute to allow the Polygraph Examiners Board to inspect licensees. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)
32. Amend statute to require continuing education for polygraph examiners. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)
33. If the agency is absorbed by TDLR, advisory committee members should receive reimbursement for travel, meals, lodging, and other allowable expenses. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)
34. Amend statute to add the galvanic skin response (GSR), also known as galvanic skin conductance (GSC) or electrodermal activity (EDA), as a required recording of polygraph examination. Presently, only the respiratory and cardiovascular channels are statutorily required to be recorded, with all other recordings optional. To the knowledge of the Polygraph Examiners Board, there is no licensee using an instrument that is not capable of recording the GSR/GSC/EDA along with the respiratory and cardiovascular channels. The profession has advanced beyond using only two parameters for test data analysis. (Frank Di Tucci, Executive Officer – Polygraph Examiners Board)
35. Require the Polygraph Examiners Board to set up a standardized scoring guideline for Board members to use when grading the scenarios portion of the licensing exam. (Janice Marshall Harrison, police officer and polygraph examiner – Port Arthur Police Department, Port Arthur)
36. Require the Polygraph Examiners Board to establish a more strict and standardized complaint tracking procedure. (Janice Marshall Harrison, police officer and polygraph examiner – Port Arthur Police Department, Port Arthur)
37. Amend the Polygraph Examiners Act to allow the Board to extend a polygraph examiner intern license beyond the 18-month maximum if a medical disability causes an intern to be unable to complete the internship requirements in the required time. (Avery D. “Skip” Ensley, polygraph examiner – Azle)
38. Require the Polygraph Examiners Board to issue licenses for polygraph firms and for an operations manager who works in the firm. The operations manager must be a licensed polygraph examiner and is responsible for the day-to-day operations of the firm and the behavior of its employees. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)
39. Require the Polygraph Examiners Board to issue a specialized polygraph license before anyone can administer post-conviction sex offender polygraph tests in Texas. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)
40. Continuing education should be required for all polygraph examiners and firm operations managers. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)

41. Prohibit polygraph examiners from using speaking engagements as continuing education credits for recognition by the Joint Polygraph Committee on Offender Testing. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)
42. The State should have separate Polygraph Board-approved training academies for basic polygraph training, post-conviction sex offender training, continuing education training, and other academies as polygraph evolves. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)
43. The State should license polygraph instructors in the categories of basic instructor, senior instructor, post-conviction sex offender instructor, and continuing education instructor. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)
44. All polygraph exams from start to finish should be audio and video recorded. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)
45. Polygraph examiners should keep track of the number, type, and results of examinations they perform and report the numbers to the Polygraph Board upon renewal. (Joseph McCarthy, polygraph examiner – Fenian Polygraph Services, Grand Prairie)

#### **Miscellaneous**

46. Increase the number of full-time, dedicated staff in the DPS Concealed Handgun Licensing program to ensure the Department's ability to process licensees' applications within the number of days set in statute by the Texas Legislature. (Alice Tripp, Legislative Director – Texas State Rifle Association-PAC, Paige)
47. The Department of Public Safety needs to develop new and better metrics for measuring an officer's job performance. (Claude A. Hart, Executive Director – Texas State Troopers Association, Austin)
48. DPS should use computerized time clocks to record staff hours instead of paper time sheets that are then input into a computer system. (Anonymous)
49. Require DPS to check state parking garages daily to ensure that only those with proper permits are parking in spaces designated for handicapped parking and to ticket or tow violators. (Judy M. Spalding – State Commission on Judicial Conduct, Austin)
50. DPS should hire someone without police experience to be a business manager to work on daily operations. The business manager should have equal standing to the Colonel. (Anonymous)
51. Authorize DPS to require tow companies to charge the same rates set by local sheriff's or police departments when DPS officers impound vehicles. (Larry Cernosek, Chairman – Texas Towing and Storage Association, Austin)

52. Require arresting or booking police officers to photocopy driver licenses of arrested individuals and attach them to the Notice of Suspension, Temporary Driving Permit (Form DIC-25) so those individuals can use the photocopy to retrieve their cars from impound storage facilities. (Larry Cernosek, Chairman – Texas Towing and Storage Association, Austin)

### *Commission Decision*

- ◆ Adopted New Issue 10.
- ◆ Adopted New Issue 11, modified to state that DPS should remove, rather than reconsider, its policy that prohibits troopers from living a specified distance from, rather than more than 20 miles from, their duty stations, and reconsider any other outdated policies that are hindrances to employee retention.
- ◆ Adopted New Issue 12, which includes several recommendations, including statutorily requiring the Public Safety Commission to hire the Director of Internal Affairs, and to directly oversee the activities of the Office; statutorily establishing that the mission of Internal Affairs is to independently and objectively investigate all divisions of the Department; directing DPS to enforce statutes granting the Internal Affairs Office original jurisdiction over all criminal investigations occurring on Departmental property or involving on-duty DPS employees; and directing DPS to consolidate current internal affairs investigations throughout the Department in the Internal Affairs Office.
- ◆ Adopted New Issue 14.
- ◆ Adopted New Issue 53 by Representative Isett instructing Sunset staff to develop recommendations, if appropriate, resulting from the current management and organizational audit at DPS, for consideration at a later Sunset Commission meeting.
- ◆ Adopted New Issue 54 by Mr. McMahan directing DPS to use state-of-the-art call center technology and best practices for monitoring driver license customer service phone calls and publish that information on the Internet; help customers replace lost driver licenses more quickly; and look at expanding the hours of operation of driver license offices.
- ◆ Adopted New Issue 55 by Mr. McMahan that amends statute to allow DPS to put the classroom part of the concealed handgun license renewal class and the written test online.

## *Legislative Action*

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House Bill 2730 subjects DPS to a limited review that studies implementation of the information technology audit conducted in 2008 and implementation of a civilian business management model for the Driver License Program, which includes using state-of-the-art call center technology and best practices for monitoring driver license customer service phone calls, among other provisions.

House Bill 2730 modifies the Sunset Commission recommendation by renaming the Office of Internal Affairs as the Office of Inspector General. The bill requires the Public Safety Commission to hire the Inspector General and oversee the Office. The bill sets in statute the mission of the Office, and a legislative modification specifies that the Inspector General will refer criminal allegations to the Texas Rangers or the Criminal Law Enforcement divisions for investigation or referral back to the Office for further action.

The Legislature did not pass a bill to separately register or set apart computer forensic technology specialists from private investigators, although a request to consider this option was forwarded to the legislative committees for study. Also see Provision 20 added by the Legislature.

House Bill 2730 authorizes DPS to offer the classroom part of the concealed handgun license (CHL) renewal class and the written test online, making the renewal process easier and more efficient for licensees. The Legislature also added provisions that require DPS to allow certain CHL instructors to renew online and to put CHL instructors' telephone numbers and email and website addresses online if requested to do so by the instructor.



# PROVISIONS ADDED BY LEGISLATURE



# *Provisions Added by Legislature*

## *Department of Public Safety*

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### **1. Modernize the Department's enabling statute.**

The Legislature made several changes to H.B. 2730 to help modernize the Department's statute, including repealing a 1957 provision that sets the number of divisions the Department may have; allowing the Department to hire deputy directors; and specifying that the director of DPS must be a citizen of the United States instead of Texas.

### **2. Modify state law enforcement agencies' physical fitness programs.**

House Bill 2730 modifies physical fitness standards for state law enforcement agencies to specify that the standards and programs must include individual fitness goals relative to an officer's age and sex. The bill requires each law enforcement agency to adopt a reward policy that provides incentives to officers who participate in the program and meet the standards.

### **3. Decentralize and rename the Texas Rangers Unsolved Crimes Investigation Team.**

The Legislature added a provision to H.B. 2730 that changes the name of the Unsolved Crimes Investigation Team to the Unsolved Crimes Investigation Program and allows the Program to operate statewide instead of at Austin DPS headquarters.

### **4. Increase training requirements for Driver License Division staff.**

The Legislature added provisions that require Driver License Division staff to receive training within three months of being hired and annually thereafter on customer service, cultural diversity, and citizenship documents.

### **5. Increase integrity of driver licenses and identification certificates.**

The Legislature added provisions to H.B. 2730 that require DPS to identify any driver license addresses submitted so frequently that an applicant actually living at the address is doubtful, and prohibit DPS from issuing a driver license or identification certificate to a person who has not established a domicile in Texas. House Bill 2730 specifies that an applicant may receive a driver license at a post office box only if the applicant's residence address has also been provided, with some exceptions. The bill also requires DPS to participate in a pilot program to issue driver licenses and identification certificates to inmates of the Texas Department of Criminal Justice upon release.

### **6. Modify driver education programs for minors.**

House Bill 2730 requires school districts to consider offering a driver education and traffic safety course during each school year, and requires DPS to collect data regarding collisions of automobiles driven by students taught by different driver education programs and to report annually on the data. The bill increases the fee for a provisional license or instruction permit from \$5 to \$15 and makes the provisional license expire on the youth's 18th birthday, instead of the first birthday after the date of application. The bill also prohibits the director of DPS from waiving driving tests for applicants under 18.



## **7. Modify the Driver Responsibility Program.**

House Bill 2730 requires DPS to send additional notices to drivers assessed a surcharge under the Driver Responsibility Program (DRP). The bill specifies that DPS must spread out the payment period for surcharges of \$250 or more. The bill requires, rather than authorizes, DPS to establish an indigency program for DRP, and prohibits DPS from assessing a surcharge for indigent persons who provide evidence to the court of their income level. Evidence may include a recent tax return showing an income that does not exceed 125 percent of federal poverty guidelines, or documentation of participation in the food stamp or Children's Health Insurance programs. House Bill 2730 also requires DPS to establish a procedure to deduct one point for each year that a person has not accumulated points. These bill provisions do not take effect until September 1, 2011.

## **8. Establish a driver record monitoring pilot program.**

The Legislature added a provision that authorizes DPS to establish a driver record monitoring pilot program not to exceed one year. Under the program, DPS would monitor certain driver records as specified by a contractor, and notify the contractor of any traffic offense convictions or change in driver license status. DPS would also provide the contractor with a copy of the driver record. The bill specifies that if a contractor inappropriately discloses driver record information, the Attorney General may file suit for injunctive relief or a civil penalty not to exceed \$2,000 for each inappropriate disclosure.

## **9. Conform state and federal law regarding motor vehicle conviction information on holders of commercial driver licenses.**

House Bill 2730 requires persons holding commercial driver licenses, judges, and court clerks to report convictions for certain motor vehicle offenses to DPS within seven days of the conviction. Current law allows these persons 30 days in which to report the convictions to DPS. This change is necessary to meet federal requirements and ensure the continued authority of Texas to issue commercial driver licenses.

## **10. Increase penalties for commercial drivers and youth who smuggle persons.**

The Legislature added provisions to H.B. 2730 that prohibit a person from having a commercial driver license if the person uses a motor vehicle to smuggle illegal immigrants, and require a juvenile court to order DPS to suspend a juvenile's license if the juvenile has engaged in a severe form of trafficking in persons.

## **11. Amend certain driver license provisions.**

House Bill 2730 contains cleanup language relating to enforcement actions against a person convicted of driving while intoxicated with a child passenger. The bill raises the driver license reinstatement fee for completing an education program from \$50 to \$100 to be consistent with others sections of law, and closes a loophole so that a person who commits an offense as a minor cannot circumvent the driver license penalty if the person turns 21 before the court date.

**12. Ease restrictions on who may hold a concealed handgun license (CHL), and remove penalties for failure to display a CHL.**

House Bill 2730 added two provisions to ease restrictions on who may hold a concealed handgun license, including allowing persons who have defaulted on student loans held by the Texas Guaranteed Student Loan Corporation to be eligible. The bill also specifies that a person whose felony conviction was vacated, set aside, annulled, invalidated, voided, or sealed is eligible. The Legislature also removed DPS' ability to suspend a CHL for failure to display the license to a peace officer and removed the criminal penalty, a Class B misdemeanor, for failure to display.

**13. Provide an alternative to the requirement to carry an automobile insurance card.**

House Bill 2730 specifies that if a peace officer verifies through the TexasSure Vehicle Insurance Verification program that a driver has automobile insurance, the driver need not provide the peace officer with evidence of insurance.

**14. Authorize DPS to access FBI criminal history record information on holders of certain registrations, certificates, or permits.**

House Bill 2730 authorizes DPS to access FBI and departmental databases on persons who apply for or hold a DPS issued registration to manufacture, distribute, analyze, or research controlled substances; transfer chemical precursors or chemical laboratory apparatus; own or operate a vehicle inspection station; or sponsor or instruct motorcycle operator training and safety programs. Currently DPS has authority to check the Department's criminal history record information database for information on these applicants and permit holders. However, DPS does not have authority to access the FBI database.

**15. Update statutes regarding collection and use of criminal history record information.**

House Bill 2730 cleans up various statutes regarding DPS' criminal history records. The bill requires DPS' state database to serve as the record creation point for juvenile justice information, and as the control terminal for the entry of records into the federal database maintained by the Federal Bureau of Investigation. The bill clarifies that DPS agreements to disseminate information must require the user to follow Department policies, and updates statutory references to federal requirements. House Bill 2730 changes statutory references to Texas driver license numbers or personal identification certificate numbers to include numbers assigned to identification cards issued by other states and jurisdictions, and adds the ability of persons to consent to the release of their criminal history record information held by state agencies and other entities.

**16. Improve counties' crime record data reporting.**

House Bill 2730 requires counties that report less than 90 percent complete crime records to DPS to establish a local data advisory board to plan for the adequate collection and transmission of records under rules to be established by the DPS director.

**17. Require subcontractors to obtain criminal history background checks on all employees who provide services at schools and are not holders of current teaching certificates.**

House Bill 2730 requires subcontractors working on projects for school districts, open-enrollment charter schools, or shared services arrangements to obtain national criminal history record information on any employee who provides services at a school property. The bill exempts an employee who holds a current teaching certificate, but the employing entity must ensure that the certificates remain current. Subcontractors must submit written certification to the contractor and the school district indicating that they have obtained the required criminal history record information for each employee. An employee cannot provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from obtaining a teaching certificate.

**18. Prohibit the release of public school employees' criminal history information.**

House Bill 2730 prohibits criminal history information of public school employees in any format from being released under the Public Information Act. The bill specifies that the information may only be released to the person who is the subject of the information, the Texas Education Agency, a local or regional educational entity, or by court order. The bill also requires criminal history information to be destroyed after being used for authorized purposes or after the first year anniversary date of being obtained.

**19. Increase parking fines and fees in the Capitol Complex.**

House Bill 2730 increases the fine for violating parking rules in the Capitol Complex from \$10 to \$25, and increases the late fee from \$2 to \$5.

**20. Exempt computer repair from the Private Security Act.**

The Legislature added a provision to H.B. 2730 to clarify that computer repair and maintenance are exempt from regulation by the Private Security Board. The bill also exempts from Private Security Board regulation employees performing investigative services for the Texas Department of Insurance, Office of Thrift Supervision, Securities and Exchange Commission, Federal Deposit Insurance Corporation, National Association of Securities Dealers, or the Financial Industry Regulatory Authority.

**21. Create an interagency council to plan transferring the controlled substances database from DPS to the Pharmacy Board.**

House Bill 2730 creates an interagency council, consisting of the directors of DPS and the Pharmacy and Medical boards, to develop a plan to transfer the controlled substances database from DPS to the Pharmacy Board. The bill specifies that the plan must be reported to the Legislature by January 2011.

**22. Allow DPS employees to donate compensatory or annual leave time for legislative purposes.**

The Legislature added a provision to H.B. 2730 to allow DPS employees to donate compensatory or annual leave time to members of the Texas State Troopers Association and DPS Officers Association for legislative purposes. The bill specifies that the Public Safety Commission shall adopt rules to operate the program and that the DPS director or designee shall administer the program.

**23. Authorize compensatory time for DPS security officers for working on certain holidays.**

House Bill 2730 authorizes DPS security officers working in the Capitol Complex to receive compensatory time for work on state or national holidays that fall on Saturday or Sunday.

**24. Modify inspection requirements for out-of-state motor buses.**

The Legislature added a provision to House Bill 2730 that allows motor buses registered but not kept in Texas to use certificates of inspection in compliance with federal law.



# *Provisions Added by Legislature*

## *Polygraph Examiners Board*

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None added.



**SUNSET STAFF REVIEW OF THE  
DEPARTMENT OF PUBLIC SAFETY  
PRIVATE SECURITY BOARD  
POLYGRAPH EXAMINERS BOARD**



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