



Public Safety Commission Meeting

April 21, 2011, 10:00 a.m.

Criminal Law Enforcement Auditorium

6100 Guadalupe, Bldg E

Austin, TX 78752

Summary

(This report represents a summary of events of the meeting, and is not necessarily complete nor an exact transcript of testimony.)

The Public Safety Commission convened as posted to consider and take formal action, if necessary, on

10:04 am - Chairman Polunsky called the meeting to order. In attendance: Chairman Allan Polunsky, Commissioners Carin Barth, Ada Brown, John Steen, and Cynthia Leon. Also present were Director Steve McCraw, Dep. Director Lamar Beckworth, Deputy Director Cheryl McBride, Chief of Staff Duke Bodisch, and General Counsel Phil Adkins.



II. APPROVAL OF MINUTES

Motion made to approve the minutes and seconded.. Approved unanimously.

III. PUBLIC COMMENT (members of the public wishing to address the Commission are subject to a time limit of 5 minutes and must complete a Public Comment Registration Card located at the entry)

None

IV. DIRECTORS REPORT

A. Presentation to the Department of Public Safety Museum

Director Steve McCraw asked B.C. Lyon as well as FBI agent and the last living survivor of a DPS agent who was killed by Bonnie and Clyde (didn't get their names). B. C. Lyon, Executive Director of the DPS Museum was presented a framed print commemorating the incident which included a grave stone rubbing as well.



B. Recognition of Trooper Jose Mena, as a finalist for “Trooper of the Year” award at the International Association of Chiefs of Police, State and Provincial Police Division

Director Steve McCraw reported in general terms the great job that the DPS troopers in the field are doing, illustrating the point by listing some of the items in his morning report from the field: 120 lbs. of marijuana, 5,900 lbs. of marijuana, 293 lbs. of marijuana, \$90,000 in cash.... These types of interventions happen day in and day out.

Director McCraw asked to recognize Trooper Jose Mena of El Campo on March 25, 2011 was a runner up in the International Association of Chiefs of Police Trooper of the Year Award. Trooper Mena patrols Hwy. 59 and an Amber Alert went out about a 2 year old who was abducted by her father, Jamie Cook, after he had killed the mother and a step daughter. Trooper Mena spotted the suspect’s vehicle in the parking lot of a Super Walmart, and after questioning an employee determined that a man fitting the suspect’s description was currently in the store. Understanding the eminent

danger that the 2 year old was in and the crowded store, Trooper Mena took a covert surveillance position near the exit. Trooper Mena was able to quietly approach the suspect and apprehend him with minor disturbance and no injury to the child, the perpetrator or the general public.

Chairman Polunsky echoed Col. McCraw’s sentiment that this is the type of heroic action that troopers confront and that makes them proud to be associated with the Department of Public Safety and called Trooper Mena a “shining star” and represents the agency well. Without diminishing the selfless efforts of Trooper Mena, Chairman Polunsky said that there are any number of our Troopers who would have taken the same action, which is a testament to their character and training.



Assistant Director Baker and Trooper Mena

Chairman Polunsky asked Assistant Director Tom Ruocco if he still sat on the Board for the National Association for Missing and Exploited Children. When AD Ruocco said that he was, Chairman Polunsky asked him to consider nominating, or having the Director

nominate Trooper Mena for consideration of a national award.

Commissioner Carin Barth summed up the conversation with one word: "WOW".

Director McCraw also said that he and Col. Beckworth have traveled around the state speaking with CID and Rangers regarding investigations and are asking for high profile case investigators to come to Austin to brief the Director. This has been met with enthusiasm and Agents and Rangers are anxious for the opportunity to do such briefings. It makes everyone want to excel.

Today I want to commend Trooper Adam Sweaney from El Campo in the Houston Region. In the last 45 days, Trooper Sweaney has captured the following: 2/27 4,235 lbs. of marijuana; 3/6 3,690 lbs. of marijuana; 3/25 2,670 lbs. of marijuana; 4/14 3279 lbs. of marijuana. Total: 13,874 lbs. of marijuana, with a wholesale value of \$12.2 million dollars. This is money that is not going into the pocket of the Mexican drug cartels. Trooper Sweaney had previously worked in CVE and feels that his experience there has helped him in spotting suspect vehicles and in asking the right questions. The Commission joined in congratulating Trooper Sweaney.



Trooper Sweaney on Right

Director McCraw went on to discuss progress that has been made by the DPS IT division since the Conflicker attack in 2009. Security software has been replaced throughout the agency. We've recently learned that 3.5 million ERS, TRS, and Workforce Commission identities were posted on a public access site at the Comptroller's office, which included names, SS#, DL#, and DOBs. So far has led to at least 1 criminal incident that the Attorney General's office is investigating. DPS encrypted over 21 million records which otherwise might have been made public. I am proud of Assistant Director Mark Doggett for his watchful eye in avoiding this disaster. Our Operations Information Center monitors our systems daily for attacks, viruses and worms. To move to the next step, AD Doggett said that it would be necessary to upgrade our exchange server (email server) and upgrade to an encryption service which would also have significant upfront cost in order to encrypt the department's email. Director McCraw pointed out that he does not brief the PSC (or anyone else) on classified agency issues using email, cell phones, and only rarely by land lines. Such briefings generally take place in person such as at Executive Sessions of the PSC.

Chairman Polunsky thanked the Colonel for his good work and commented on the vast improvements in IT at the Department in the four years that he has been on the Commission, beginning with Brad Rable and continuing with Mark Doggett.

Director McCraw went on to discuss the Recruit School. Over a year ago, the PSC empowered the Department to move to a needs-based recruit school. With that we moved from a 26 week academy to an 18 week academy and are currently adjusting to a 20 week academy. The Department currently has 299 vacancies for commissioned officers. Chairman Polunsky asked what the current attrition rate is for the recruits, and Captain Jason Hester said that the current school started with 52, and has had a 33% attrition rate so far. The previous school started with 59 and had a 29% attrition rate, graduating 44. 86% of those 44 graduating recruits also earned their Fitness Star, meaning that they were in the 90th percentile for fitness. DPS currently has 164 applicants in the pipeline, which will likely result in 65-70 recruits in the academy.

When asked the reason for such a high attrition rate, Col. McCraw stated that it really comes down to money and the fact that we have not altered our standards. The Federal border patrol agents have had a very high incidence of corruption due to easing hiring standards to fill their ranks. DPS will not go down that road.

Chairman Polunsky asked if those leaving the academy said what other law enforcement agency they were going to, Capt. Hester said that that wasn't a question being asked at their exit interview. The Commission suggested that they should begin asking that question.

Col. Beckworth agreed that money is the key. When we are competing on even terms, DPS can blow away the competition (Austin, Houston, Dallas, etc.). However, as long as our salaries remain significantly below the major metropolitan police departments' salaries, we will have a tough time recruiting qualified candidates. He continued to point out that the DPS academy is one of the toughest training schools in the country. Commissioner Barth said that with the economy continuing to improve, money is going to continue to play a huge role in the recruiting process.

Chairman Polunsky stated that he was not as concerned with the attrition rate in the academy as he is with the difficulty in drawing in qualified candidates. What can be done to get more into the front door.

Colonel Beckworth also stated that the Department is currently doing a study on the feasibility of reinstating the retire/rehire program. This program helped keep trained, qualified commissioned officers working for the department for an additional five years. The legislature added a 6.9% surcharge on this practice in 2007 to help shore up the ERS, which effectively shut down the practice at DPS. We are now weighing the cost to benefit to see if it might again make sense. This surcharge may be reduced to 6.5% or 6.0% in the next biennium, according to Deputy Director Cheryl McBride, who also sits on the Board of Trustees for ERS.

Commissioner Cindy Leon asked Chairman Polunsky if she could assist in boosting recruiting, having been a Blue and Gold Recruiting Officer during her stint with the Navy. Chairman Polunsky stated that the PSC wants to take a more hands-on approach in resolving the recruiting issue and to that end he asked Commissioner Ada Brown (who has previously been involved with this issue) and Commissioner Cindy Leon to head up a Committee to work with DAD Woodall and other staff to find some solutions.

Director McCraw also discussed the cost of gas and how being reimbursed at a rate of \$1.53 per gallon by the state when gas prices are approaching \$4.00 makes it difficult. It is hard to be a HP Trooper when you're sitting on the side of the road with no gas.

He went on to say that the Department has identified a need for an additional 775 commissioned officers (not counting the 300 that we are currently short). This number includes 775 additional troopers, 61 CID agents, and 17 Texas Ranges, for a total cost of \$225 million.

Director McCraw also discussed the wildfires across Texas. There have been 8,071 wildfires, burning over 1,767,319 acres and destroying 320 homes and threatening another 9,100 homes. Two firefighters have given their lives fighting these fires, but there have been no civilian deaths, which can be partially attributed to the great work our troopers have contributed to the cause.



Director McCraw went on to discuss the ongoing problems with the Drivers License Division. The Department is processing more, and longer transaction resulting in continued long lines and delays. The drivers license phone call volume continues to be a problem, resulting in 85% of the calls being dropped. When asked what the solution might be, Col. McCraw responded more FTEs. The DL division is receiving 20,000 calls per week which is an unworkable volume when expecting examiners to field some of the calls. AD Davio is looking into leveraging technology with a voice over protocol system that would enable

switching some of the high volume of calls to underutilized DL facilities in rural areas. We need to increase funding by \$68 million in the next biennium to resolve these issues. With that funding, we could add 361 additional personnel and build 6 new Mega-centers (Austin, San Antonio, DFW Metroplex, and three in Houston). We have identified that 80 DL offices process 85% of the volume, while 226 offices handle 15%. There was some discussion about shutting down the under-utilized offices and about the political firestorm that might result. There was also discussion of revamping and expanding the concept of "mobile DL offices" to service rural and remote areas.

Director McCraw also addressed the threat at the Texas/Mexico border. He stated that a federal study showed that 70-90% of the Texas border had no or low level security. We are now seeing a cartel presence in Texas including hit squads. 60% of criminal activity in Texas is gang related. Houston has shown a 162% increase in gang related crime. Only 6.5% of criminal activity along the border is intercepted, with 93.5% getting by.

V. NEW BUSINESS

- A.** Report, discussion and possible action on provision of Department recruiting practices review and study for future schools

Previously Discussed

- C.** Report, discussion, and possible action on proposed amendments to Commercial Driver License Rules for publication: Rule 16.13, 37 TAC Sec. 16.13 concerning Farm-Related Service Industry Waiver and Rule 16.105, 37 TAC Sec. 16.105 concerning Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers

Assistant Director Rebecca Davio – the first rule relates to farm related 180 waivers – tightens the rules. The second rule pertains to drivers who are put out of service and makes rules that apply to comply with federal regulations.

Motion to approve and seconded. Passed Unanimously.

- C.** Review of pending contract change order/award
 1. Public Assistance Grant Compliance Auditing Services (Horne, LLP) – Contract Amendment
 2. DLD Mailing Services Solution (to be determined) – Award of New Contract

Assistant Director Valerie Fulmer – asked for approval of two contracts listed. There was much regarding item 1 due to the large price tag. Though the funds would come from FEMA, DPS has a fiduciary responsibility to be good stewards of the taxpayer's money.

- VI. ADJOURN INTO EXECUTIVE SESSION** (if required) to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; ongoing criminal investigations

Chairman Polunsky adjourned to executive Session at 12:36 pm.

Reconvened at 2:39 pm.

VII. ONGOING BUSINESS

Reports, discussion and possible action regarding the following:

- A.** Committee report and discussion on 28-day work cycle and Overtime and Compensatory Time policy

Chairman Polunsky asked Commissioner Brown to discuss this issue. The Committee is waiting for the outcome of this Legislative Session and at the end of the session we hope to re-assess our position and move forward.

- B.** Report, discussion and possible action regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of the Department or Commission management team

Skipped

- C.** Report, discussion, and possible action by the Commission regarding modification and transformation of the DPS organizational structure approval of personnel placements and salaries pursuant to Government Code chapter 411, Secs. 411.005, 411.006 and i. 411.0071

Skipped

- D.** Follow up report, discussion and possible action regarding Legislative initiatives for modification of the provisions of Government Code 411.244 DPS Office of Inspector General

Inspector General Stuart Platt – HB3099 moved out of committee favorably and should move to the Senate the week after next.

- E.** Update report, discussion and possible action regarding the status of building safety and security at the DPS campus on North Lamar

Chairman Polunsky said that this was addressed in Executive Session

- F.** Report, discussion and possible action on the Fiscal Year 2011 Operating Budget

Assistant Director Denise Hudson – There is \$14 million in the budget for gasoline, and we have spent approximately \$8 million, leaving only \$6 million for the year, leaving an estimated shortfall of \$4.5 million for gasoline this year (based on the projected price of fuel).

Chairman Polunsky asked if the Department had the ability to speculate on the fuel and buy gas for future delivery. AD Hudson said that as a state agency, DPS was not able to do this. Deputy Director McBride confirmed this and said that TxDOT, which uses more gas than any other agency, has fully investigated this and could not do it. Comm. Barth asked if we had considered building/leasing fuel storage tanks. The department has some, but could perhaps add to them.

Director McCraw addressed the Commissioners' concerns stating that we will have to move money from other areas to continue purchasing fuel. We have to continue pro-active patrols so we have to look at moving funds from column A to column B.

The Commission continued to look for and discuss solutions. Col. Beckworth said that we have been in this position before, and there are things that we could do, but none of them are good solutions because they weaken our law enforcement efforts.

AD Hudson went on to provide a summary of pending legislation (SB1 and HB1 and others) that could provide additional funding. Chairman Polunsky said that our team is doing a tremendous job distinguishing themselves at the capitol working around the clock. Col. McCraw said that Commander Bullock has done a great job educating the legislature about what we are doing along the border and providing copies of the Discovery program "Texas Drug Wars" helped as well.

G. Report, discussion and possible action regarding purchases using seized funds

Director McCraw said that there is legislation pending that would provide the Department with 40% of the state's share of seized funds (with a 40%, 30%, 30% split of funds coming back to the state from the Feds). We hope that that would move forward.

H. Update Report, discussion and possible action regarding recruitment

Addressed in Director's report.

I. Report, discussion and possible action regarding Continuity Plan at the Department of Public Safety

Nothing to report at this time.

J. Follow-up report, discussion and possible action regarding creation of a foundation to benefit the Texas Department of Public Safety

There is a Foundation that exists, and the governance had changed, removing PSC from the Board of Directors. We are talking about ways of addressing that by bringing former Commissioner Clowe to that Board.

K. Follow-up report, discussion and possible action on the Department of Public Safety gift policy and reporting requirements

Colonel Steve McCraw stated that they have taken a close look, and submitted a draft of a revised policy and are awaiting feedback before proposing it for approval at the next PSC meeting.

L. Status report, discussion and possible action on TxDOT median dividers and effectiveness in deterring vehicles crossing over and law enforcement turn around areas

Assistant Director David Baker - Since the last PSC meeting the HP District Captains have been asked to re-evaluate the crossovers and set priorities. There were 256 requested previously, and now 266 are requested, with 71 having now been completed. We are working with TxDOT engineers to set priorities. Each crossover costs approximately \$20,000.

M. Report, discussion and possible action regarding the adoption of proposed amendments to Driver License Rule 15.163, 37 TAC Sec. 15.163, concerning the removal of the inclusion of future surcharges in the Amnesty and Indigency Programs

AD Rebecca Davio – This involves minor changes to the rule to allow for calculation of payment.

Amnesty Program: This program ended on April 17, 2011 There were 713,444 persons eligible but only 109,824 took advantage (15%), which netted \$6,944,457 split between the General Revenue fund and to the e fund. We get 1%.

The Indigency Program begins on April 30, 2011. To qualify you must live at or below 125% of the poverty level.

Motion made to approve the two rule amendments and seconded. Passed unanimously.

VIII. REPORTS

A. Commission member reports and discussion

None

B. Finance Report

Chairman Polunsky has been covered.

C. Chief Auditors Office Report

AD Goodson – report is in the packet and will be happy to

D. Division status reports on activities and action

Nothing additional to report from the Divisions

Commissioner Brown commended AD Nim Kidd for his division's efforts in managing the wildfires across the state. She also gave a "good job" to AD Doggett for the IT improvements.

IX. CONSENT ITEMS

- A.** Discussion and possible action on appointments of Special Rangers and Special Texas Rangers pursuant to Government Code chapter 411, Secs. 411.023 & 411.024: Special Ranger – Jorge R. Vargas, Jr.
- B.** Report, discussion and possible action on Psychological Services OVAG Grant
- C.** Report, discussion and possible action regarding the adoption of proposed amendments to Private Security Rules: Rule 35.35, 37 TAC Sec. 35.35, concerning Standards of Service and Rule 35.311, 37 TAC Sec. 35.311, concerning Exemptions
- D.** Report, discussion and possible action regarding the adoption of proposed new Private Security Rules: Rule 35.187, 37 TAC Sec. 35.187, concerning Renewal Applications and Rule 35.222, 37 TAC Sec. 35.222, concerning Qualifications for Locksmith Company License

Chairman Polunsky asked if any of the rules need to be reviewed separately.

Motion to approve all consent items, and seconded. Passed unanimously.

X. ITEMS FOR FUTURE AGENDA

Chairman Polunsky asked for suggestions for agenda items.

None offered.

XI. DATE FOR FUTURE MEETINGS

May 19th is tentatively scheduled.

XII. ADJOURN

The Commission may take items out of the order in which they are posted on this agenda. Also, an item that has been adopted, passed upon, delayed or tabled for a later meeting may be considered or reconsidered at the same meeting.

Chairman Polunsky adjourned the meeting at 3:47 PM.

The Public Safety Commission may meet and discuss in Executive Session and have action taken in an Open Meeting where required on the following items

Government Code Sec. 551.071 Consultation and deliberation with legal counsel about pending or contemplated litigation or a settlement offer, or on a matter where the Commissioners seek the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, and to discuss the Open Meetings Act and the Administrative Procedures Act with their attorney

Government Code Sec. 551.074 Appointment, employment, evaluation, reassignment, duties, discipline or dismissal of director, assistant director, and persons appointed to management team positions pursuant to Govt. Code Sec. 411.0071

Government Code Sec. 551.076 Deliberations about security audits, security devices, including deployment and implementation of security personnel and devices Government Code Chapter 411, Sec. 411.0041 Ongoing criminal investigations

Government Code Sec. 551.072 Deliberation of the purchase, exchange, lease, or value of real property, if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person

Government Code Sec. 551.073 Deliberation of a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person