



Public Safety Commission Meeting

February 16, 2012, 9:00 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 the following agenda items:

I. CALL TO ORDER

9:09 am - Chairman Polunsky called the meeting to order. In attendance: Chairman Allan Polunsky, Commissioners Ada Brown, Carin Barth, John Steen and Cynthia Leon. Also present were Director Steve McCraw, Deputy Director David Baker, Deputy Director Cheryl McBride, and General Counsel Phil Adkins.



II. APPROVAL OF MINUTES

Motion made by Commissioner Steen, and seconded by Commissioner Barth, to approve the Minutes.

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)

Chairman Alan Polunsky asked if anyone wished to make public comment. There was no response.

IV. DIRECTORS REPORT

A. Presentation of Director's Awards, Director's Citations and Life Saving Awards

Director Steve McCraw – (Presentation taken out of sequence following the dismissal hearing; the following awards report is provided by the DPS Public Affairs Office; photos by John Pike).

Awards Presented to Texas Heroes

Today the Public Safety Commission and DPS Director Steven C. McCraw presented 30 awards for extraordinary demonstrations of heroism. Eleven Director's Citations, four Lifesaving Awards, 13 Director's Awards, one Purple Heart and one DPS Unit Citation were awarded to DPS personnel, law enforcement officers, and members of the public.

"I am honored to present awards to these individuals and units that have gone above and beyond to make Texas a safer place and assist those in danger," said Director McCraw.

Public Safety Commission Chairman Allan B. Polunsky stated, "These award recipients are true Texas heroes."

Trooper Robert Bryan received a Director's Citation for his efforts in evacuating a wounded Harrison County Sheriff's Deputy from the scene of a gunfight on January 26, 2011.

Corporal Timothy Pitts received a Director's Citation for his efforts in rescuing a woman who was stranded in Lake Leon near Eastland after her boat capsized on January 5, 2011.

Trooper Kevin Sanmann received a Director's Citation for his decisive action against a subject who posed a significant threat to a Plano Police Department detective, an ATF agent and himself during the execution of an arrest warrant on October 7, 2010.

Trooper Stephen Jay Tone received a Director's Citation for his efforts in locating and rescuing four firefighters who had gone missing during a wildfire in Eastland County on April 15, 2011,

Corporal Jesse Stewart received a Director's Citation for his response to a suicide call on January 24, 2010, in Rusk County, during which he negotiated with the subject until medical assistance arrived. Corporal Stewart also received a Lifesaving Award for supporting first responders and performing CPR on a driver who had fallen unconscious on January 25, 2010, near Kilgore. The man's breathing and pulse were restored, and Corporal Stewart continued CPR until medical assistance arrived.

Staff Sergeants Michael Lemmon, Christopher Barclay, Kevin Allison and Scott Allan Hamilton received Director's Citations for their response during a training mission in Corpus Christi Bay on May 12, 2011, when they rescued two fishermen from a boat that had caught fire.

Former Agents J. Wesley Crites and James York received Director's Citations, and former Agent Jimmy Murray received a Purple Heart, for their efforts during the execution of a search warrant on March 3, 1972, in Houston, when a female suspect attempted to flee. The suspect shot Agent Murray, and Agents Crites and York returned fire and took the suspect into custody.

Trooper Charlie Lunceford received a Lifesaving Award, and Canton Police Department Sergeant Steve Hall received a Director's Award, for reviving a woman who had fallen unconscious after choking on February 10, 2011.

Trooper Barry Evans received a Lifesaving Award, and James Douglas Beggerly received a Director's Award, for performing CPR on a subject who had collapsed shortly after being arrested near Tyler.

Trooper Brian Powell received a Lifesaving Award, and Gene Smithwick received a Director's Award, for performing CPR on a man in Weatherford who had gone into full cardiac arrest.

Mr. Ramon Trevino received a Director's Award for his assistance to Trooper Arnold Rodriguez on August 28, 2010, in restraining a combative subject who was being arrested for DWI in Brownsville.

The U.S. Homeland Security Investigations Border Security Enhancement Security Team in Alpine, including Chinyere Abosi, Jose Santa Cruz, William Fort, Kemp Johnson, Robert Soria, Erick Tarango, Don Alvarenga, Alex Rodriguez, and Brian Scholz, received Director's Awards, and the Alpine office of the DPS Criminal Investigations Division received a DPS Unit Citation, for their efforts to dismantle drug trafficking operations in their area. These efforts resulted in the arrest of 41 subjects and the seizure of 11,553 pounds of marijuana, 15.76 kilograms of cocaine, \$267,213 in cash, seven firearms and 12 vehicles.

B. Advice and consent regarding appointment of Homeland Security Assistant Director – Jay Kimbrough

Director Steve McCraw – Asked for an Advice and Consent ruling regarding the appointment of Jay Kimbrough, Assistant Director for Homeland Security. After leaving the Marines where he was awarded a Purple Heart for a severe wound he received while serving in Vietnam, he earned a BBA from SMU, and a law degree from South Texas College of Law.

Some of the positions that Mr. Kimbrough has held since 1982 include:

- *Attorney in Bee County.*
- *Assistant District Attorney for the 156th District of Texas.*
- *Bee County Judge.*
- *Executive Director, Texas Commission on Private Security.*
- *Executive Director, Texas Commission on Alcohol and Drug Abuse.*
- *Executive Director of the Governor's Criminal Justice Division, Office of the Governor of Texas.*
- *Deputy Chief of Staff, Office of the Governor of Texas.*
- *Deputy Attorney General for Criminal Justice, Office of the Attorney General of Texas.*
- *Director, Office of Homeland Security, Office of the Governor of Texas.*
- *Deputy General Counsel, The Texas A&M University System.*
- *Conservator, Texas Youth Commission.*
- *Deputy Chancellor and General Counsel, The Texas A&M University System*
- *Chief of Staff, Office of the Governor of Texas*



Motion made by Commissioner Steen (who added that he is one of the most distinguished public servants in the state of Texas and we are fortunate to have him on board). Seconded by Comm. Leon. Passed. Chairman Polunsky echoed Commissioner Steen's comments, and welcomed AD Kimbrough on board.

Director McCraw reported to the Commission that the federal funding for Homeland Security in Texas was cut dramatically since 2010. Col. McCraw showed that UASI funding dropped from \$160,587,176 in 2010 to \$117,102,283 in 2011. Specifically, he showed the following funding:

	<u>2010</u>	<u>2011</u>
Houston:	\$41,452,916	\$41,452,916
DFW	\$25,097,410	\$25,097,410
San Antonio	\$ 6,229,550	\$ 0 (1,812,799)
El Paso	\$51,389,900	\$ 0 (\$1,568,961)
Austin	\$ 2,931,990	\$ 0 (53,209)

Chairman Polunsky voiced outrage that such draconian cuts were made in Texas, a frontline of Homeland Security and asked the Director to draft a letter to be signed by Chairman Polunsky and other Commissioners stating strong objections to these cuts in Texas.

Director McCraw also reported on several interdiction successes around the state including \$1,028,930 in cash, 16 kilos of cocaine, \$60,000 in currency, 2,334 lbs. of marijuana, 11 lbs. of cocaine, and \$168,000 in cash. This is an example of what our Troopers do day in and day out.

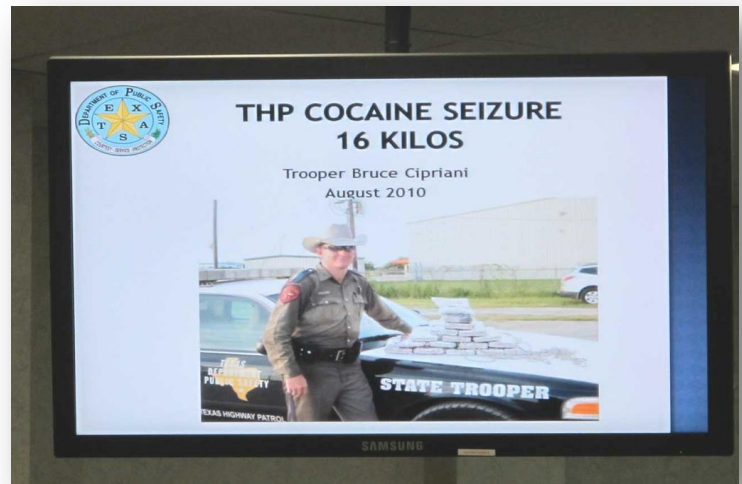


V. NEW BUSINESS

A. Discharge Appeal Hearing and possible action regarding DPS employee Michael Deck

Chairman Polunsky – Asked if there would be any witnesses – DPS attorney John Burkett had two, Dennis Dovias and Renearl Bowie. Michael Deck had none. Mr. Deck did not avail himself of representation.

Following testimony and discussion, the Commission delayed a decision until the March PSC Meeting and asked DPS counsel to provide further testimony and background information.



B. Report, discussion, and possible action on the presentation of the Office of the Inspector General 2011 Annual Report of Operations and OIG resource allocations/regional assignments of personnel

Inspector General Stuart Platt with Capt. Philip Ayala – DAD – Office of Inspector General was established in July of 2009, and at the time we were keeping track of cases with handwritten index cards. We have purchased a software package that helps us to efficiently track and record cases throughout their life cycles. Part of our charge is to identify "trends in the investigations, and recommendations to avoid future complaints". With one year's data collected, we now have the tools needed for informed decisions and recommendations. Gen. Platt and Capt. Ayala made a presentation regarding the type of data that can be tracked with the new software. The data could be parsed to show:



- The source of the complaint (public, internal, administrative, etc.)
- Type of violation (ethics, policy/procedures, criminal)
- Investigative assignment (Division referral, TAG, OIG)
- Commission classification (Commissioned/non-commissioned)
- By region (Regions 1-7)
- By Division (HP, CID, etc.)

IG Platt pointed out that only 40 of the 247 filed complaints in 2011 were sustained so far, and perhaps 6

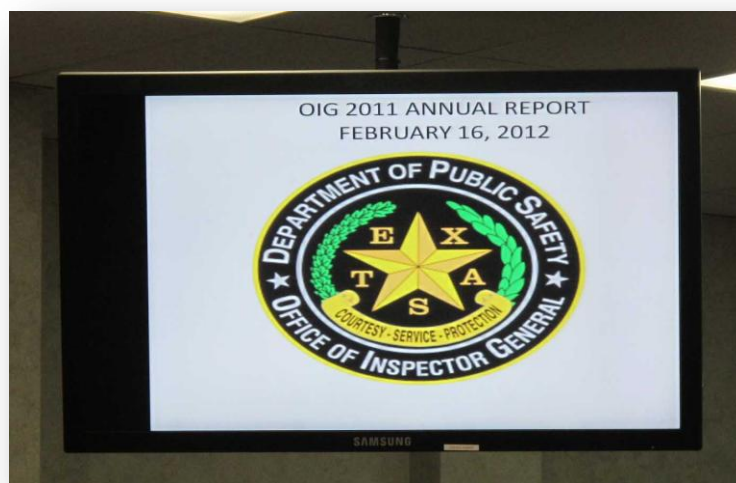
more still under investigation will be sustained. The two divisions with the most complaints were Highway Patrol at 54.1% and Drivers License with 12.2%. 56% of the complaints against commissioned officers and 43% against non-commissioned officers were sustained. General Platt pointed out that the highest number of complaints are against troopers in the first 5 years of service, followed closely by those in years 6-10.

Comm. Barth asked if routine ethics training is provided. Dir. McCraw replied that there was no specific training, but it was part of much of the training. The commissioners recommended all troopers should receive ethics training, and troopers in their first 5 years of service should have annual refresher training.

Gen. Platt said that HP Sergeants have an overwhelming work load leaving very little time to mentor the troopers that they are supervising. He mentioned discussing this issue with Chief Rodriguez and Major Joy.

IG Platt made two recommendations to the Commission:

1. Reduce the workload on HP Sergeants by increasing the number of Sergeants in the field. Not only would this improve the capability of Sergeants to mentor the new troopers, it will also make the position of Sergeant more attractive to troopers who are considering promoting.
2. Fact based scenarios should be pushed in online training as well as in the field. Have this type of training towards the end of the Academy when the cadets are more aware of the job and in a better frame of mind to focus on this type of training.



Inspector General Platt went on to report that the OIG is running well, however he said that he would like to move away from using TAGs by adding to the number of dedicated Lieutenant Investigators. The goal number is 32 investigators. We now have 10 permanent and 3 floaters. Gen. Platt recommended adding 7 Lieutenants, 1 Captain, and 2 administrative positions to the Office of Inspector General. He also said that TxDOT has space available in San Antonio that they are willing to lease for \$1.00 per year, and that he has identified other space in Corpus Christi and elsewhere that could be used.

Chairman Polunsky asked Commissioner Ada Brown to review the recommendations of Gen. Platt, and to report back to the Commission at the March meeting. Comm. Brown happily volunteered to do so.

Director McCraw asked Chairman Polunsky if he could introduce a special guest to the PSC Meeting, State Representative Pete Gallego of Alpine, Chairman of the House Criminal Jurisprudence Committee. Director McCraw and Chairman Polunsky spoke of Rep. Gallego's commitment to law enforcement and thanked him for his service to Texas (Rep. Gallego is not running for re-election).

C. Report, discussion, and possible action on proposed repeal and simultaneous proposal of new Driver License Rule for publication to receive public comment: Rule 15.48, 37 TAC Sec. 15.48 concerning Selective Service Registration

Assistant Director Rebecca Davio – Drivers License Division – SB 132 required this change. Repeals current rule 15.48. Straight forward change, but needs approval. I am requesting approval to publish in the Texas Register.

Motion made and seconded. Passed unanimously.

- D.** Report, discussion, and possible action on proposed new Driver License Rule for publication to receive public comment: Rule 15.90, 37 TAC Sec. 15.90 concerning Deferral of Enforcement Actions for Victims of Identity Theft

AD Davio – will explain procedures for identity theft victims to provide proof of the erroneous offense to have associated with driver's license. This, upon approval will be posted in the Texas Register.

Motion made and seconded. Passed unanimously.

- E.** Report, discussion, and possible action on proposed new Commercial Driver License Rule for publication to receive public comment: Rule 16.41, 37 TAC Sec. 16.41 concerning Medical Certificate Requirements

AD Davio – Requested approval to publish in the Texas Register.

Motion made and seconded. Passed unanimously.

- F.** Report, discussion, and possible action regarding expanded scheduling options for Driver License transactions

AD Davio – Three components of wait times:

- Processing times – how long at the counter*
- Capacity – number of CSRs at the counter*
- Demand – number of customers coming in*

We have uneven demand volume, each day, each week, and throughout the year. Also uneven demand rural to urban. Online scheduling that we have discussed will help to alleviate some of this unevenness. It will reduce crowding and provide some predictability for our customers.

Renewals and replacements are about 70% of our business. Of those that can renew online, about 75% still come in.

Commissioner Carin Barth asked if there is a way to expedite the replacement of a DL and AD Davio replied that it is a good idea to make a copy of your DL, or at least record your DL audit number. With the DL number and the audit number, the replacement process is expedited. Comm. Barth recommended that we post that information on the website.

We are currently accommodating online scheduling at our 59 busiest offices and are expanding it to all of our 226 offices as funding permits. We currently online schedule DL driving tests and CDL driving tests.

- 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 12:55 pm.

Reconvened at 4:05 pm.

VII. ONGOING BUSINESS

Reports, discussion and possible action regarding the following:

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

Not discussed.

- B. 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 411.0071

Not discussed.

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

Discussed in Executive Session.

- D. Report, discussion and possible action on the Fiscal Year 2012 Operating Budget

Not discussed.

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

Assistant Director Denise Hudson – Nothing new to report.

- F. Update Report, discussion and possible action regarding recruitment

Deputy Assistant Director Frank Woodall – we currently have 55 of the 67 recruits still in the academy. 1 took a job as a coach at Pan Am University, 2 decided that law enforcement wasn't for them, 1 wasn't mentally prepared for the task, 1 wasn't physically prepared for the task, 5 had family issues that they felt had to take precedent, and 3 have had issues that keeps them from completing the academy, but hope to join in a future academy (broken foot, one had BP and dehydration issues, and one had a pre-existing shoulder injury that will require surgery.

AD Woodall stated that there are 555 applications in pre-screening with 171 in some phase of processing. There are 101 in testing phase (PRT, SR8, etc.), 40 in polygraph, 30 in background checks, 36 awaiting oral interviews.

- G. Report, discussion and possible action regarding Continuity Plan at the Department of Public Safety
- H. Follow-up report, discussion and possible action on the Department of Public Safety ethics policy and reporting requirements
- I. Status report, discussion and possible action on Department generators – specifically conversation updates with electrical companies around the state
- J. Report, discussion and possible action regarding Emergency Management's procurement status of RFP for audit services with respect to Federal monies for past grants

Assistant Director Nim Kidd – Asked the Commission for an additional \$10 million to extend the existing contract

- K. Report, discussion and possible action regarding Emergency Management disaster response contract services

Assistant Director Nim Kidd – Asked the Commission for an additional \$10 million to extend the existing contract until new contract services can be fully evaluated and approved.

- L. Report, discussion and possible action regarding Commission requests for additional auditing to be performed by the Chief Auditor's Office
Real Estate

Assistant Director Steve Goodson – reported that they are wrapping up the Real Estate audit and he hopes to have a completed Audit to present to the Commission by the end of this month.

- M. Report, discussion and possible action on Driver License monthly updates

VIII. REPORTS

- A. Commission member reports and discussion

Nothing

B. Finance Report

Nothing further

C. Chief Auditors Office Report

Nothing further

D. Division status reports on activities and action

- Administration – Nothing further to add to my report
- Emergency Management – AD Nim Kidd thanked AD Mark Doggett for facilitating a remote operations center training simulation at the Double Tree Hotel, which went very well.
- Government Relations – Nothing further to add to my report
- Highway Patrol – Nothing further to add to my report
- Information Technology – Nothing further to add to my report



- Intelligence and Counterterrorism – Nothing further to add to my report

- Law Enforcement Support – AD Skyler Hearn – Introduced Lynell Wiley, who Commissioner Brown had mentioned at the January PSC Meeting. Comm. Brown praised for Ms. Wiley for her excellent Forensic work above and beyond the call of duty in helping to solve a double homicide investigation 2 days before Christmas.

- Office of the Inspector General – Nothing further to add to my report

- Public Affairs and Policy – Nothing further to add to my report

- Regulatory Services – Nothing further to add to my report

- Texas Rangers – Nothing further to add to my report

- Inspector General – Nothing further to add

to my report

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: Frank E. Chambers, Bruce A. Gatlin and Steven L. McKinney
- B.** Report, discussion and possible action regarding the adoption of proposed new Private Security Rule: Rule 35.47, 37 TAC Sec. 35.47 concerning Residential Solicitation
- C.** Report, discussion and possible action regarding the adoption of proposed amendments to Private Security Rules: Rules 35.63 and Rule 35.70, 37 TAC Sec. 35.63 and Sec. 35.70 concerning General Administration and Examinations; Rule 35.93, 37 TAC Sec. 35.93 concerning Penalty Range; Rule 35.221, 37 TAC 35.221 concerning Qualifications for Investigations Company License; and Rule 35.256, 37 TAC Sec. 35.256 concerning Application for a Training Instructor Approval

A motion was made by Comm. Barth and seconded by Comm. Steen to approve consent item A. Approved unanimously. Items B and C. were pulled down as requested by AD Renearl Bowie.

X. ITEMS FOR FUTURE AGENDA

Commissioner John Steen asked Inspector General Steen why there was a different standard of action for

commissioned officers and non-commissioned officers regarding DWI charges. Comm. Steen asked this to be added to the agenda for further discussion.

Commissioner Carin Barth asked AD Rodriguez to report back to the Commission the early ramifications of the increased speed limits on the Texas highways of up to 80 mph.

XI. DATE FOR FUTURE MEETINGS

March 21, 2012

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 5:00 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