

## **GENERAL PROVISIONS**

### **01.01.00.00**

#### **01.05.00 AUTHORITY OF MANUAL**

The General Manual is an official publication of the Department of Public Safety and has the force of an order. All employees of the Texas Department of Public Safety are required to comply with the provisions of the DPS General Manual unless by their nature the provisions are clearly inapplicable to a particular instance. The Department's policies, manuals, and procedures are subject to change and do not constitute terms of an express or implied employment agreement. No employee of the Department has authority to enter into a contractual agreement regarding employment with any other employee of the Department.

#### **01.10.00 SUBJECT MATTER OF MANUAL**

**10.01** The General Manual describes the organizational structure of the Department; lists the objectives, responsibilities, and programs of the Department; promulgates policies and doctrines; and prescribes rules, regulations, procedures, and work methods.

**10.02** All policies of the Department are not necessarily contained in the General Manual. Some policies of the Department are standard operating procedure of the division, service, or bureau charged with administering a particular program. It is unfeasible to include all procedures, customs, practices, and general methodology in the General Manual. Exclusion from the General Manual of these procedures, or other customs and practices developed by the Department over the years, does not invalidate their use.

#### **01.15.00 CLASSES OF DEPARTMENT MANUALS**

The Department has previously published and from time to time will publish manuals of various kinds. These manuals will fall into the following classes:

**15.01 General Manual.** This manual is designed to serve all line personnel and certain staff positions in the Department. Its subject matter is described in 01.10.00.

**15.02 Operations Manuals.** Manuals have been, or will be published covering the program and work of a service, a staff agency, a section, or a special unit. Examples of these manuals are "Traffic Law Enforcement Manual" and "Criminal Law Enforcement Manual."

**15.03 Training Manuals.** These manuals are to be issued by each service in the Criminal Law Enforcement and Traffic Law Enforcement divisions and contain textbook-type material prescribing procedures and/or work methods on subjects such as "Crime Scene Search," "Accident Investigation," or "Service Reports."

#### **01.20.00 NUMBERING SYSTEM IN THE DPS MANUALS**

A modified decimal system is used to number each chapter, section, and subsection of the DPS manuals in order to provide quick reference to all material therein, to afford an easy means of citing specific subjects, and to maintain the flexibility of format necessary to facilitate expansion and revision of its contents.

## 01.25.00 MEANING OF TERMS USED IN THE DPS MANUALS

**25.01 Legal Definitions.** When a term is used with reference to, or in a context where it would refer to, a specific statute of the state of Texas which defines that term, it shall be given the meaning that is ascribed in that statute.

### 25.02 Specific Definitions

1. **Administration.** This is variously defined as: (1) management or conduct of an office or employment; (2) the performance of the executive duties of a business or institution like the administration of a college, factory, army, or police department; and (3) the guidance, leadership, and control of the efforts of a group of individuals toward some common goals.

2. **Line.** All of the activities directly furthering the accomplishment of the basic objective of the organization—what it is created to do—are line activities. The people who perform the basic function and the people who supervise and command them are line personnel.

3. **Staff.** All of those activities necessary to support the line function but which do not directly further the performance of the basic function of the organization are staff functions.

4. **Policy.** Departmental policies are those top administrative decisions and expressions which stake out the broad path by which a goal or goals will be reached. Policies embody the thinking, the intent, the philosophies, and the beliefs of the administration. Their primary purpose is to provide positive guides for operational decisions which must be made at lower levels. (Policies have some flexibility; and, when necessity dictates, there can be some deviation in a given case, but the deviation must be fully justified and explained in each instance.)

5. **Rule or Regulation.** A rule or regulation is a requirement promulgated by proper authority requiring or forbidding some specific act or condition on the part of an employee and from which no deviation is permitted.

6. **Division.** The major, formal, functional parts of the Department are called divisions. The several named headquarters divisions (other than the Traffic Law Enforcement and Criminal Law Enforcement divisions) perform staff functions primarily.

7. **Regional Command.** For the purposes of administration, the Traffic Law Enforcement Division is divided into six geographical areas called regions. The uniformed field services, together with supporting and staff services constitute a regional command. Each region is commanded by a major who is directly responsible to the Chief of Traffic Law Enforcement Division.

8. **Service.** The major, specialized, functional organizations working within a division are called services. The services include the major, specialized functional parts of the Administration Division, Traffic Law Enforcement Division, the Criminal Law Enforcement Division, and Texas Ranger Division.

9. **Bureau.** The principal, formally established parts of a service are called bureaus. An example: Driver Improvement and Control Bureau (DL&C Service).

10. **Section.** A section is any recognized permanent specialization in a division, service, bureau, or the executive office. Example: Accounting and Budget Control Section (executive office).

11. **Commanding Officer.** In the Department of Public Safety, the officer in charge of an operational unit who has complete responsibility for the operations of the unit and for the performance and conduct of the personnel, and who is fully accountable to a person outside of his division, service, or section is a commanding officer. Below the position of Assistant Director, the following persons only are commanding officers: Chief of Administration; Chief of

Traffic Law Enforcement; Chief of Criminal Law Enforcement; Senior Ranger Captain; Chief of Legal Services; Chief of Finance; Chief Pilot, Aircraft Operations; Assistant Chiefs, Administration Division; Chief Inspector, Inspection and Planning Service; State Coordinator of Emergency Management, Emergency Management Service; Regional Commanders; Commander of Capitol Police; Commander of Criminal Intelligence; Commander of Narcotics; Commander of Motor Vehicle Theft; Special Section Heads, Bureau Managers; Service Captains; Capitol Police Captains; Vehicle Inspection Regional Supervisors; Regional Communications Supervisors; and Safety Education Lieutenants. A commanding officer has policymaking authority within the limits of his command and within Department policy, as distinguished from other supervisors who do not have such authority.

**12. Computation of Time.** Reference to time frames in number of days referred to in DPS manuals shall be defined as calendar days. Time shall be counted excluding the first day and including the last day, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

### **01.30.00 GRAMMATICAL CONSTRUCTION**

The following rules will apply throughout the DPS General Manual:

**30.01 Construction of Tenses.** The present tense includes the past and future tenses, and the future includes the present tense.

**30.01 Construction of Gender.** The masculine gender includes the feminine and neuter genders. (For example, "trooper" means either male or female.)

**30.03 Construction of Singular and Plural.** The singular number includes the plural and the plural the singular.

**30.04 Mandatory and Permissive Verbs.** "Will" and "shall" are mandatory and "may" is permissive.

### **01.35.00 DISTRIBUTION AND CARE OF THE GENERAL MANUAL**

**35.01 Individual Issue.** Copies of the General Manual will be issued to all line personnel in the Department, to all division chiefs, bureau and section heads in staff agencies, and to other positions as determined by the Director.

**35.02 Office Issue.** Each division, bureau, or section in the Austin headquarters shall have at least one copy of the General Manual available for reference by any employee not issued an individual copy.

**35.03 Maintenance.** It shall be the responsibility of all persons receiving a copy of any DPS manual to maintain it in good condition and to keep all revisions and amendments entered promptly in the proper location. When a change is received and entered into the manual, the change will be recorded on the updating sheet located inside the front cover. Supervisors will periodically check the manual and the updating sheet to ensure proper maintenance and posting. During field inspection trips members of Inspection and Planning will also check for compliance with these instructions.

### **01.40.00 REVISIONS AND AMENDMENTS TO DPS MANUALS**

#### **40.01 Responsibilities**

1. **Office of General Counsel.** It shall be the responsibility of the Office of General Counsel to prepare promptly and coordinate with designated divisions, bureaus, and individual(s) the text of all needed amendments and revisions of DPS manuals.

2. **Assistant Chief, Administration Division, Staff Support Services.** It shall be the responsibility of the Assistant Chief, Administration Division, Staff Support Service through the General Services Bureau to maintain the stock of extra manuals and to issue same as required. The General Services Bureau will reproduce adequate quantities of approved revisions and amendments and transmit them to manual binders.

3. **Service Training Committees.** Each service training committee from each division shall make recommendations annually to the Office of General Counsel for changes, additions, or deletions to each service manual.

**40.02 Suggestions for Changes.** Suggestions for improvement of the DPS manuals consisting of revisions, additions, omissions, or errors noted may be made in writing by any employee and forwarded through channels to the Office of General Counsel. The Office of General Counsel, after determining the effect of the proposed changes, will refer same to the coordinator of the specific text or manual as indicated in Annex #1.

**40.03 Assignment of Text.** The assignment of specific text and manuals is indicated in Annex #1. These persons will be held responsible for quarterly review and preparation of written material for the manuals.

1. The divisions, bureaus, and individual(s) indicated shall have the responsibility of doing the technical writing in preparing amendments to existing text and preparing new text when requested. In addition to technical writing, obsolete data shall be identified and submitted for removal.

2. The coordinator shall assist the division, bureau, and individual(s) indicated in preparing proposed changes, additions, or deletions. On any proposed change, addition or deletion, the coordinator shall a) submit changes in manual format, numbering sequence, etc.; b) check for any conflicts with existing statutes; c) check for any conflict with existing Administrative Rules; and d) initiate the "Request for Approval" through the Office of General Counsel. The coordinator shall review the material indicated once per quarter to ensure manuals are kept up to date. The coordinator with the division, bureau, and individual(s) shall be prepared to respond to requested changes upon demand.

The "Request for Approval" form (HQ-7) is used when approval from the major division chiefs, General Counsel, and/or the Director is required for proposed changes to any DPS manual or Administrative Rule. Other proposals which, in the judgment of the originator, require extensive review and administrative approval should be submitted with the HQ-7. Instructions for the number of copies and filing are specified on the HQ-7.

For all forms and booklets sold through General Stores, managers shall inform General Stores by written memorandum of pending revisions, including anticipated date of revision completion, and/or date of implementation to avoid printing obsolete materials. The initiator of the HQ-7 shall obtain the General Stores supervisor's signature prior to beginning the routing of the HQ-7. The HQ-7 shall be returned to the initiator without approval by anyone receiving the HQ-7 without the General Stores supervisor's signature.

3. The Office of General Counsel shall ensure that the index of each manual is kept up to date, based on published changes, and prepare/submit an Administrative Manual Order properly rescinding and implementing the text to be changed.

**40.04 Effect and Form of Revisions and Amendments.** All revisions, additions, or amendments to DPS manuals will have the force of an order and must be approved by the Director, or the Assistant Director for the Director, except that the major division chief may approve those revisions, additions, or amendments not involving a major policy change.

Amendments to the manuals will be issued as Administrative Manual Orders with the title of “Amendment to (Addition to, or Revision of) the General, Criminal Law Enforcement, or other applicable manual.”

**40.05 Procedure for Avoiding Conflicts.** In order to avoid conflicts, all persons who prepare orders for the Director’s approval shall ascertain whether or not such proposed order is in conflict with DPS manuals and shall, before issuing same, submit it to the Office of General Counsel who will determine the effect of the proposed publication on DPS manuals and Administrative Rules.

**40.06 Quarterly Manual Revision Schedule and Process.** All manual revisions will be submitted and processed in accordance with Annex #2.

**LAWS CONTROLLING THE TEXAS DEPARTMENT OF PUBLIC SAFETY**  
**01.02.00.00**

**02.05.00 INTRODUCTION**

The Texas Department of Public Safety is subject to the provisions of Chapter 411, Government Code. The most current publicly-available version of this chapter can be located at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.411.htm>. See <http://www.statutes.legis.state.tx.us/> to determine how current the published version is.

Questions about this chapter and other statutes should be directed to the Office of General Counsel.

# ORGANIZATION AND ADMINISTRATION

## 01.03.00.00

### 03.05.00 GENERAL

This chapter is not an organization document formally prescribing the organization of the Department, but rather it is a short description of the general structure, with brief position descriptions for the major positions through the first level below regional and divisional commands.

### 03.10.00 ADMINISTRATION OF THE DEPARTMENT

The control of the Department is vested in the three-member Public Safety Commission appointed by the Governor. The Commission appoints a Director to conduct all of the affairs of the Department. The Director appoints Assistant Directors to advise and assist him in the administration of the Department. The Director conducts the affairs of the Department through the Texas Highway Patrol Division, the Criminal Law Enforcement Division, the Texas Ranger Division, the Driver License Division, and the Administration Division. Sections and offices attached directly to the Director's Office are Accounting and Budget Control, Legal Services, Aircraft Section, Public Information Office, Office of Audit and Inspection, Information Management, Information Resource Management and Internal Affairs.

**10.01 Organizational Chart.** An organizational chart showing the chain of command and responsibility is contained in Annex #1.

**10.02 Geographical Boundaries.** Maps showing geographical boundaries of the Traffic and Criminal Law Enforcement field commands are contained in Annex #2.

**10.03 Directory of Administrative Personnel.** A directory of the principal administrative personnel of the Department is contained in Annex #3.

### 03.15.00 DIRECTOR AND ASSISTANT DIRECTORS

The Director is the chief executive officer of the Department of Public Safety. He is appointed by the Public Safety Commission and is responsible to the Commission for the total administration and operation of the Department.

An Assistant Director, who is appointed by the Director, advises and assists the Director in the operation of the Department and acts for him in his absence.

**15.01 Special Sections and Offices.** This group consists of highly specialized operations that serve under the direct supervision of the Director. They are set out below:

1. **Accounting and Budget Control Section.** The Chief of Finance is responsible to the Director for the preparation and supervision of the budget, for purchasing and procurement, the accounting for receipts and disbursement of all funds, the maintenance of all financial records and proper inventory of all capital property, ensuring proper payroll processing, and providing assistance to employees on their insurance benefits.

2. **Office of General Counsel.** Serves as legal advisor to the Director, Equal Employment Opportunity Coordinator, Administrative Procedure and Texas Register Act Liaison Officer, and assists the Director in the details of administration of departmental affairs.

3. **Aircraft Section.** The Chief Pilot is responsible to the Director for the administration and operation of the Aircraft Section and the coordination of activities with the Chief of Administration, Chief of Texas Highway Patrol, Chief of Driver License, Chief of Criminal Law Enforcement, and Chief of Texas Rangers.

4. **Public Information Office.** The Chief of Media Relations is responsible to the Director for the collection of information regarding departmental programs, operations, and activities affecting the public about which they should be informed and for the dissemination of such information through public information channels.

5. **Internal Affairs Unit.** The Internal Affairs Captain is responsible to the Director for conducting specific investigations assigned by the Director's Office or the Public Safety Commission, the investigation of employee firearm discharges resulting in death or injury, and providing investigative assistance to Legal Services. Internal Affairs has original jurisdiction over all investigations occurring on departmental property or involving Department employees. Internal Affairs shall coordinate, but need not conduct, all of these investigations. The Internal Affairs Captain shall present to the Commission information relating to investigations conducted that includes an analysis of the number, type, and outcome of the investigations, trends in the investigations, and recommendations to avoid future complaints.

6. **Office of Audit and Inspection.** The Director of the Office of Audit and Inspection, who is appointed by the Public Safety Commission, serves as the agency's internal auditor and works under the auspices of the Internal Audit Act of 1989 and Subchapter I, Chapter 411, Texas Government Code. The Director of the Office of Audit and Inspection reports directly to the Public Safety Commission with access to the Director in administrative matters. The Director of the Office of Audit and Inspection shall, with the advice and consent of the Commission, determine which audits and inspections to perform and may publish the findings and recommendations of those audits and inspections. In performing these audits and inspections, the Director of the Office of Audit and Inspection is authorized to have full, free, and unrestricted access to all property, personnel, data, and records (including medical) relevant to the subject under review.

a. The Office of Audit and Inspection conducts independent and objective audits of all of the divisions of the Department. The duties of the Office of Audit and Inspection include the following:

- 1) Evaluate and make recommendations about the adequacy and effectiveness of the Department's internal control structure.
- 2) Promote economy, effectiveness, and efficiency within the Department.
- 3) Prevent and detect fraud, embezzlement, theft, waste, and abuse in Department programs and operations and recommend controls to prevent or detect such occurrences.
- 4) Assess compliance with written policies and procedures.
- 5) Evaluate the reliability of accounting and reporting systems and procedures.
- 6) Verify the existence of assets and ensure proper safeguards for their protection.
- 7) Review computer security procedures.
- 8) Advise in the development and evaluation of the Department's performance measures.
- 9) Review actions taken by the Department to improve program performance and make recommendations for improvements.



10) Review and make recommendations to the Commission, Director, and the legislature regarding rules, laws, and guidelines relating to Department programs and operations.

11) Keep the Commission, Director, and legislature fully informed of problems in Department programs and operations.

12) Ensure effective coordination and cooperation with the state auditor's office, legislative oversight committees, and other governmental bodies while attempting to avoid duplication of effort.

b. The Office of Audit and Inspection conducts independent and objective inspections of all of the divisions of the Department. The Chief Inspector is responsible to the Director of the Office of Audit and Inspection for development and inspection of program activities carried on by the Department to ensure that all operations are conducted efficiently, uniformly, and in compliance with established procedures and makes recommendations for improvements in operational performance. The Chief Inspector ensures that proper emphasis is given to each phase of enforcement responsibility by field commanders and that record keeping, research, planning, and training activities in the field and at headquarters are fully developed.

Additional responsibilities include agency strategic planning, maintenance and revisions to all manuals, Department Fleet Safety Program (includes DPS commercial driver controlled substance and alcohol testing program), Department Recognition and Awards Program, legislative bill analysis and fiscal note coordination, instruction of DPS personnel and others in areas of technical expertise, responding to specialized and complex technical inquiries and other duties as assigned.

1) **Communications/Regional Adjutants.** This inspector is responsible to the Chief Inspector for centralized planning and development of programs specifically related to police communications, for making formal and informal inspections to ensure that such programs are carried out in accordance with established policies, and for expert technical advice on all phases of the police communications program. This inspector is responsible to the Chief Inspector for inspection of the Department's regional adjutant program. This inspector's responsibilities include participation in department-wide planning.

2) **Driver License.** These inspectors are responsible to the Chief Inspector for centralized planning and development of programs specifically related to driver licensing activities, for making formal and informal inspections to ensure that such programs are carried out in accordance with established policies, and for expert advice on all phases of driver license operations and programs. Their responsibilities include participation in department-wide planning.

3) **Highway Patrol/Vehicle Inspection/Fleet Safety.** These inspectors are responsible to the Chief Inspector for centralized planning and development of programs specifically related to Highway Patrol, Vehicle Inspection, and Fleet Safety activities and programs, for making formal and informal inspections to ensure that such programs are carried out in accordance with established policies, and for expert advice on all phases of Highway Patrol operations and programs. Their responsibilities include participation in department-wide planning.

4) **Commercial Vehicle Enforcement.** This inspector is responsible to the Chief Inspector for centralized planning and development of programs specifically related to Commercial Vehicle Enforcement activities, for making formal and informal inspections to ensure that such programs are carried out in accordance with established policies, and for expert advice on all phases of Commercial Vehicle Enforcement operations and programs. This inspector's responsibilities include participation in department-wide planning.

5) **Texas Rangers/Crime Laboratories.** This inspector is responsible to the Chief Inspector for centralized planning and development of programs specifically related to Texas Ranger activities, for making formal and informal inspections to ensure that programs are carried out in accordance with established policies, and for expert advice on all phases of Texas Ranger operations and programs. This inspector is responsible to the Chief Inspector for the inspection of the Department's crime laboratory program. This inspector's responsibilities include participation in department-wide planning.

6) **Narcotics/Special Crimes/Motor Vehicle Theft.** These inspectors are responsible to the Chief Inspector for centralized planning and development of programs specifically related to narcotics, special crimes, and motor vehicle theft activities, for making formal and informal inspections to ensure that such programs are carried out in accordance with established policies, and for expert advice on all phases of narcotics, special crimes, and motor vehicle theft operations and programs. These inspector's responsibilities include participation in department-wide planning.

7. **Information Management Service.** The Chief of Information Management Service is responsible to the Assistant Director. The service designs, procures, develops, implements, and supports computer equipment and software (including telecommunications applications and equipment). This information supports all divisions of the agency and other law enforcement agencies throughout the state. Operational support is provided 24 hours a day.

8. **Information Resource Management.** Information Resource Management formulates policies and procedures to ensure effective use of agency information systems and automation technologies. Responsibilities include data security, contingency planning, quality assurance, long-range planning, and information resources procurement and planning. Information Resource Management guides strategic planning for information systems.

9. **Dispute Resolution Office.** The Dispute Resolution Office (DRO) is supervised by the Chief Dispute Resolution Officer and is responsible to the Director or designee for providing assistance to all employees, supervisors, and managers on issues that might not otherwise be brought forth; providing confidential options and processes for reaching resolution of such issues; bringing awareness to upper management about concerns of or among employees; and acting as an agent of fairness. The DRO is independent and autonomous of the various chains of command; and acts confidentially, informally, and objectively (i.e., attempts to see all sides of any issue). The dispute resolution officers are not agents of notice and, therefore, any communications made to them are not considered notice to the Department. The Director or designee may appoint an Advisory Committee to meet with the DRO periodically to provide guidance and advice and to provide feedback on services provided to the Department.

### **03.20.00 TEXAS HIGHWAY PATROL DIVISION**

The Chief of the Texas Highway Patrol is responsible to the Director for the direction and coordination of all field traffic law enforcement and field traffic law administration activities of the Department. He is responsible for liaison and coordination of the activities of his division with the activities of the related staff support and staff divisions in headquarters through the Chief of Administration and with the Driver License Division, Criminal Law Enforcement Division, and the Texas Ranger Division.

The Assistant Chief of the Texas Highway Patrol assists the chief in carrying out his responsibilities. The chief delegates sufficient authority to his assistant to enable him to effectively perform his assigned tasks.

**20.01 Governor's Protective Detail.** The Region 7 Regional Commander is designated by the Chief of the Texas Highway Patrol as commanding officer of the detail to the Chief through the Assistant Chief of the Texas Highway Patrol for the security of the Governor and immediate family members, Governor's mansion, and mansion grounds.

**20.02 Motor Carrier Bureau.** The Manager of the Motor Carrier Bureau is responsible to the Chief of the Texas Highway Patrol Division through the Assistant Chief and a major assigned to and designated by the Chief of the Texas Highway Patrol, for the Motor Carrier Safety and Motor Carrier Compliance Audit sections of the bureau.

The Motor Carrier Safety Section will maintain commercial vehicle inspection files and develop safety profiles from accident reports, inspection reports, hazardous material spills/incidents, arrest activity, and safety complaints. Necessary computer files will be maintained to comply with federal requirements for reporting to Safetynet. The Motor Carrier Safety Section will also develop statistical data from Commercial Vehicle Enforcement activity reports by maintaining CVE-3's (arrest tickets), trooper weekly reports, inspection reports, and dispositions.

The Motor Carrier Compliance Audit Section will perform the administrative function of the enforcement of the Motor Carrier Safety and Hazardous Materials Regulations by tracking, processing, and monitoring compliance reviews, enforcement cases, and administrative penalties assessed on motor carriers who violate the above regulations.

**20.03 Breath Alcohol Testing Bureau.** The Manager of the Breath Alcohol Testing Bureau is responsible to the Chief of the Texas Highway Patrol for the supervision of the Department technical supervisors, supervising criminalists, and the direction of the statewide breath testing program under the provisions of the Texas Breath Alcohol Testing Regulations (Rule §§19.1-19.7). The manager of the bureau, when approved by the Director, also acts as scientific director of the Breath Alcohol Testing Program and is responsible to the Director for the enforcement of the regulations.

**20.04 Vehicle Inspection and Emissions, Vehicle Inspection Records, and Information Services.** An individual designated by the Chief of the Texas Highway Patrol is responsible to the Chief of the Texas Highway Patrol through the Assistant Chief for overseeing Vehicle Inspection and Emissions, Vehicle Inspection Records, and Information Services.

Vehicle Inspection and Emissions is responsible for implementing and administering the state's vehicle emissions testing program (Inspection and Maintenance (I/M) Program). This includes the collection and analysis of statistical data and the reporting of such data as required by the United States Environmental Protection Agency.

Vehicle Inspection Records is responsible for administering the issuance of station and inspector licenses under the vehicle inspection program, for receiving, distributing and tracking vehicle inspection certificates, and for accounting for funds and maintaining records generated by these functions.

**20.05 Regional Commands.** Each of the eight regional commanders is responsible to the Chief of the Texas Highway Patrol for the total administration and operation of the departmental activities in their region, except those relating to the Criminal Law Enforcement Division, Driver License Division, and Texas Ranger Division. Through his subordinate commanders he carries out the departmental programs in the following specific fields:

1. Highway Patrol
2. Commercial Vehicle Enforcement
3. Police Communications System
4. Vehicle Inspection

**20.06 Service Commanders.** Each of the Highway Patrol captains, the Commercial Vehicle Enforcement captains, the Vehicle Inspection regional supervisor, and the regional Communications supervisor in each region is responsible to the regional commander for the administration and operation of his service for achieving its objectives and for the performance of its program to an acceptable level.

### **03.25.00 TEXAS RANGER DIVISION**

The Chief of Texas Ranger Division is responsible to the Director for the supervision and coordination of all activities of the Texas Rangers. He is responsible for liaison and coordination of the activities of his division with the activities of the related staff support services in headquarters through the Chief of Administration and with the Criminal Law Enforcement Division, the Driver License Division, and the Texas Highway Patrol Division.

The Assistant Chief of Texas Ranger Division assists the Chief in carrying out his responsibilities. The Chief delegates sufficient authority to his assistant to enable him to effectively perform his assigned duties.

**25.01 Company Commanders.** Each of six Texas Ranger captains is responsible to the Chief of Texas Rangers for the total administration and operation of the Texas Ranger activities in his company. These activities consist primarily of making criminal and special investigations; apprehending wanted felons; suppressing riots, mobs, and other major disturbances; and rendering assistance to local law enforcement officials in the suppression of crime and violence.

### **03.30.00 CRIMINAL LAW ENFORCEMENT DIVISION**

The Chief of Criminal Law Enforcement Division is responsible to the Director for the direction and coordination of all criminal law enforcement activities of the Department. He is responsible for liaison and coordination of the activities of his division with the activities of the related staff support and staff divisions in headquarters through the Chief of Administration and with the Texas Highway Patrol Division, the Driver License Division, the Texas Ranger Division and the Governor's Division of Emergency Management.

The Assistant Chief of Criminal Law Enforcement Division assists the chief in the administration of division functions and responsibilities and assumes responsibility for the division in the chief's absence.

**30.01 Criminal Intelligence Service.** The Commander of the Criminal Intelligence Service is responsible to the Chief of Criminal Law Enforcement Division for the supervision and coordination of all activities of the service. This includes operations in the field and the headquarters staff functions.

1. The Criminal Intelligence Service Assistant Commander (Enforcement) and the district captains are responsible to the Commander for the administration and operation of Criminal Intelligence Service activities in their geographical area of assignment. These activities include collecting and disseminating criminal intelligence information; conducting criminal and administrative investigations; serving as the state's focal point for counterterrorism efforts; tracking civil commitment offenders; conducting polygraph examinations of subjects in criminal investigations; making arrests of criminal violators; performing dignitary security assignments to protect state and national government officials as assigned; conducting special investigations of a highly confidential nature as directed; conducting pre-employment polygraph examinations on applicants for DPS Recruit School and Police Communications; pursuing and developing investigative leads relative to missing persons; locating and arresting wanted felons; and assisting other local, state, and federal law enforcement officials in curtailing criminal activity.

2. The Criminal Intelligence Service Assistant Commander (Headquarters Operations) and the headquarters captains are responsible to the Commander for the administrative and operational activities of the Criminal Intelligence Service headquarters entities and personnel. The headquarters entities include the Counterterrorism Intelligence Mission, Texas Fusion Center, Missing Persons Clearinghouse, Clerical Section, and Crime Analysis Section. As integral parts of the overall crime-fighting effort, the headquarters entities are responsible for compiling, analyzing, and disseminating criminal law enforcement information; locating missing persons; and identifying criminal offenders. In efforts to suppress criminal activity, the headquarters entities render daily assistance to other local, state, and federal law enforcement officials.

**30.02 Motor Vehicle Theft Service.** The Commander of Motor Vehicle Theft Service is responsible to the Chief of Criminal Law Enforcement Division for the administration of all personnel and functions of the service to achieve maximum effectiveness from the service in the control of the theft of motor vehicles and other programs assigned to the service.

The Assistant Commander of Motor Vehicle Theft Service advises and assists the Commander in the operation of the Motor Vehicle Theft Service and acts for him in his absence.

Each Motor Vehicle Theft district captain is responsible for his assigned area to the Commander for collecting information and making investigations and arrests related to motor vehicle thefts, other programs assigned to the service to include enforcing sex offender registration compliance and ensuring the integrity of racing through enforcement of pari-mutuel wagering laws and rules, and for providing assistance to other law enforcement officials in theft investigations related to the service's scope of responsibility.

**30.03 Narcotics Service.** The Commander of the Narcotics Service is responsible to the Chief of Criminal Law Enforcement Division for the supervision and coordination of all activities of the service, both in the field and the headquarters staff functions.

The Narcotics Service district captains are responsible to their respective field Assistant Commander, Deputy Commander (Field Operations) and Commander for the administration and operation of Narcotics Service activities and oversight of narcotics task force operations in their geographical area of assignment. These activities include the collecting and disseminating of information regarding violations of the narcotics and dangerous drug laws; conducting administrative and criminal investigations; making arrests of criminal violators; and assisting other law enforcement officials in the suppression of illegal narcotics and dangerous drugs.

The headquarters captains and managers are responsible to the Commander and the Deputy Commander (Headquarters Operations) for the administrative and operational activities of the Narcotics Service headquarters sections, regulatory programs, and personnel. The headquarters entities include the Controlled Substance Registration Section, Texas Prescription Program, Precursor Chemical Laboratory Apparatus Section, Texas Narcotics Information System, and Narcotics Analysis Section. As integral parts of the overall statewide drug law enforcement strategy, the headquarters sections are responsible for compiling, analyzing, and disseminating criminal law enforcement information; providing investigative leads relative to the sale of precursor chemicals and laboratory apparatus and information relating to the diversion of prescription drugs. In its efforts to suppress drug trafficking in the State of Texas, the headquarters sections provide daily assistance to other local, state, and federal law enforcement officials, as well as state licensing and regulatory boards. The Technical Unit Captain is responsible to the Deputy Commander (Headquarters Operations) for the daily administration of wire/oral intercept, Computer Information Technology and Electronic Crime (CITEC), and other electronic surveillance activities of the Narcotics Service.

**30.04 Crime Laboratory Service.** The Crime Laboratory Service Director is responsible to the Chief of Criminal Law Enforcement Division for the total administration and operation of the crime laboratories of the Department. This service consists of the field laboratory system and the headquarters laboratory.

1. **Field Laboratories Bureau.** The Manager of the Field Laboratories Bureau is responsible to the Crime Laboratory Service Director for maintaining and operating the field scientific crime detection laboratories of the Department. These laboratories consist of personnel and equipment to conduct analyses and examinations primarily in the following categories:

a. Chemistry

- 1) Trace Evidence
- 2) Drugs

3) Toxicology

b. Serology/DNA

c. Firearms and Tool marks

d. Latent Prints

**2. Headquarters Laboratory Bureau.** The Manager of the Headquarters Laboratory Bureau is responsible to the Crime Laboratory Service Director for maintaining and operating the scientific crime detection laboratory in the Department headquarters. The laboratory consists of personnel and equipment to conduct analyses and examinations primarily in the following specific categories:

a. Chemistry

1) Trace Evidence

2) Drugs

3) Toxicology

b. Serology/DNA

c. Firearms and Tool marks

d. Latent Prints

e. Photography

f. Questioned Documents

g. Convicted Offender DNA Database, CODIS (Combined DNA Index System)

### **03.35.00 ADMINISTRATION DIVISION**

The Chief of Administration is responsible to the Director for the overall headquarters staff functions as performed by the Crime Records Service, Staff Support Service, and Regulatory Licensing Service. He is also responsible for liaison and cooperation between his office and the Texas Highway Patrol Division, Criminal Law Enforcement Division, the Driver License Division, and the Texas Ranger Division.

**35.01 Crime Records Service.** The Assistant Chief, Administration Division, Crime Records Service (CRS), is responsible to the Chief of Administration for the total administration and operation of the crime records function of the Department. This service consists of the Access and Dissemination Bureau, Crime Information Bureau, the CHRI Processing Bureau, and the Crime Records Support Bureau. In addition, attorneys and associated staff assigned to CRS provide specialized legal services for criminal history record expunction and other crime records-related activities.

1. **Access and Dissemination Bureau.** The Manager of the Access and Dissemination Bureau is responsible for managing and controlling the access to and dissemination of the criminal history records that are maintained in the Texas computerized criminal history file. In addition, the Bureau manages the requests that come through Texas for access to the Federal Bureau of Investigation criminal history files. The entities allowed access to these files include many licensing, employment, volunteer, and other non-criminal justice agencies authorized by state or federal statute or

executive order. The Bureau has the responsibility for authorizing each non-criminal justice entity's access, training them on the appropriate security measures and restrictions, and verifying compliance with those requirements.

**2. Crime Information Bureau.** The Manager of the Crime Information Bureau is responsible for the administration of the Texas Uniform Crime Reporting (UCR) program, the Texas Crime Information Center (TCIC), the Texas Sex Offender Registration Program (SOR), and the Texas Help End Auto Theft (HEAT) program. The UCR program collects, processes, and disseminates statistical data on the incidence of crime in Texas, working in close cooperation with local law enforcement agencies and the FBI to ensure standardized reporting of offenses. The TCIC Section serves as the state control terminal for the nationwide National Crime Information Center (NCIC) operated by the FBI. TCIC and NCIC provide criminal justice agencies throughout the state with on-line real time access to theft reports, warrants, and other criminal justice data from across Texas and the nation. TCIC provides extensive support to local criminal justice agencies in the use of the systems. The Texas Sex Offender Registration Program coordinates the registration of sex offenders into a central database available to law enforcement agencies and the general public. Texas law requires certain sex offenders to register and periodically verify their addresses with their local law enforcement agencies. Those agencies then enter that data into the state registry. The information is available at no charge to the public via the DPS website. Crime Information Bureau field representatives assist local agencies with reporting their sex offender data to the central repository. The Texas HEAT project works with the Texas Auto Theft Prevention Authority to administer a statewide auto theft prevention program. Through this program, citizens purchase stickers to be placed on their vehicles allowing peace officers to stop the vehicles between the hours of 1 a.m. and 5 a.m. to determine whether authorized persons are driving.

**3. Criminal History Records Information Processing Bureau.** The Manager of the Criminal History Records Information (CHRI) Processing Bureau is responsible for the creation and maintenance of the Texas Automated Fingerprint Identification System (AFIS) and Texas Computerized Criminal History system (CCH). To create the criminal history records, the Bureau processes the arrest fingerprints and arrest, prosecution, and disposition data submitted from Texas criminal justice agencies. The Bureau provides extensive training and technical assistance to the agencies reporting criminal justice data to the repository. The AFIS automates the processing of the fingerprint data and provides a very timely and accurate identification of the person fingerprinted. The AFIS also provides the Department and local criminal justice agencies with a significant crime-fighting tool; namely, the ability to search latent fingerprints found at crime scenes against the fingerprint database of applicants and persons previously arrested in the state. A network of remote input devices placed at local police departments and sheriffs' offices across the state extends these functions to local law enforcement. The criminal history repository is used daily by law enforcement and criminal justice agencies in the administration of their duties, as well as by many non-criminal justice agencies performing background checks and suitability determinations for employment, licensing, volunteer and other purposes authorized by state or federal statute or executive order.

**4. Crime Records Support Bureau.** The Manager of the Crime Records Support Bureau is responsible for assisting the other Bureaus within Crime Records by providing centralized support for certain functions, to include, processing all incoming mail to Crime Records; imaging and electronically storing documents submitted to Crime Records; performing data analysis functions regarding the Crime Records systems; providing budgetary support; and administrative support of other functions that extend across the service, such as reports, grants, and human resources activities. The budget functions include all activities related to the sale of criminal history records to the public and to the authorized non-criminal justice entities as well as the overall budgetary responsibilities of Crime Records.

**35.02 Staff Support Service.** The Assistant Chief, Administration Division, Staff Support Service, is responsible to the Chief of Administration for the administration and operation of the headquarters activities related to psychological services, personnel and training, general stores and services, and building programs and for the procurement, distribution, and maintenance of the automotive fleet and communications equipment.

**1. Fleet Operations Bureau.** The Manager of Fleet Operations is responsible to the Assistant Chief, Staff Support Service, for the procurement, distribution, maintenance and repair of automobiles, radios, and equipment necessary to

the operation of the Department's business and for maintaining reports and records thereon. This responsibility requires the operation of extensive repair facilities such as:

a. **Radio Shop.** For the installation and repair of mobile and base station radio equipment and for the maintenance and repair of portable wheel weighing scales used in weighing trucks.

b. **Auto Shop.** For the equipping, maintenance, and repair of the automotive fleet.

2. **General Services Bureau.** The Manager of the General Services Bureau is responsible to the Assistant Chief, Staff Support Service, for providing services and supplies such as reproduction, mail distribution in headquarters, procurement and issuance of general stores and office supplies, and other services related to operating the headquarters.

3. **Human Resources Bureau.** The Commander of Human Resources Bureau is responsible to the Assistant Chief, Staff Support Service, for the recruitment, testing, employment, and classification of personnel; the maintenance of necessary personnel records; the supervision, administration, and preparation of promotional examinations; and the administration of the risk management, safety, and Workers' Compensation program.

4. **Training Bureau.** The Commander of the Training Bureau is responsible to the Assistant Chief, Staff Support Service, for the operation of the departmental training facilities and for conducting recruit and in-service training schools for Department personnel and special schools for DPS personnel and outside police officers. The commander is also responsible for operation of the Motorcycle Operator Training, All-Terrain Vehicle Operator Training, Bicycle Operator Safety Training, School Bus Safety Program, Concealed Handgun Instructors Training, and the Law Enforcement Academy cafeteria and dormitory.

5. **Building Program Bureau.** The Manager of the Building Program Bureau is responsible to the Assistant Chief, Staff Support Service, for the supervision of the construction, maintenance, and repair of Department field and headquarters buildings.

6. The Chief Psychologist of the Victim and Employee Support Services is responsible to the Assistant Director of Administration for the planning and oversight of employee assistance activities for the agency. The Chief Psychologist provides direct psychological services to employees, as needed, provides clinical oversight of the agency's comprehensive stress management services, victim services and peer support services, and serves as consultant to the Director, Deputy Directors and division Assistant Directors in developing and implementing policies and procedures pertaining to employee mental health issues.

7. **Equal Employment Opportunity.** The EEO officer is responsible to the Assistant Chief, Staff Support Service, for ensuring compliance with the federal and state statutes governing employment law, discrimination, and sexual harassment. The EEO office receives and processes EEO-related complaints from employees and applicants and works in cooperation with the Employee Relations office, Office of General Counsel and Department management to attempt to resolve the complaints. The EEO Officer also provides EEO training to all new employees at the headquarters complex; works with field offices to ensure training is provided to all new field employees; and provides employment law and related Department policy training to Department staff during in-service schools and supervisory training courses.

8. **Radio Frequency Unit.** The Radio Frequency Unit (RFU) is responsible to the Assistant Chief, Staff Support Service, for working to facilitate interoperable radio communications throughout the state by providing guidance and assistance to local, regional, state and federal public safety entities. The RFU unit also provides technical assistance to the Governor's Office of Homeland Security by reviewing proposed regional interoperability plans.

**35.03 Regulatory Licensing Service.** The Assistant Chief, Administration Division, Regulatory Licensing Service (RLS), is responsible to the Chief of Administration for the total administration and operation of the regulatory licensing



functions of the Department. This service consists of the Private Security Bureau and the Concealed Handgun Licensing Bureau. In addition, attorneys assigned to RLS provide specialized legal services for both bureaus, as well as providing general legal services to the assistant chief.

1. **Private Security Bureau.** The manager of the Private Security Bureau is responsible to the Assistant Chief, Regulatory Licensing Service, for the administration of the Private Security Act. This includes the licensing of members of the security profession and the enforcement of criminal violations of the Act against unlicensed individuals and companies as well as administrative violations of the Act against license holders.

2. **Concealed Handgun Licensing Bureau.** The manager of the Concealed Handgun Licensing Bureau is responsible to the Assistant Chief, Regulatory Licensing Service, for the administration of the concealed handgun licensing statute, which includes the licensing of applicants for a license to carry a concealed handgun.

### **03.36.00 DRIVER LICENSE DIVISION**

The Chief of the Driver License Division is responsible to the Director for the overall headquarters and field Driver License functions as performed by the Field Service, Headquarters Service, and the Administrative License Revocation (ALR) Program. He is also responsible for liaison, cooperation, and coordination of the activities of this division and the Texas Highway Patrol Division, Criminal Law Enforcement Division, Administration Division, and Texas Ranger Division.

**36.01 Driver License Division Headquarters Service.** The Assistant Chief, Driver License Division Headquarters Service, is responsible to the Chief of the Driver License Division for the administration and operation of the function of driver's license issuance; the collection, processing, filing, and evaluation of driver records; initiating action against problem drivers; administration of the safety responsibility program; and maintaining motor vehicle traffic crash records for the Department.

1. **Driver Improvement and Control Bureau.** The Manager of the Driver Improvement and Control Bureau is responsible to the Assistant Chief, Driver License Division Headquarters Service, for providing telephonic customer service. The manager is also responsible for the administration and operations necessary for the identification of problem drivers, initiating action against them for correction, and maintaining necessary records therefor.

2. **License Issuance Bureau.** The Manager of the License Issuance Bureau is responsible to the Assistant Chief, Driver License Division Headquarters Service, for the administration and operations necessary for the issuance of driver's licenses and identification certificates, accounting for funds derived therefrom.

3. **Driver Records Bureau.** The Manager of the Driver Records Bureau is responsible to the Assistant Chief, Driver License Division Headquarters Service, for the administration and operations necessary for the processing, maintenance, and filing of records pertaining to individual drivers.

4. **Safety Responsibility Bureau.** The Manager of the Safety Responsibility Bureau is responsible to the Assistant Chief, Driver License Division Headquarters Service, for the administration and operation of the program established by Chapter 601 of the Texas Transportation Code, which requires certain drivers to show proof of financial responsibility after having been involved in a traffic accident or after having been convicted for certain offenses.

5. **Crash Records Bureau.** The Manager of the Crash Records Bureau is responsible to the Assistant Chief, Driver License Division Headquarters Service, for the collection and processing of motor vehicle traffic crash reports for the accumulation, tabulation, and dissemination of statistics therefrom. The manager is the official custodian of motor vehicle crash records for the state.

**6. Customer Service Bureau.** The Manager of the Customer Service Bureau is responsible to the Assistant Chief, Driver License Division Headquarters Service, for the administration and operation of the service telecommunications center relating to driver's license activities, the headquarters' lobby sales area, and the Department's main telephone switchboard line during regular working hours.

**36.02 Driver License Division Field Service.** The Assistant Chief, Driver License Division Field Service, assists the chief in carrying out his responsibilities. The chief delegates sufficient authority to the assistant chief to enable effective performance of assigned duties.

**1. Driver License Regional Service Commanders.** Each of eight (8) Driver License captains is responsible to the Assistant Chief or Major of the Driver License Division Field Service, as designated, for the total administration and operation of the Driver License field activities within his/her region/district, except those relating to the Criminal Law Enforcement Division.

**36.03 Administrative License Revocation (ALR) Program.** The Director of Hearings is responsible to the Chief of the Driver License Division for the administration and operation of the ALR Program (Legal Section).

### **03.40.00 EMERGENCY MANAGEMENT DIVISION**

The Chief of the Emergency Management Division is responsible to the Director for the operation of the State Operations Center and for the development of a capacity at state and local levels of government for the direction and control of emergency operations during the periods of national emergency, major accidental disaster, natural disaster, or civil disturbance. The capacity for direction and control involves the plans, organizations, procedures, facilities, and equipment necessary for state and local governments to analyze the situation and take effective action to preserve life and property. (Refer to 01.13.00.00 in this manual).

**1. State Operations Center.** The Operations Section Administrator is responsible to the Chief of the Emergency Management Division for providing the coordination and liaison necessary for interfacing with communications and information systems of other law enforcement and criminal justice agencies.

### **03.45.00 ASSOCIATIONS**

Employees who receive inquiries from the public regarding the Texas Department of Public Safety Officers Association, the Texas State Troopers Association, the Texas Black State Troopers Association, the Texas Highway Patrol Association, and the Texas Department of Public Safety Criminalists Association will provide the following information:

"The Texas Department of Public Safety Officers Association, the Texas State Troopers Association, the Texas Black State Troopers Association, the Texas Highway Patrol Association, and the Texas Department of Public Safety Criminalists Association are not officially part of the Texas Department of Public Safety, but are nonprofit associations composed of members who are employees of the Texas Department of Public Safety."

"Additional information may be obtained by writing or calling the associations at the following addresses and telephone numbers."

TEXAS DEPARTMENT OF PUBLIC SAFETY OFFICERS ASSOCIATION  
PO BOX 4998  
AUSTIN TX 78765  
Phone: (512) 451-0571

TEXAS STATE TROOPERS ASSOCIATION  
5540 N LAMAR BLVD  
AUSTIN TX 78751  
Phone: (512) 450-1814

TEXAS BLACK STATE TROOPERS ASSOCIATION  
PO BOX 472524  
GARLAND TX 75047-2524  
Phone: (will be included when available)

TEXAS HIGHWAY PATROL ASSOCIATION  
8906 WALL STREET  
AUSTIN TX 78754  
Phone: (512) 491-9117

TEXAS DEPARTMENT OF PUBLIC SAFETY CRIMINALISTS ASSOCIATION  
PO BOX 133065  
TYLER TX 75713  
Phone: (will be included when available)

### **03.50.00 TEXAS DEPARTMENT OF PUBLIC SAFETY HISTORICAL MUSEUM AND RESEARCH CENTER**

The Texas Department of Public Safety Historical Museum and Research Center has been designated by the Director as the official museum of the Texas Department of Public Safety. The museum displays historical exhibits, and it also serves as a repository for all types of Department related memorabilia.

Additional information about the museum may be obtained by writing or calling the museum at the following listed address, telephone number, or website.

TEXAS DEPARTMENT OF PUBLIC SAFETY HISTORICAL  
MUSEUM AND RESEARCH CENTER  
PO BOX 141603  
AUSTIN TX 78714-1603  
Phone: (512) 459-4046  
Website: [www.txdpsmuseum.org](http://www.txdpsmuseum.org)  
E-mail: [txdpsmus@flash.net](mailto:txdpsmus@flash.net)

# **OBJECTIVE, MISSION, AND PROGRAM**

## **01.04.00.00**

### **04.05.00 OBJECTIVE OF THE DPS**

The broad objective of the Texas Department of Public Safety is: "To Maintain Public Safety in the State of Texas."

The Department works toward the attainment of this objective within existing regulations and in cooperation with other agencies and persons with mutual or related responsibilities. It seeks to preserve the peace and to protect the persons, property, rights, and privileges of all people in the state of Texas.

### **04.10.00 THE DPS AGENCY MISSION**

**10.01** The Texas Department of Public Safety is an agency of this state created to provide public safety services to those people in the state of Texas by enforcing laws, administering regulatory programs, managing records, educating the public, and managing emergencies, both directly and through interaction with other agencies.

### **04.15.00 PROGRAMS OF THE DPS**

**15.01 Classes of Programs by Subject Matter.** The programs of the Department of Public Safety fall into three general classes:

1. Street and highway traffic management
2. Crime suppression and control
3. Emergency management

**15.02 Classes of Programs by Function.** The three major classes of functional departmental programs within the Department are as follows:

1. Police Law Enforcement Function
  - a. Highway Patrol Service
  - b. Driver License Division Field Service
  - c. Commercial Vehicle Enforcement Service
  - d. Narcotics Service
  - e. Special Crimes Service
  - f. Texas Ranger Division
  - g. Motor Vehicle Theft Service
2. Administrative and Regulatory Function
  - a. Driver License Division Headquarters Service
    - 1) License Issuance Bureau
    - 2) Driver Records Bureau

- 3) Driver Improvement and Control Bureau
- 4) Safety Responsibility Bureau
- 5) Customer Service Bureau
- 6) Accident Records Bureau
- b. Motorcycle Safety Unit
- c. Controlled Substances Registration
- d. Breath Alcohol Testing Program
- e. Vehicle Inspection and Emissions, Vehicle Inspection Records, and Information Services
- f. Administrative License Revocation (ALR), Driver License Division Legal Section
- g. Regulatory Licensing Service

### 3. Staff Support and Supplemental Functions

- a. Office of Audit and Inspection
- b. Staff Support Service
- c. Crime Laboratory Services statewide
- d. Crime Records Service
- e. Accounting and Budget Control
- f. Motor Carrier Bureau
- g. Public Information Office
- h. Emergency Management Service
- i. Administrative and Legal Services
- j. Communications Service
- k. Information Management Service
- l. Missing Persons Clearinghouse
- m. Employee Relations Office

## 15.03 Programs Under Texas Highway Patrol Division

1. **Highway Patrol Service.** The program of the Highway Patrol Service is “Police Traffic Supervision, General Police Work on Rural Highways, Public Safety Education, and Capitol Security.” This program consists of the following major activities:

- a. Police traffic supervision on rural highways
  - 1) Police traffic direction
  - 2) Police traffic accident investigation
  - 3) Police traffic law enforcement and patrol
- b. General police work—primarily on rural highways
  - 1) Criminal law enforcement
  - 2) Emergencies and disasters
  - 3) Security activities
- c. Public Safety Education
  - 1) Public traffic safety education
  - 2) Public education in crime prevention and civil defense matters
  - 3) Public information
  - 4) Cooperation with and assistance to other agencies
  - 5) Providing intra-departmental staff assistance
- d. Capitol Security
  - 1) Police functions, security, and parking administration in the Capitol Complex
  - 2) Traffic enforcement, parking enforcement and criminal investigations within the Capitol

Complex

**2. Commercial Vehicle Enforcement Service.** The program of the Commercial Vehicle Enforcement Service is “The Supervision of Commercial Vehicles and For Hire Traffic and Limited Traffic and General Law Enforcement on Rural Highways.” This program includes the following major activities:

- a. Supervision of commercial vehicle traffic—basic
  - 1) Assistance to commercial vehicle owners and operators on technical matters
  - 2) Supervision of motor carrier operations
  - 3) Traffic law enforcement on commercial and “for hire” vehicles
- b. Traffic and criminal law enforcement on rural highways

**3. Vehicle Inspection Service.** The program of the Vehicle Inspection Service is “Vehicle Inspection Station Supervision.” This program includes the following major activities:

- a. Inspection station supervision—basic
  - 1) Station qualification
  - 2) Station inspection
  - 3) Station control

**4. Communications Service.** The program of the Communications Service is “Public Safety Communications.” This program consists of the following major activities:

- a. Communications between Department units
- b. Communications between the Department and other law enforcement agencies
- c. Information and assistance to the public in emergency and other Department-related matters
- d. Warning and communications necessary for the protection of lives and property of the public

**5. Motor Carrier Bureau.** The program of the Motor Carrier Bureau is to provide administrative support applicable to the Commercial Vehicle Enforcement Service relative to safety and records. The program consists of the following sections:

a. Motor Carrier Safety Section will provide statistical data from Commercial Vehicle Enforcement activity reports by maintaining CVE-3’s (arrest tickets), trooper weekly reports, inspection reports, and dispositions; and provide the support to administer the motor carrier safety regulations.

b. Motor Carrier Compliance Audit Section will perform the administrative function of the enforcement of the Motor Carrier Safety and Hazardous Materials Regulations.

#### **15.04 Programs Under Criminal Law Enforcement Division**

**1. Special Crimes Service.** The programs of the Special Crimes Service consist primarily of developing strategic and tactical intelligence data relating to organized crime and criminal activity in the state of Texas; identifying crime problems and persons involved in criminal activities; analyzing criminal information to provide operational units of the Department and other law enforcement agencies with necessary data to investigate criminal and organized crime activities; providing assistance to law enforcement and governmental agencies in the administration of polygraph examinations to suspects, witnesses, and victims involved in ongoing criminal investigations to help determine truthfulness of statements, verify alibis, obtain investigative leads, locate evidence or wanted individuals, identify perpetrators, and eliminate suspects and providing specialized polygraph training and continuing education courses for polygraph examiners.

**2. Motor Vehicle Theft Service.** The programs of the Motor Vehicle Theft Service consist primarily of planning, designing, and implementing statewide programs to promote cooperation and to provide leadership for coordinated

efforts in vehicle theft control activities among all law enforcement and other interested agencies; and to promote effective law enforcement by the prompt apprehension of persons involved in the commission of motor vehicle thefts in Texas.

3. **Narcotics Service.** The programs of the Narcotics Service consist primarily of identifying and eliminating illegal trafficking of controlled substances and drug abuse in Texas through investigative and enforcement action; assisting state regulatory boards in regulating the dispensing and prescribing of controlled substances and dangerous drugs and in obtaining evidence for civil actions; and registration of persons who distribute, dispense, analyze, conduct research, or administer controlled substances in the course of professional practice.

4. **Crime Laboratory Service.** The programs of the Crime Laboratory Service consist primarily of performing quality forensic analyses of evidentiary material, such as controlled substances and alcohol, firearms/toolmarks, trace evidence, serology, documents, toxicology, latent prints, forensic photography, and image enhancement in a timely fashion and assisting the law enforcement community with crime scene investigations and providing expert testimony in criminal proceedings.

**15.05 Programs Under Texas Ranger Division.** The programs of the Texas Ranger Division consist primarily of conducting criminal and special investigations; apprehending wanted felons; suppressing major disturbances; protection of life and property; and rendering assistance to local law enforcement officials in the suppression of crime and violence.

**15.06 Programs Under Driver License Division.** The program of the Driver License Division is “The Licensing and Postlicense Control of Drivers.” This program consists of the following major activities:

**1. Driver License Field Service**

- a. Process applications for driver licenses and identification cards.
- b. Examination of new drivers
- c. Improvement and control of problem drivers
- d. Traffic and criminal law enforcement by Driver License Field Service commissioned officers

**2. Driver License Division Headquarters Service**

- a. License issuance, renewal, record keeping, and information
- b. Evaluation and processing of problem driver records
- c. Evaluation and processing of accident records for compliance with the Safety Responsibility Act
- d. Maintain the traffic accident records system in accordance with state and federal regulations

**3. Administrative License Revocation (ALR), Driver License Division Legal Section**

**15.07 General Obligations.** Personnel of all services, agencies, and units in the Department are subject to assignment by the Director to perform in any program or activity when he deems such assignment necessary.

# DOCTRINES, POLICIES, AND OPERATING PROCEDURES

## 01.05.00.00

### 05.02.00 GENERAL DOCTRINES AND POLICIES (Rule 201.01.02.001)

**02.01** The Department of Public Safety accepts its responsibilities as a public trust; it is our policy to discharge with dispatch any responsibility to the fullest extent with maximum benefit for the public.

**02.02** It is the policy of the Department of Public Safety to afford maximum courtesy, service, and protection to all citizens and visitors in this state.

**02.03** The Department recognizes that government exists for the benefit of the governed—the people. Enforcement and regulatory actions against persons are carried out for the benefit of society as a whole. We do not act to adjudicate or rectify injustices, inequities, or wrongs between individuals, but we act only to maintain order for the preservation and protection of society as a whole.

**02.04** It is a solemn obligation of members of the Department of Public Safety to uphold the constitutions of the United States and the state of Texas as well as to enforce the statutory enactments. Constitutional provisions take precedence over statutory enactments. In the enforcement of the provisions of a statute, personnel of the Department of Public Safety will refrain from infringing upon any rights or privileges guaranteed by the constitutions.

**02.05** The Department of Public Safety recognizes that the basic responsibility for the enforcement of the criminal laws rests with the local officers in their respective jurisdictions. It is the policy of the Department to cooperate with and assist local officers fully in these matters, but to leave the basic responsibility to them unless specifically assigned to do otherwise.

**02.06** It is the policy of the Department of Public Safety to assume primary responsibility for traffic supervision on the rural highways of this state; to cooperate with and assist local officers when they do such work, but to accept full and primary responsibility for the discharge of this function, including the regulation of commercial traffic.

**02.07** The Department of Public Safety will cooperate with all governmental agencies discharging their statutory duties when our assistance complies with state law and departmental policies and regulations.

**02.08** It is the policy of the Department of Public Safety to assign available manpower in any field service to the areas of the state in proportion to the amount of the statewide problem of that service existing in any particular area so that we may, as nearly as practicable, render to all citizens their equitable share of the service available.

**02.09** Sexual harassment has been held to be a violation of 42 U.S.C.A., Sec. 2000e, et seq. No sexual harassment will be tolerated in the Department. Such activities will be considered grounds for disciplinary action. Severity of such disciplinary action will be determined on a case-by-case basis. Aggravated cases will be considered grounds for discharge.

Sexual harassment means sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.



## **05.04.00 DELEGATION OF RESPONSIBILITY FOR CERTAIN BASIC FUNCTIONS**

**04.02 Crash Investigation Responsibility.** The Department of Public Safety has the responsibility for performing police traffic crash investigation in the rural areas of this state. In discharging this responsibility the Department delegates to the Highway Patrol the primary responsibility to investigate and report motor vehicle traffic crashes occurring on rural highways and the responsibility to secure from the drivers of the motor vehicles involved the necessary written reports required by law. The Commercial Vehicle Enforcement service is delegated secondary responsibility to conduct these investigations in certain instances, while the Driver License Division has the responsibility to supplement these services in making the investigations when circumstances make such action desirable. These responsibilities will be discharged according to detailed procedures outlined in the Texas Highway Patrol Manual.

**04.03 Major Emergencies.** In addition to the specific responsibilities set out elsewhere in this publication, the Department of Public Safety has a general responsibility to assist and cooperate with local governmental agencies in the protection of life and property and in the restoration of order in time of disaster. Policies and procedures relating to operations during periods of disaster or major emergency are contained in 01.13.00.00.

## **05.06.00 SPECIAL POLICIES AND INSTRUCTIONS**

**06.01 Identification.** Any member of the Department of Public Safety shall give his last name, title and identification number (if assigned a number) in a courteous manner upon request. In addition, they will also provide the name of their immediate supervisor and a contact number if requested.

1. **Exceptions.** This section does not apply to members:

- a. On an undercover assignment,
- b. During an emergency operation or special assignment where time and/or circumstances do not permit an interruption or distraction.

### **06.02 Duty Hours and Duty Assignment**

1. All commissioned members of the Department of Public Safety are subject to call to duty 24 hours a day and may be recalled to duty when necessity demands.

2. An employee shall, during regular office hours, conduct Department business only at the employee's regular place of business or assigned duty point unless the employee is on travel status or has received prior written authorization from the Director or his designee. In no event will an employee's personal residence be deemed to be the employee's regular place of business or duty point without the written authorization of the Director or his designee.

3. No employee, whether or not subject to FLSA, shall accrue state compensatory time for work conducted at any location other than the employee's regular or temporary place of business or assigned duty point. An employee's residence shall only be deemed to be the employee's regular or temporary place of business or assigned duty point for this subsection if the employee obtains the advance approval of the Director or designee.

**06.03 Reporting for Duty.** All members of the Department shall report for duty at the time and place required by assignment or orders and shall be physically and mentally fit to perform their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties.

**06.04 Competency to Perform Duty.** All members of the Department shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Duties shall be performed in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Incompetence may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; or absent from duty without leave.

#### **06.05 Abuse of Position**

1. **Use of Official Position or Identification.** Employees of the Department are prohibited from using their official position, uniform, identification card, or badge for personal or financial gain, for obtaining privileges or restricted or confidential information not otherwise available to them except in the performance of duty, or for avoiding consequences of illegal acts. Employees may not lend their identification cards or badges to another person.

2. **Use of Name, Photograph, or Title.** Members of the Department shall not permit or authorize the use of their names, photographs, or official titles which identify them as members of the Department of Public Safety, in connection with testimonials or advertisements of any commodity or commercial enterprise without the approval of the Director.

3. **Prohibited Compensation.** No member of the Department shall receive any fee, gift, or compensation for any service rendered in the performance of their assigned duty other than the salary paid by the Department of Public Safety. This does not prohibit the acceptance of approved awards.

**06.06 Rebellious Activities.** Members of the Department of Public Safety shall not attempt to create, originate, incite, cause, or join any mutinous, seditious, rebellious, or reactionary movement within the Department. Any member of the Department having knowledge of any such activities must employ every means to suppress them and shall report such activities to a commanding officer or other proper superior at once.

**06.07 Strikes.** Members of the Department shall not engage in any strike. "Strike" includes the concerted failure to report for duty, willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purposes of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of employment.

**06.08 Locked Desks and Cars.** Members and employees of the Department of Public Safety may be assigned motor vehicles, lockers, desks, cabinets, or cases for the mutual convenience of the Department and its personnel. All personnel are admonished that the retention of personal items in such containers, equipment, or facilities is at the risk of the employee and the Department will not be responsible for any losses. Such equipment, containers, or facilities are subject to entry and inspection without notice even if the employee has locked or placed a personally owned lock on the property.

No locked property shall be entered at any time without the permission of the employee unless the major division chief, Administrative Division head, regional commander, CLE commanders, Senior Ranger Captain, agent in charge, or special section head has given express permission in an emergency-type situation. When time permits, a search warrant should be obtained before searching any such equipment, containers, or facility due to a criminal investigation.

#### **06.09 Budgetary and Managerial Suggestions**

1. **Policy.** All employees of the Department, whether stationed at Headquarters or in field offices, are encouraged to submit budgetary and managerial suggestions to the Director. The Director will review all submitted suggestions in good faith when determining whether action will be taken to implement employee suggestions. No employee will be retaliated against for submitting budgetary and managerial suggestions to the Director.

This does not prohibit employees from submitting suggestions through their chain of command, or from implementing routine procedural changes without approval from the Director when those changes fall within the scope of the employee's authority.

2. Supervisors will make new employees aware of the budgetary/managerial suggestion program during the employee orientation. Supervisors will also discuss the program at frequent employee job-related meetings. Forms will be supplied and made available to all employees on a routine basis.

3. **Procedure.** An employee wishing to submit a budgetary or managerial suggestion to the Director will fill out Form HR-90 (see Annex #12). The employee may submit the form directly to the Human Resources Bureau without going through his or her chain of command, or place the form in a Budgetary/Managerial and Safety suggestion box located in a field or headquarters office. Suggestions retrieved from suggestion boxes will be forwarded directly to the Human Resources Bureau. The Human Resources Bureau will record the suggestion and forward it to the Director. The suggestion should contain sufficient information to enable the Director to adequately evaluate its feasibility.

The Director may consult with and solicit information from other members of the Department in his review of the suggestion. Except for suggestions submitted anonymously, written notification of the Director's decision concerning the suggestion will be sent to the suggester. Copies of all written documents concerning a suggestion will be forwarded to the Human Resources Bureau for central record keeping.

The Human Resources Bureau will prepare the required reports of procedures and findings to be sent to the House Appropriations Committee, the Senate Finance Committee, the Governor's Office of Budget and Planning, and Legislative Budget Board.

**06.10 Transporting Civil Prisoners on Commercial Airlines.** Department of Public Safety personnel transporting civil prisoners on commercial airlines will comply with all FAA regulations and those regulations and policies of those airlines on which such prisoners are being transported.

There are policy differences between the various airlines concerning the transportation of civil prisoners. The airline acceptance coordinator and the captain of the specific aircraft each have specific authority to approve an officer boarding a commercial airline with a civil prisoner. When time permits, DPS personnel transporting civil prisoners shall inquire in advance for the policies and requirements of that specific airlines in order to avoid flight boarding problems and conflicts.

**06.11 Death of Person While in Custody.** If a person dies while in the custody of a DPS commissioned officer, the Director must file a written report of the cause of death with the Attorney General no later than the 30th day after the day on which the prisoner died to comply with the requirements of the Code of Criminal Procedure, Article 49.18(b). Failure to investigate the death and file the report as required or failure to report facts known or discovered in the investigation is a Class B misdemeanor offense. **"In the custody of a peace officer" means under arrest by a peace officer, or under the physical control or restraint of a peace officer.** It is sometimes questionable when a person is actually in custody; therefore, it is DPS policy to include those instances where an attempt is being made to take a person into custody by the use of force.

### **1. Responsibility for Reporting**

- a. The immediate supervisor of the officer involved will be responsible for submitting the report.
- b. A report shall be submitted even though other agencies involved in the occurrence are submitting a report.

### **2. Procedure for Reporting**

a. Annex #2, Custodial Death Report, shall be used to report custodial deaths. Use a copy machine to duplicate the form or use Annex #2 if a copy machine is not readily available. Type or print in ink, legibly. This form can also be found on the Internet at [www.oag.state.tx.us](http://www.oag.state.tx.us).

b. Complete as much of the form as possible and mail direct to the General Counsel, Texas Department of Public Safety, PO Box 4087, Austin, Texas 78773-0140, within ten days of the death. Submit other copies through channels as required.

c. The General Counsel will review the Custodial Death Reports, determine which are reportable to the Attorney General, prepare those for the Director's signature, and submit the reports as required by law.

## **06.12 Officer Involved Shooting Reports**

Articles 2.139 and 2.1395 of the Code of Criminal Procedure require law enforcement agencies to report an incident in which a peace officer discharges a firearm causing death or injury to another or an incident when a non-peace officer discharges a firearm and causes injury or death to a peace officer. The report is to be submitted to the Attorney General not later than the 30<sup>th</sup> day after the date of the officer-involved injury or death.

### **1. Responsibility for Reporting**

a. The immediate supervisor of the officer involved will be responsible for preparing and submitting the report through the appropriate chain of command to the Office of General Counsel.

b. A report shall be submitted even though other agencies involved in the occurrence may be required to submit a report.

c. In addition to the officer involved shooting report, the immediate supervisor is also responsible for completing the administrative requirements for firearm discharges resulting in death or injury that are explained in section 96.09 of this Chapter of the General Manual.

### **2. Procedure for Reporting Officer Involved Shootings**

a. Forms are available on the Attorney General website at <https://www.texasattorneygeneral.gov/cj/peace-officer-involved-shooting-report>.

b. The completed report shall be submitted to the Office of General Counsel within ten days of the incident.

c. The Office of General Counsel will review the report, obtain appropriate signatures, and submit the report to the Attorney General.

d. The DPS internet site shall be updated to comply with statutory posting requirements.

**06.14 Expunction of Records.** An expunction matter is a civil suit authorized by Chapter 55 of the Code of Criminal Procedure. It is an attempt to have all records and files relating to an arrest erased from the Department's records. The Department is a party in each of these suits, whether or not DPS was the arresting agency, because of DPS's responsibility as depository for the statewide criminal history file. Final hearings on expunction suits are often held within two months of the filing of the case. Due to the expedited nature of these hearings, it is important that Crime Records Legal Staff be contacted immediately when any DPS member receives a document relating to expunctions.

1. **Receipt.** When any expunction-related document is received by any member of the Department located outside the headquarters complex in Austin, they shall immediately telephone the Crime Records Legal Staff at (512) 424-5839 or 424-5840. Crime Records Legal Staff will identify the priority of the item and instruct the Department

member on how to transmit the document to Crime Records Legal Staff. Members stationed at the headquarters complex in Austin shall immediately cause the item to be delivered to the Crime Records Legal Staff office.

2. **Compliance.** Crime Records Service Legal Staff will represent the Department in all expunction matters. Crime Records Service Legal Staff will decide whether or not to oppose an expunction petition based on compliance with the law and departmental resources.

If the court proceedings result in the issuance of a final order of expunction, Crime Records Service Legal Staff will notify all appropriate division chiefs, service commanders/bureau managers, section supervisors, or their designees of the entry of the order by sending an expunction memo. Upon receipt of the memo, the person notified shall comply with the expunction order, or cause it to be complied with, by destroying all records and files subject to the order, including the expunction memo. If some records can be removed, but some records cannot, then those records and files that can be removed should be destroyed. If records that cannot be removed contain information ordered expunged, that information should be redacted from the documents. Name and arrest information ordered expunged shall also be deleted from any index. If no record is found, then the expunction memo shall be destroyed. Do not return any documents or memos to Crime Records Service Legal Staff. The records and files subject to expunction are not limited to crime records and may include other departmental records "related to the arrest." All records and files relating to the arrest includes any and all documents associated with expunction order compliance including the Petition for Expunction, Order of Expunction, the expunction memo and any correspondence or emails relating to the expunction. The person designated by Crime Records Service shall provide the Federal Bureau of Investigation with notice of the expunction order and request the FBI to expunge its records subject to the order.

3. **Inquiries.** Inquiries shall be made to Crime Records Service Legal Staff.

4. **Criminal Offense.** After the Department receives a final order to expunge an arrest record, any future use of that record or file may be a criminal offense under Article 55.04 of the Code of Criminal Procedure, except as provided by Article 55.03.

## **05.08.00 DISCIPLINE**

**08.01 Definition and Requirement.** Discipline is defined as the alert, willing, and thoughtful acceptance of proper authority. Such discipline is required from each member of the Department. Discipline shall be maintained insofar as possible through appropriate training and leadership.

**08.02 Infractions.** Members of the Department who fail to comply with and uphold departmental rules and regulations will be dealt with on the basis of recommendations of supervisors and in accordance with uniform departmental policies approved by the Director.

## **05.09.00.00 SUPERVISORY CORRECTIVE ACTION**

Routine corrective action taken by Department supervisors for minor violations of policy or deficiencies in an employee's performance is a primary supervisory responsibility and does not constitute formal disciplinary action. When such infractions or deficiencies are detected, employees should be counseled in a non-adversarial manner in order to educate the employee and improve performance.

Verbal counseling may be appropriate for very minor policy violations, however, strong consideration should be given to documenting most corrective actions through use of the HR-31 Counseling Record form (see Annex #20). Utilization of the Counseling Record serves to reinforce the importance of policy compliance, provides the employee written guidance for performance improvement and documents deficiencies in the event of continued infractions. Additionally, the

Counseling Record form assists the supervisor and employee as supporting documentation during the evaluation process (General Manual 07.62.03).

The HR-31 Counseling Record form shall be submitted to and maintained at the supervisory level designated by the Division Assistant Director. Counseling Records file retention shall adhere to the retention period listed on the current agency record retention schedule.

#### **05.10.00 COMPLIANCE WITH LAW**

Members of the Department of Public Safety are expected to be an example to the public in abiding by all laws of the United States, this state, and local jurisdictions.

#### **05.11.00 EFFECT OF TCLEOSE ADMINISTRATIVE ACTION**

Commissioned members of the Department are licensed by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). TCLEOSE has promulgated rules and regulations in regard to the retention, suspension, and revocation of that license. All commissioned members are admonished to become familiar with those rules, for in the event a commissioned member of the Department might be alleged to have violated one of those rules, the possibility exists that he could be decommissioned and/or discharged as a result of action taken by TCLEOSE on an allegation of a violation or suspected violation of their rules.

**11.01 Reporting Responsibilities of Individuals.** Current TCLEOSE rules provide, in part: When a person who holds a commission license or certificate is arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, that person must report such fact to the Commission (TCLEOSE) in writing within 30 days, including the name of the arresting agency and the style, court, and cause number of the charge or indictment, if any. (Section 211.27, TCLEOSE Administrative Rules.)

Employees who are holders of a TCLEOSE commission license or certificate(s) who are arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, must complete and submit TCLEOSE form E-1—Report of Criminal Charges (Annex #8) as soon as possible after the occurrence through the chain of command to the Human Resources Bureau. The Human Resources Bureau will prepare and submit the required notification to TCLEOSE on behalf of the employee to ensure that the report is filed within 30 days of the incident as required by TCLEOSE rules.

Nothing in the above paragraph prevents the employee from directly reporting to TCLEOSE, but the employee must still submit the E-1 form through the chain of command.

**11.02 Agency Reporting Responsibilities.** The Department has a responsibility to notify the executive director of TCLEOSE when it or its chief administrator knows that one of the Department's commissioned officers has been arrested, charged, or indicted for any criminal offense above the level of Class C misdemeanor or for any Class C misdemeanor offense involving the duties and responsibilities of office or family violence, (Section 211.29, TCLEOSE Administrative Rules.) The Department has this reporting responsibility even when the employee does not himself or herself submit a copy of the TCLEOSE form E-1 to TCLEOSE or through the chain of command. Therefore, every supervisor over commissioned officers must report through the chain of command to the Human Resources Bureau any knowledge of a commissioned subordinate's arrest, charge, or indictment for criminal offenses mentioned above. The supervisor may use the TCLEOSE E-1 form for this purpose. The responsibility of the supervisors to report does not relieve the commissioned employee of his or her responsibility to report as required in Section 11.01. When the Human Resources Bureau receives the supervisor's report through the chain of command, it will prepare and submit the required notification to TCLEOSE on behalf of the Department.

## **05.12.00 ASSOCIATIONS**

Members of the Department shall avoid association or dealings with persons whom they know, or should know, are persons who have a reputation for involvement in felonious or criminal behavior, except as necessary for the performance of official duties.

## **05.13.00 RELATIONSHIPS WITH SUPERIORS**

A member of the Department of Public Safety shall obey any lawful command issued by a superior officer or supervisor.

All members of the Department shall be honest, truthful and straightforward with superior officers or supervisors regarding Department matters.

## **05.14.00 VICTIM SERVICES**

It is the policy of the Texas Department of Public Safety to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians and relatives by Article 56.02 of the Code of Criminal Procedure (Annex #26). It is the duty of Victim Services personnel to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, or close relatives of deceased victims by Subdivisions (4), (6), and (9) of Article 56.02 of the Code of Criminal Procedure.

When investigating a crime, at the initial contact or at the earliest possible time after initial contact between the victim of a reported crime and the Department of Public Safety, the agency shall provide a written notice to the victim containing the information listed in Article 56.07 of the Code of Criminal Procedures (Annex #27). It is the duty of Victim Services personnel to distribute this written notification in the form of a victim services brochure to commissioned Department personnel. At the same time that the agency provides this notice, the agency shall provide, if the agency possesses the relevant information, a referral to a sexual assault program as defined by Section 420.003, Government Code, and a written description of services provided by that program to all sexual assault victims. A sexual assault program may provide a written description of its services to the agency.

## **05.15.00 EMPLOYEES AS CRIME VICTIMS**

Under Chapter 552 of the Government Code (Public Information Act), the identity of a crime victim that is also a Department employee is excepted from public disclosure until the third anniversary of the date the crime was committed unless the employee makes a written election to release the information.

**15.05.** An employee of the Department who is also a crime victim may elect whether to allow public access to information held by the Department that would identify or tend to identify the crime victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on form HR-185 and be filed with Human Resources before the third anniversary of the latest to occur of one of the following:

1. the date the crime was committed; or
2. the date employment begins.

A copy of the election should be filed with the first-line supervisor. The supervisor is responsible for assuring that all appropriate Department staff are notified of the election, including, but not limited to, public information officers, investigative officers, local staff and members of the chain of command.

In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

“Crime victim” means a person who is the victim of sexual assault, kidnapping, or aggravated robbery or any person who has suffered bodily injury or death as a result of the criminal conduct of another.

## **05.16.00 WORKPLACE VIOLENCE POLICY**

The safety and security of its employees is of utmost importance to the Department. Violation of this policy will lead to disciplinary action.

**16.01 Relations Among Members.** Threats of violence, threatening behavior, or acts of violence toward a coworker will not be tolerated. No member of the Department, on any pretense, may strike any other member of the Department or draw or lift up any weapon or offer any violence against any member. No member of the Department shall by word or act provoke or incite a member of the Department to resort to physical force or violence. A member shall not threaten any other member nor shall a member create a hostile working environment for other members.

### **16.02 Relations with the Public**

1. **Noncommissioned Personnel.** A noncommissioned member of the Department shall not commit any violent act against a member of the public and acts of violence against Department personnel by the public will not be tolerated. Whenever possible, a noncommissioned member should seek guidance on how to handle a possibly violent situation from their chain of command. The goal should be the avoidance of violence. Where a member of the public becomes hostile or a situation develops which could become violent, a noncommissioned member should attempt to contact commissioned personnel or other police personnel rather than making an attempt to eject or otherwise confront the aggressor. Physical force should be the final resort and shall only be used against a member of the public if immediately necessary to avoid imminent harm of the Department member or other persons.

2. **Commissioned Personnel.** Commissioned members come in contact with abusive, threatening, and violent members of the public as part of their normal duties as peace officers. Training is provided in the proper use of force to all commissioned personnel. Commissioned personnel at all times shall be in compliance with the federal and state laws applicable to the use of force by peace officers in the commission of their duties.

**16.03 Reporting Requirements.** A Department member who witnesses or has knowledge of any threats, threatening behavior, or acts of violence by Department members shall report such incidents to their supervisor. Members are responsible for making this report regardless of the relationship between the individual who initiated the hostile behavior and the person or persons who were abused, threatened, or attacked.

A commissioned member complies with this section by including the information in an offense report. Serious confrontations shall be reported immediately.

**16.04 Protective Order Notification.** All individuals who apply for or obtain a protective order or restraining order which lists a departmental location as being a protected area must provide to their supervisor a copy of the temporary/permanent protective or restraining order. Lobby personnel and/or Security personnel and other appropriate personnel should be informed of the existence of protective or restraining orders. Members given this information should discuss or disseminate this information only if there is a business reason to do so.



Supervisors, after discussions with their chain of command, should also inform Lobby or Security personnel of any person the supervisor believes may be a threat of future violence, including disgruntled former employees.

**16.05 Crime Victim Information.** The identity of a crime victim who is also a Department employee cannot be released to the public without written permission (See General Manual, Chapter 5, Section 05.15.00).

#### **05.17.00 COURTESY**

An employee of the Department of Public Safety shall be courteous to the public and to other employees. An employee shall be tactful in the performance of duties, shall control behavior, and shall exercise the utmost patience and discretion. An employee shall not engage in argumentative discussions even in the face of extreme provocation. Employees shall not express any prejudice concerning another's creed, politics, lifestyle or similar personal characteristics.

In the performance of duties, an employee shall not use harsh, coarse, profane, or offensively suggestive language or gestures. An employee will not deliberately intimidate, degrade, undermine or humiliate another employee. An employee will not let personal feelings interfere with working relationships.

#### **05.18.00 PRIVATE SECURITY LICENSES**

No Department employee may hold any license or registration issued by the Private Security Bureau under Chapter 1702, Occupations Code. Further, no Department employee may perform any work that requires a license or registration issued by the Private Security Bureau under Chapter 1702, Occupations Code.

#### **05.19.00 REQUESTS FOR ASSISTANCE**

When any person applies for assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established departmental procedures.

#### **05.20.00 DOCUMENTATION, PRESERVATION AND DISCLOSURE OF EVIDENCE**

**20.01 Purpose.** The purpose of this policy is to ensure that Department personnel are in compliance with the landmark decisions *Brady v. Maryland* (1963), *Giglio v. United States* (1972) and related cases and state laws including the *Michael Morton Act of 2013* which revised the criminal discovery process in Chapter 39 of the Code of Criminal Procedure. This policy explains the general duties and procedures. Other policies may further explain the methods of implementing the key principles stated in this policy.

**20.02 Policy.** Department law enforcement officers and testifying employees shall fully document, preserve, and disclose all evidence that is gathered and prepared for criminal investigations. Complete reports, including potentially exculpatory information and witness credibility information will be provided to prosecutors in a timely manner. It is the role and responsibility of prosecutors and not that of department employees to reach conclusions regarding what will be disclosed to a criminal defendant in the discovery process. Department employees shall not, by either action or inaction, withhold material related to a case from a prosecutor responsible for that case.

**20.03 Definitions.**

a. Exculpatory information – includes what is commonly called “Brady Material” as well as information that must be disclosed under Code of Criminal Procedure Chapter 39. “Brady Material” is evidence in the government’s possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a prosecution witness, including law enforcement officers.

b. Chapter 39 information – a broader category of information than Brady Material. It is evidence that is material to any matter involved in a criminal action that is in the possession, custody, or control of the Department or the Department’s investigating officers.

c. Witness credibility information (commonly referred to as “impeachment” evidence or “Giglio/Kyles Information”) – evidence that can be used to examine the veracity of the witnesses testifying on behalf of the government including cooperating civilians, informants, and investigating law enforcement officers and employees. This includes disciplinary history or sanctions of law enforcement officers and employees who are called upon to testify on behalf of the prosecution.

#### **20.04 Duty to Document and Preserve Reports, Notes and Evidence.**

a. Department personnel that prepare evidence for criminal proceedings shall completely document activities and preserve information and tangible things gathered in the course of an investigation. Documents such as field notes, working papers and electronic communications shall be preserved as part of the case file.

b. Any state record that is Chapter 39 information must be retained for at least the minimum period provided in the DPS Records Retention Schedule and may not be destroyed until a case is completely concluded even if beyond the scheduled retention. If it is unclear whether a Department record that is eligible for destruction under the DPS Record Retention Schedule is still required to be retained under this policy as Chapter 39 information in a pending case, the Department will either continue to retain the record until the case is concluded or coordinate with the prosecutor to determine if the record may be destroyed.

#### **20.05 Duty to Document Exculpatory Information and Witness Credibility Information.**

a. Exculpatory information discovered during investigation shall be clearly documented in Department reports. The duty to document exculpatory information is comprehensive. The duty to document extends to any investigative activity regarding a specific investigation even if the investigator is not directly assigned to the specific investigative case.

b. Witness credibility information shall be documented. This is typically any information that may indicate that a civilian witness has a motivation other than civic duty to provide evidence to the officer. The following are examples of witness credibility information that must be documented:

i. payments or assistance given to informants or witnesses;

ii. offers or discussions regarding reducing charges against a witness in exchange for information or testimony or discussions of payments or other assistance;

iii. offers or discussions relating to not charging the witness with a crime in exchange for testimony or information.

#### **20.06 Duty to Disclose to Prosecutor.**

a. Department employees that provide testimonial or documentary evidence for criminal prosecutions shall timely disclose all documents, reports, notes, and tangible things that were gathered or created for the case including Chapter

39 information, exculpatory information, and witness credibility information. Disclosures shall be made in the manner directed by the prosecutor.

b. A Department employee that is providing prosecution evidence for a criminal proceeding shall provide the prosecutor with a copy of the employee's most recent employee biographical datasheet generated by Human Resources and notify the prosecutor of any other matters concerning the employee that relates to the employee's credibility as a witness in the proceeding. If the data is incomplete or inaccurate, the employee is responsible for providing updated corrected information so that the prosecutor has a correct record of official Department information. The employee shall provide the prosecutor with copies of all letters or notices of discipline such as written reprimands and assessments of time off, disciplinary probation, and demotions. Full disclosure will enable the prosecutor to determine what should be disclosed to the defense.

**20.07 Continuing Duty to Disclose.** The law imposes a continuing duty on an officer or employee of the Department to promptly provide exculpatory, impeachment or mitigating information to the prosecutor after it is discovered or identified in a criminal case. This duty continues even after a case is considered closed by virtue of a conviction, deferred adjudication or other action.

**20.08 Office of Inspector General Responsibilities.** OIG has the following responsibilities under this policy as to investigations conducted by OIG:

a. OIG shall coordinate with regional commanders to provide the investigative file for any investigation by OIG for any Department officer or employee to a prosecutor if it is requested by the prosecutor for a criminal case.

b. OIG shall provide a prosecutor with unsustained, unfounded, and exonerated complaints against a Department employee if the prosecutor specifically requests those records in writing. Although complaints against law enforcement officers that have not resulted in discipline are usually confidential by state law, prosecutors may have a responsibility to provide such information to representatives of criminal defendants in order to comply with more specific constitutional requirements.

c. OIG may provide a prosecutor with a copy of a notice of investigation that is open but not completed if the prosecutor specifically requests open investigations.

**20.09 Department Responsibilities.**

a. The regional commander or the designee of the regional commander shall coordinate with prosecutors to establish appropriate procedures for Department personnel to provide and preserve evidence and information under this policy.

b. The Department shall train all employees who have responsibilities to routinely testify in criminal proceedings regarding the requirements of this policy as well as the state and constitutional requirements.

**20.10 Discipline Relating to this Policy.**

a. The failure to properly document, preserve, and disclose all evidence gathered in the course of an investigation constitutes serious misconduct warranting disciplinary action against the officer or employee up to and including discharge from employment.

b. The act of knowingly withholding exculpatory information or witness credibility information from a prosecutor by either failing to document or failing to disclose that information constitutes serious misconduct warranting disciplinary action against the officer or employee up to and including discharge from employment.

## **05.23.00 SEARCH OF PERSONS**

**23.01 Purpose.** The purpose of this policy is to help officers determine the lawful limits of authority with regard to searching individuals.

**23.02 Policy.** Commissioned members of the Department may search a person based upon (1) a search warrant identifying the person to be searched (2) based upon probable cause that evidence or contraband will be found on the person and an articulable exception to the warrant requirement (3) when reasonable suspicion justifies a limited pat down search or *Terry* frisk (4) when conducting a search incident to a valid arrest, or (5) consent.

Officers should recognize that searches conducted without a warrant are presumptively unreasonable unless well-defined exceptions to the warrant requirement are applicable. In every instance in which an officer conducts a warrantless search of a person the officer must be able to articulate an exception to the warrant requirement that allowed the search.

### **23.03 Procedures—Pat-Down Searches –*Terry* Frisk**

#### **A. Justification for Conducting Pat-Down Searches**

A law enforcement officer has the right to perform a pat-down search of the outer garments of a suspect for weapons if (1) the suspect has been legitimately stopped with reasonable suspicion and (2) only when the officer has reason to believe that the suspect possesses weapons on his or her person and poses a threat to the officer's or another person's safety. Not every traffic stop or public contact poses sufficient justification for conducting a pat-down search. Following are some criteria that may form the basis for establishing justification for performing a pat-down search. Officers should note that these factors are not all-inclusive; there are other factors that could or should be considered. The existence of more than one of these factors may be required in order to justify a pat-down search.

1. The type of crime suspected—particularly in crimes of violence where the use or threat of deadly weapons is involved.
2. Where more than one suspect must be handled by a single officer.
3. The hour of the day and the location where the stop takes place.
4. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
5. The appearance and demeanor of the suspect.
6. Visual indications that suggest that the suspect is carrying a firearm or other deadly weapon.

#### **B. Procedures for Performing a Pat-Down Search**

Pat-down searches should be conducted in the following manner.

1. In a pat-down search, officers are permitted only to feel the outer clothing of the suspect. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club, or other item.
2. If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack, or other item that may conceal a weapon, the officer should not open the item but instead place it out of the suspect's reach.
3. If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve that item only. If the

item is a weapon, the possession of which is a crime, the officer may make an arrest of the suspect and complete a full-custody search of the suspect.

### C. “Plain Touch” Doctrine

While the purpose of a pat down or “*Terry*” Frisk is to discover weapons not evidence of a crime, under certain circumstances an officer may lawfully seize contraband detected during the lawful execution of a pat down. In order to lawfully seize evidence under the “plain touch” doctrine the officer must be justified in conducting the pat down and the incriminating nature of the item must be immediately apparent to the touch. An officer is not permitted to manipulate soft objects for the purpose of identifying an item.

**23.04 Evidentiary Search with Warrant Exception.** When an officer develops probable cause that a person possesses evidence or contraband on their person and a valid exception excuses obtaining a warrant, the search may only extend to areas that may conceal the object of the search.

### 23.05 Search Incident to Arrest

#### A. Procedure for Search Incident to Arrest

1. When an officer makes a custodial arrest of an individual the officer shall search the suspect’s person. A full search of the person is reasonable under the Fourth Amendment and a valid exception to the warrant requirement.
2. Any evidence found on a suspect, even if unrelated to the basis of arrest, may be seized.
3. A search incident to arrest may include the suspect’s pockets, waistband, sleeves and socks as well as items they are in possession of at time of arrest.

### 23.06 Strip Searches and Body Cavity Searches

1. Members of the Department are prohibited from conducting any search of an individual requiring the removal or rearrangement of clothing to permit the visual inspection of the genitals, breast or buttocks. When appropriate, Members will inform detention facility staff of any suspicion that such a search would reveal evidence or contraband.
2. Members of the Department are prohibited from searching any body cavity other than the mouth without a duly executed search warrant. A member will not seek nor execute such a warrant absent supervisory approval at a level of Major or above.

**23.07 Requesting Assistance.** An officer requesting that another officer conduct a search of an individual detained by the requesting officer must articulate to the assisting officer the circumstances that justify the search and whether a pat down/weapons frisk, an evidentiary search or a search incident to arrest is being requested.

## 05.24.00 USE OF FORCE

### 24.01 Definitions.

**1. Use of Force:** An action by a commissioned member of the Department to compel compliance by an unwilling subject.

**2. Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily injury or death.

**3. Imminent:** About to occur.

**4. Objectively reasonable:** A use of force is objectively reasonable if a trained, reasonable commissioned member of the Department could have appropriately used that level of force if faced with the circumstances that confronted the member using force.

**24.02. General Use of Force.** A commissioned member of the Department may use force when the officer reasonably believes the force is necessary to bring about a lawful arrest, search or detention or to prevent escape after arrest. Before using force, a commissioned member of the Department will manifest his or her purpose and identify himself/herself as a peace officer unless the officer reasonably believes the officer's purpose and identity are already known by or cannot reasonably be made known to the person arrested. In every situation, members will use only the amount of force that is objectively reasonable based on the totality of the circumstances they confront. Members will use force only in accordance with Department training. Only weapons authorized by the Department may be utilized.

**24.03. Use of Deadly Force.** Commissioned members of the Department may use deadly force when the use of force is authorized and:

1. the officer reasonably believes that deadly force is immediately necessary to defend the officer or another person from a substantial risk of death or serious bodily injury,

2. the use of deadly force is immediately necessary to make an arrest and the officer reasonably believes that the conduct for which arrest is authorized included the use or attempted use of deadly force by the person to be arrested; or,

3. the use of force is immediately necessary to make an arrest and the officer reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the officer or another if the arrest is delayed.

#### **24.04 Discharging Firearms.**

1. A commissioned officer is prohibited from discharging a firearm at or in the direction of any person including toward any part of an occupied vehicle unless:

- a. the use of deadly force is justified under 05.24.03; and,
- b. the discharge does not present an unreasonable risk of injury to third parties.

2. Commissioned officers are accountable for the consequences of each round that is discharged and must continually re-evaluate whether circumstances justify using deadly force as those circumstances evolve.

**24.05 Discharging Firearms at Vehicles.** In evaluating whether to use deadly force by discharging a firearm at a vehicle, members shall consider that the danger inherent in discharging a firearm is increased when shooting at a moving vehicle. There is a risk of harm to any occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, with the actions of the suspect creating the threat. In exercising discretion regarding firearms discharges at a vehicle, members will abide by the following restrictions:

1. The discharge of a firearm with the intent and purpose of disabling a vehicle is considered a use of deadly force for purposes of this policy. Members may discharge a firearm for the purpose of disabling a vehicle only if circumstances justify the use of deadly force.

2. Members may discharge a firearm at a vehicle for the purposes of disabling the vehicle only when the member reasonably believes that the vehicle is solely occupied by the driver; or if passengers are present, the member reasonably believes that the passenger(s) are actively engaged in the circumstances justifying the use of deadly force.

3. No commissioned member shall intentionally position his or her body into the path of a vehicle that is attempting to flee. Whenever possible, the affected member should make a reasonable effort to get out of harm's way if a vehicle is moving toward him/her.

#### **24.06 Discharge of Firearm from Aircraft.**

1. In addition to the other requirements of this policy, a firearms discharge from an aircraft is authorized only when an officer reasonably believes that the suspect has used or is about to use deadly force by use of a deadly weapon against the air crew, ground officers or innocent third parties.

2. For purposes of authorizing the discharge of a weapon from an aircraft, a suspect's driving behavior including aggressive or reckless driving to evade arrest does not constitute use of a deadly weapon by the suspect.

**24.07 Discharge of Firearm from Tactical Marine Unit.** In addition to complying with 05.24.03-05.24.05 above, a firearms discharge from a tactical marine unit is authorized only when the following conditions are present:

1. Ground personnel are unavailable to respond to the threat in a reasonably effective manner.

2. There are no reasonably effective alternative means of eliminating an imminent threat of death or serious bodily injury to officers or another person.

**24.08 Vehicle Used as a Tool.** A commissioned member of the Department may have to use the vehicle as a tool to end the commission of a crime. Using a vehicle as a tool is considered a use of force and members will be guided by 01.05.24.02 General Use of Force and 01.05.24.03 Use of Deadly Force. Those members trained in the Precision Immobilization Technique will be guided by the techniques and training taught by DPS EVOC.

**24.09 Deviations from Use of Force Policy.** The Department's Use of Force policy may not cover all circumstances that will confront commissioned members of the Department. In all situations, officers are expected to act with intelligence and exercise sound judgment based on a deep reverence for human life. Any deviations from this policy will be examined rigorously on a case-by-case basis for specific exigencies that required deviation. The involved officer must be able to articulate clearly the reasons for the use of force as well as the reason for any deviation from this policy.

#### **05.25.00 TESTIMONY ON BEHALF OF A CRIMINAL DEFENDANT**

When any member of this Department is served with a subpoena to testify on behalf of the defendant in a criminal case, such member shall promptly notify his immediate supervisor and the prosecuting attorney. Failure to make such notification could be detrimental to the interests of this Department.

In the event a member has been made aware or notified that he will be subpoenaed in a criminal case, on behalf of the defendant, such member shall promptly notify his immediate supervisor and the prosecuting attorney.

Members of the Department who are served with a subpoena and who actually testify on behalf of a criminal defendant will not wear a uniform or display any emblem patch, badge, or other items indicating their position with the Department without the approval of the member's major division chief.

## **05.26.00 CIVIL SUITS**

**26.01** Members of this Department are subject to suit as a result of their official acts as representatives of this Department. The legislature has provided that the state will defend and indemnify an employee in a lawsuit filed against him; however, in order to avail oneself of this statutory protection, certain requirements must be met.

1. The lawsuit must arise from the official acts of the employee as a member of this Department.

2. The lawsuit must be presented to the Attorney General no later than ten (10) days after date of service. Failure to meet the ten-day statutory deadline means that the state may decline to defend the employee and will, thus, not be liable for court costs, damages, or attorney's fees.

**26.02 Date of Service.** The date a member receives a citation is the date of service and is the date from which time is counted for purposes of compliance with this procedure. No days are omitted in the counting. The date of service should be duly noted and reported to Office of General Counsel in the memorandum hereinafter described.

**26.03 Procedure.** When a member of this Department is served with a citation in a civil suit naming him and the suit arises out of official acts, then the employee should immediately notify his supervisor who, in turn, shall notify Office of General Counsel. The member shall prepare a detailed memorandum directed to Office of General Counsel reciting the events surrounding the incident that gave rise to the lawsuit, giving the date of service, and requesting that the Attorney General represent the member in the suit. This memorandum to Office of General Counsel shall be considered a privileged communication between the member and Office of General Counsel attorney-client privilege. This memorandum should not be made available to anyone else except on the direction of Office of General Counsel. Failure to follow this procedure will destroy the confidentiality of the communication. Nothing in this procedure precludes the member from notifying any member of the command structure of the events surrounding the lawsuit.

**26.04 Counsel.** A member of this Department may employ, at his own expense, his personal attorney to assist with his representation in the case. This information, along with the attorney's name, should be included in the memorandum to Office of General Counsel. The Attorney General remains in charge of the litigation. An employee may decline to be represented by the Attorney General; however, if he does so decline, he shall be liable for the entire cost, including court costs, attorney's fee, and damages awarded, if any.

**26.05 Time Limits.** When a member is served with a citation in a civil suit, the memorandum and supporting documents, such as case reports and other relevant memoranda, must be in the hands of Office of General Counsel no later than seven (7) calendar days from the date of service. This affords Office of General Counsel three (3) days to transmit all the material to the Attorney General's Office, thus meeting the ten-day statutory deadline.

**26.06 Waiver.** The waiver of the ten-day deadline is difficult to justify. Accordingly, do not rely upon the verbal assertions of any person that the ten-day deadline may be waived. It is in the best interests of the member and the Department that such matters be handled within the ten (10) days set out by statute and detrimental reliance on the purported waiver could be very damaging to the interests of the Department and the member.

**26.07 Service.** Members shall not accept service of a citation in a civil lawsuit for another member. Members should not accept a citation for the Department unless specifically directed to do so. Normally, citations naming the Department as a party to a lawsuit should be served on Office of General Counsel. Certified mail service to a named individual should only be received by the named member. Certified mail service to an unknown person should be refused. Certified mail service to the Department should be forwarded immediately to Office of General Counsel for appropriate action.

## **05.28.00 INDEBTEDNESS**



Members of the Department shall not undertake any financial obligation which they know or should know they will be unable to meet and shall discharge promptly all debts and legal obligations incurred by them while a member of the Department. They should conduct their personal business in such a manner that they may be able to live within their income; however, should circumstances arise beyond their control wherein their indebtedness is a result of necessity and has grown out of proportion to their income, the regional commander or other appropriate supervisor may at his discretion make arrangements for them to pay thereon in satisfactory installments. The regional commander or appropriate supervisors will advise with employees regarding their personal and financial affairs at the employee's request, and such advice and information shall be treated confidentially.

#### **05.30.00 ENDORSEMENTS AND REFERRALS**

Members of the Department shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service (such as an attorney, ambulance service, towing service, bondsman, mortician, etc.). In the case of ambulance or towing service, when such service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, officers shall proceed in accordance with established departmental procedures.

#### **05.32.00 GENERAL ACCIDENT PROCEDURE**

Any member of the Department of Public Safety who witnesses or comes upon a reportable motor vehicle accident shall render or summon any necessary aid and notify an appropriate officer of the exact location and apparent severity of the accident—if these things have not already been done.

#### **05.34.00 SEEKING FAVORS**

No member of the Department of Public Safety shall ask for favors or gifts from the public which may in any way compromise his position as an impartial employee of the state. If such favors or gifts are proffered, he shall refuse them in a courteous manner.

#### **05.36.00 VOTER REGISTRATION**

All members of the Department of Public Safety who are eligible to vote shall maintain qualifications as an elector as provided by law.

#### **05.40.00 GAMES OF CHANCE**

No member of the Department shall engage in any game of cards, pool, dominoes, billiards, pinball, lottery, or games of chance in any public place while on duty, except when necessary in the performance of duty and while acting under proper and specific orders from a superior officer.

#### **05.46.00 ATTENDING LEGISLATIVE SESSIONS**

Employees of the Department of Public Safety shall not, while on duty, attend legislative sessions or loiter around the reception rooms of offices of either house while the State Legislature is in session—unless specifically authorized to be present on official business.

## **05.47.00 CHALLENGE COINS**

A challenge coin is a medallion, usually bearing an organization's insignia or emblem and carried by the organization's members. They are generally exchanged as a token of appreciation. The Department recognizes the value of challenge coins but their intrinsic design elements could place Department members in violation of state statutes unless the proper approval is obtained. Department members shall be guided by the following policy.

1. Challenge coins may not be produced utilizing Department funds regardless of the design.
2. Challenge coins designed or produced by any Department member that include in the design the DPS insignia or a deceptively similar insignia require the Director's prior approval as per Government Code 411.017(a)(1).
3. Challenge coins designed or produced by any Department member that include the term "Texas Department of Public Safety", "Department of Public Safety", "Texas Ranger" or "Texas Highway Patrol" require the Director's prior approval as per Government Code 411.017(a)(3).
4. Challenge coins designed or produced by any Department member that include in the design any Department division, service or bureau name or insignia require prior approval by the Director.
5. Challenge coins that incorporate the state seal in the design must meet the requirements of Texas Administrative Code, Title I, Part 4, section 72.41, which requires approval through application to the Office of the Secretary of State.

A request for approval for the design and production of a challenge coin will be submitted via interoffice memorandum through the appropriate chain of command to the Director.

## **05.48.00 GIFT SOLICITATIONS**

The taking of solicitations to purchase gifts for any member of the Department of Public Safety is specifically prohibited. This order is for the purpose of preventing embarrassment or "pressure" on any employee and is not intended to interfere with purely voluntary donations which do not in any way adversely affect any employee or his work.

## **05.49.00 FRAUD POLICY**

Fraud is a serious violation of law that will not be tolerated in the Department. Fraud offenses can be found in Chapter 32 of the Texas Penal Code. Generally, (for purposes of this policy) it is theft of, or any means used to misappropriate state property or resources. Employees who suspect fraud is occurring in the workplace should immediately notify their supervisors. If for some reason the employee is uncomfortable with notifying their supervisor, they may notify Internal Affairs or the State Auditor's Office. All allegations of fraud should be thoroughly investigated. Administrative investigations into fraud allegations will be conducted in accordance with Chapter 7A of the General Manual. Criminal Investigations will be conducted by a Division or Service assigned by the Director's office. Both Administrative and Criminal Investigators must notify Internal Affairs of the initiation of the investigation and the end results.

## **05.50.00 BORROWING MONEY AND ACCEPTING GIFTS**

**50.01 Members.** No member of the Department shall borrow any money, securities, property, sign any personal note, or seek credit from any subordinate officer or any member of the Department.

**50.02 Nonmembers.** No member of the Department shall borrow any money or accept gifts or fees from any person seeking a departmental service, a favor, or information for himself or others or from anyone known, suspected, or reputed to be a violator of the law.

**50.03 Personal Gifts or Compensation.** No member of this Department may accept any gifts or other form of compensation or emolument as a result of expenditure of state funds. Any promotional gifts related to the expenditure of state funds are to be utilized for the benefit of the state. Examples are frequent flyer points related to state travel, radios, desk sets, etc., given in consideration for entering magazine subscriptions or making purchases of certain types of property. When such benefits or promotional gifts are offered, they shall be forthwith made available for utilization by the Department of Public Safety.

#### **05.54.00 COURT APPEARANCES AND TESTIMONY (Rule §1.91 amended)**

**54.01 Policy.** Findings, facts, data, information, and opinions based on such findings, facts, data, or information gained by a Texas Department of Public Safety employee from and during the course of his employment, if requested while such person is employed by the Department, shall be considered as being the product of state employment and will be generally made available through court testimony by the employee on state time and expense.

**54.02 Criminal Court.** Members of the Department when summoned to a court in criminal cases for the purpose of giving testimony in instances clearly related to official departmental business will be on state duty time. The law allows for the service of a subpoena in a criminal cause to be effected through personal service, certified mail, or facsimile.

**54.03 Civil Court.** It is the intent of the Department of Public Safety that its personnel provide necessary testimony in a civil suit arising out of a case in which the employee was officially involved in the regular course of duties with this Department. The member answering a subpoena in such instances will be on official duty. Such testimony will be in accordance with the following:

1. **Subpoena.** A member of the Texas Department of Public Safety will not testify in a civil suit involving or arising from official acts until served with a legally binding subpoena. This does not apply to suits to which the employee, Department, or state is a party. If a deposition can be arranged in lieu of an actual court appearance, an employee shall not leave regular duty to attend court.

(Note: In Texas civil cases a subpoena for court appearance may be issued for a witness who may be represented to reside within 150 miles of the county line of any county in which the suit is pending or who may be found within such distance at the time of the trial. Subpoenas for deposition are binding if issued within 150 miles within the employee's place of residence. Federal subpoenas may be served within the district or at any place without the district that is within 100 miles of the place of the hearing or trial.)

Employees making civil court appearances or giving depositions on official departmental business will be on state duty time.

2. **Dress.** In general, a uniformed employee will testify in uniform in civil cases unless otherwise instructed.

**54.04 The Employee Is Unable To Respond.** An employee, unable to respond to a subpoena or summons, will notify the appropriate court officials and the employee's immediate supervisor.

**54.05 Fees and Expenses.** The law requires that all civil subpoenas requiring attendance in court be accompanied with a witness fee. The fee in state court proceedings is \$10.00 if personal appearance is required and \$1.00 if the subpoena is for documents only. The fee in federal court proceedings is \$40.00 plus actual travel expenses for the first day. If an employee is testifying on the employee's own time on matters unrelated to Department employment, then the employee may retain the witness fee. If the employee is testifying while on duty on matters connected to the employee's position with the Department, then the fee should be submitted to Accounting and Budget Control along with a memo giving the employee's name, station, budget code and a notation that the money is a witness fee in a case in which a subpoena was received.

Expenses resulting from court testimony by Department employees arising from official acts will normally be paid by the Department at state rates and in line with state and Department policy. However, Section 660.049 of the Government Code disallows reimbursement or travel advances for a state employee who is compensated for travel expenses by another entity. Therefore, if the employee is compensated for travel, lodging, or meals by another entity, reimbursement for the same expense category may not be claimed from the state; however, the employee may claim reimbursement for any expense category for which compensation was not received. Any employee who is compensated by another entity for any or all travel expenses must submit a report to the employee's supervisor showing that no more than actual expenses of travel, lodging, and meals were received or include any excess with the report for forwarding to Accounting and Budget Control.

The subpoena fee and any excess compensation for travel expenses may be submitted together.

#### **54.06 Expert Testimony (Arising From Nonofficial Acts)**

1. Employees may be assigned to give expert testimony for the Texas Department of Public Safety or other governmental agencies and while doing so will be on official duty at state expense. Such assignments will be determined by the appropriate Division chief, or special section head. Division chiefs may delegate this assignment to their respective service commanders or regional commanders. Generally, testimony requested by another state agency or testimony as a custodian of records will be considered an official duty assignment.

2. Employees who serve as expert witnesses in instances not arising from official acts of the Department of Public Safety will testify off duty at no expense to the state.

3. Physical evidence and laboratory records will only be released under legal process.

4. Employees who receive compensation for expert witness opinions or testimony are subject to the Department's policy on Secondary Employment in Chapter 7.

**54.07 Availability of Chemists.** House Bill 656, the General Appropriations Act of the 67th Legislature, states: "It is the intent of the Legislature that chemists employed by the Department of Public Safety must, upon three days notice, appear in person in response to local requests for assistance."

#### **05.56.00 DEPARTMENTAL REPORTS**

Members of the Department shall submit all required reports on time and in accordance with established departmental procedures. Reports submitted shall be truthful and complete, and no member shall knowingly enter or cause to be entered any inaccurate, false, or improper information. Employees reporting false information shall be subject to severe disciplinary action.

#### **05.58.00 USE OF DEPARTMENT EQUIPMENT**

Members shall utilize Department equipment only for its intended purpose and shall not abuse or fail to maintain such equipment in accordance with established departmental procedures.

#### **05.60.00 VIDEOS AND PHOTOGRAPHS**

**60.01** All videotapes, DVDs, CDs, photographs, video files, image files, and negatives in possession of or taken in the course of their official duties by Department of Public Safety personnel will be considered as agency property and generally available to the public. No employee shall sell, offer for sale, or receive any personal consideration whatsoever concerning the disposition or release of such items.

**60.02** Film of accident scenes will be processed and photographs printed as soon as practical after the accident. Videos and photos will be filed in the applicable sergeant area office and retained for the period of time prescribed by the retention schedule. Troopers and/or sergeants transferring from the area will not take photographs or videos from area files with them.

**60.03** Videos and photos are subject to the Public Information Act (Government Code Chapter 552) and should be handled the same as the case file with which they are associated. Policies regarding public release of case files may be found in Chapter 21 of the General Manual.

#### **05.62.00 PHYSICAL HEALTH**

All members of the Department shall keep themselves in good physical and mental condition. Members shall maintain their physical and mental condition to the degree necessary to perform any duty or assignment that may be normally expected or required. To insure that members meet the physical and mental requirements for job performance, the Director has the authority to require that members submit to physical and mental examinations.

#### **05.63.00 FITNESS FOR DUTY EVALUATION**

Department of Public Safety employees have a responsibility to maintain the physical and psychological health required to carry out their job duties. The Director or his/her designee, has the authority to require that a member of the Department submit to a fitness for duty evaluation (FFDE). When an employee is required to undergo a FFDE, the evaluation will be at the Department's expense and will be conducted by a qualified evaluator chosen by the Department.

A FFDE is a formal, specialized examination of an incumbent employee that results from (1) objective evidence that the employee may be unable to safely or effectively perform a defined job, and (2) a reasonable basis for believing that the cause may be attributable to a medical condition or impairment. The condition or impairment may be physical or psychological. The central purpose of an FFDE is to determine whether the employee is able to safely and effectively perform his or her essential job functions.

A FFDE should only be requested when all other avenues of appropriate Department supervisory and managerial practice have been unsuccessful in addressing the problem performance behavior in question. The FFDE is not to be used as a substitute for disciplinary action.

A Psychological FFDE is not an appropriate response when the supervisor believes that the employee presents a threat of imminent danger to self or others due to a psychological condition or impairment. Such cases require an emergency psychiatric evaluation.

Department mental health professionals are not conducting a psychological FFDE when meeting with Department employees in the context of an officer-involved shooting or other critical incident and will not render a fitness for duty opinion. A request for a psychological FFDE following an officer-involved shooting or other critical incident should only be made if there exists objective evidence that the employee may be unable to safely or effectively perform a defined job due to suffering a psychological condition or impairment as a result of the incident.

An employee's supervisor may request through the chain of command that the Director order a FFDE when there is an objective and reasonable basis for believing that the employee may be unable to safely and/or effectively perform his or her duties due to a medical condition or impairment. An objective basis is one that is not merely speculative but derives from direct observation, credible third-party report, or other reliable evidence.

When requesting a FFDE, the supervisor and others in the employee's chain of command, should prepare a file containing documentation to justify and support the FFDE request. The file should contain a description of the objective evidence giving rise to concerns about the employee's fitness for duty; a summary of any supervisory interventions initiated by the supervisor in an attempt to address the problem behavior exhibited by the employee; and the effect of those interventions on the employee's job performance and problem behavior. The file should also include documentation of the employee's work history in the current position including a summary of performance evaluations; commendations and testimonials; internal affairs investigations; formal citizen/public complaints; use-of-force incidents including reports related to officer-involved shootings; civil claims; and disciplinary actions. Finally, the file should contain a description of the potential harm envisioned to befall the employee, co-workers, and/or the public if the employee continues in the current job position.

If the employee has been on medical leave, or has been on restricted duty, due to a medical condition that is prompting and/or related to the FFDE request, a summary of the documentation requiring the leave or restricted duty should be included in the FFDE file prepared to support the request. In most cases documentation for medical leave purposes or restricted duty should be on file with the Human Resources Management. In some cases, it will be in the Department's interest to request the FFDE as a second opinion when an employee is cleared to return to duty after a period of medical leave or restricted duty due to a medical condition, by the employee's own health care professional.

The request and supporting documentation will be reviewed by the Human Resources Management. If the request is for a psychological FFDE, the Staff Psychologist will review the file and supporting documentation as well. If a fitness for duty evaluation appears to be indicated, this recommendation will be made to the employee's chain of command by the HR reviewer and/or the Staff Psychologist. In consultation with the chain of command, HR, and/or the Staff Psychologist, the specific questions to be addressed by the evaluator conducting the FFDE will be determined and prepared in letter form by the supervisor. Possible questions to be addressed by the evaluator include:

1. Return to Duty
2. Return to duty with medical or mental health intervention
3. Return to different duty
4. Re-evaluate after medical leave and medical or mental health intervention
5. Not fit for any duty

The file containing the documentation justifying the FFDE along with the letter identifying the questions to be addressed by the evaluator will be provided to the evaluator prior to conducting the FFDE.

The employee will receive a letter from the Director ordering the employee to participate, and fully cooperate, in the FFDE. The letter will include the date, time, and location of the FFDE and the name and credentials of the professional conducting the evaluation.

The Staff Psychologist will identify an appropriately qualified licensed psychologist or psychiatrist for psychological FFDEs. For other medical FFDEs the evaluator will be chosen by the Human Resources Section.

In the course of conducting the FFDE, the examiner may ask the examinee to provide additional medical/psychological treatment records and other data for the examiner to consider in addition to the documentation provided by the Department. When some portion of the information requested by an examiner is unavailable or is withheld by the employee, the examiner must judge the extent to which the absence of such information may limit the reliability or validity of his or her findings and conclusions.

During the FFDE process, the Department is the examiner's client, not the employee. The employee will be requested to give written authorization to the examiner to release his/her findings and opinions to the Department. If such authorization is denied, or if it is withdrawn once the examination commences, the employee will have failed to comply with the direct order to fully cooperate with and participate in the evaluation.

The examiner will provide a written report to the Department that will be maintained in the custody of the Human Resources, or with the Staff Psychologist, when a psychological FFDE is conducted. The report will be reviewed by HR and/or the staff psychologist, OGC and the employee's chain of command, as appropriate.

Findings may include that the employee is unfit for unrestricted duty or that the employee be assigned to restricted duty and re-evaluated after a period of time, typically at the termination of a course of treatment. The examiner may be asked to provide an opinion regarding necessary work restrictions, accommodations, interventions, or causation. However, whether or not a recommended restriction or accommodation is reasonable for the specific case is a determination to be made by the Department.

When the Department has requested the FFDE as a second opinion to that given by another health care professional, the Department will consider the relative merit of any conflicting findings or recommendations based upon an assessment of differences in the professionals' areas of expertise and knowledge of the employee's job and work environment; the objective bases for each opinion; and whether the opinion is contradicted by information known to or observed by the Department.

#### **05.64.00 COMPREHENSIVE STRESS MANAGEMENT SERVICES**

The Department recognizes that the effects of work related and personal stress can detract from an employee's effectiveness on the job. The Department offers a comprehensive stress management program to assist employees in their responsibility to maintain themselves in good physical and mental condition in order to perform their job duties effectively. Additionally, the Department recognizes that law enforcement officers are exposed to unique and often severe stress. Law enforcement families and Department support staff can be affected by the same severe stress that impacts officers on a secondary or vicarious basis.

**Staff Psychologist Responsibilities.** The Staff Psychologist of the Psychological Services Bureau is responsible for the programs that comprise the Department's comprehensive stress management services: the Employee Assistance Program; the Critical Incident Response Team; and the Volunteer Chaplain Program. The Psychological Services Bureau provides administrative support and oversight to the Department's Veteran Assistance Program.

**Employee Assistance Program.** The Employee Assistance Program (EAP) provides support, education, referral, and brief counseling services to employees and their families. The types of services provided by the Employee Assistance Program are described in Annex #28. The role of the Staff Psychologist and the Employee Assistance Program in the Drug Free Workplace policy is described in section 08.07.01.3.

The professional counseling staff of the Employee Assistance Program, including the staff psychologist, may refer employees to non-Department mental health or substance abuse providers if the employee's problem is outside the expertise of the Department mental health professional and beyond the scope of the brief services the Department's program is designed to provide. The Department's professional mental health staff retains the responsibility to determine whether the employee's needs can be best served by the Department EAP or by a referral to an outside provider or specialist.

**Critical Incident Reponse Team.** The Critical Incident Response Team (CIRT) provides crisis response to employees and their families following exposure to critical incidents and traumatic events. The Critical Incident Response Team may also provide services to other law enforcement and emergency responders upon request and when resources are available. The team is comprised of Department employee volunteers who are specially trained to assist their colleagues with the effects of critical incidents and trauma. Department employees must have the recommendation of their chain of command prior to being accepted to the Team. Employees must also have the approval of their immediate supervisor in order to respond to specific incidents. The Staff Psychologist and the professional mental health staff of the Employee Assistance Program provide mental health consultation to the CIRT.

**Department Veteran Assistance Program.** The Department's Veteran Assistance Program (DVAP) provides support and assistance to Department employees activated for military duty by order of the President of the United States in support of an ongoing recognized conflict. Each activated employee is assigned a Veteran Sponsor to provide support at pre-deployment, deployment, and post-deployment. Assistance is also provided to the activated employee's family members and supervisor throughout the cycle of deployment. The Staff Psychologist at Headquarters and the Psychological Services Bureau mental health professionals located in regional offices provide administrative support, mental health consultation, and referral assistance to the DVAP Veteran Sponsors, and brief counseling services to activated employees and family members upon request.

**Volunteer Chaplain Program.** The Volunteer Chaplains provide crisis intervention and spiritual counseling services upon request to employees and their families. Chaplain services are non-denominational and volunteer chaplains are prohibited from proselytizing or attempting to promulgate any particular religious orientation. The Chaplains frequently work as part of the Critical Incident Response Team. They may also assist in fulfilling law enforcement responsibilities to victims of crime as defined in the Code of Criminal Procedures and described under Victim Services, 05.14.00.

**Nature of Services.** All services provided by the comprehensive stress management program (EAP, CIRT, Chaplain) are confidential. Professional EAP staff, chaplains and employee volunteers will not reveal information shared with them by DPS employees seeking services with the exceptions of information suggesting imminent harm to self or others or information regarding the abuse of children, the elderly or handicapped adults. Commissioned employee volunteers of the Critical Incident Response Team and the Employee Assistance Program must also report violations of law.

Employees may initiate contact and request services directly.

Employees may utilize stress management services while on duty time with proper notification to their supervisors.

All stress management services are voluntary with the exception of post-shooting or critical incident interventions required by policy.

The cost of the comprehensive stress management service is free. Employees are responsible for the cost of any service they choose to receive from non-DPS providers on the recommendation of the EAP staff.

**Supervisor Responsibility.** Supervisors should be aware of the stress management services available to employees and should make employees aware of the available services when employees demonstrate work performance



problems and identify stress as contributing to these problems. A supervisor should never assume a relationship between work deficiencies and stress or medical issues, but will refer an employee to the Employee Assistance Program for a specific stress related service when the employee has identified a stress related issue as having contributed to the deficiency. All Employee Assistance Program services are voluntary and employees are not obligated to follow a supervisory referral to participate. When the employee accepts the referral for EAP services to address a work deficiency, the supervisor should complete the EAP Supervisor Referral Form (Annex #29) and provide a copy to the EAP professional staff.

## **05.65.00 EMPLOYEE APPEARANCE**

All employees are considered representatives of this agency. Therefore, all employees are required to maintain a well-groomed and professional appearance, which fosters a favorable impression of the Department. It is not the Department's intention to scrutinize the intricate details of employee dress; however, we expect all employees to present a professional image, and should an employee's attire or appearance be offensive to the public or co-workers, agency management must take appropriate action.

### **A) Guidelines applicable to all employees**

The Department considers the following attire inappropriate in the workplace for any employee:

- Tank tops, spaghetti straps or bare midriff shirts, off-the-shoulder blouses, and/or low-cut blouses
- Shorts or cutoffs
- Sweat pants or gym clothes
- Exposed undergarments, pajamas, or other clothing not designed to be worn as an outer garment
- Clothing items made of sheer or see-through material if they cause undergarments to be visible or are otherwise offensive
- Dresses or skirts that are too short for a professional environment
- Shirts displaying graphic or profane language, offensive logos, or depictions of drug or alcohol use
- Clothing with holes, patches, or fraying
- Shoes not designed to be worn in the workplace, such as flip-flops meant to be worn at the beach or pool, house slippers, or gardening shoes
- Hats or baseball caps, unless authorized by the Department to be worn in the workplace (other than head coverings worn for religious or medical purposes)

The list of inappropriate attire is not intended to be exhaustive, and supervisors shall have discretion to determine whether an employee's attire is appropriate for the workplace. In addition, all employees are expected to maintain high standards of cleanliness and personal hygiene while on duty and to refrain from overuse of colognes, perfumes, or other scented items that may cause allergic reactions in others.

### **B) Additional Guidelines for Employees in Direct Contact with the Public and Other Professional Positions**

Employees who are in direct contact with the public for any reason on the Department's behalf are required to be in standard business attire. All supervisors and their administrative staff, as well as other FLSA exempt professional positions, are also expected to be in standard business attire. Jeans and t-shirts are not considered standard business attire. In addition, visible tattoos, brandings, or piercings of any kind other than earrings are prohibited. Casual business attire is acceptable on Fridays unless otherwise directed by the employee's supervisor. Examples of standard and casual business attire are listed below to assist employees in selecting attire appropriate for the workplace.

- 1) Examples of standard business attire for males and females include:

- Business suit or jacket
- Dress shirt, sport shirt with collar, or sweater
- Dress slacks/khakis
- Dress shoes/boots

Examples of standard business attire for females also include:

- Dress
- Blouse
- Dress skirt
- Dress Capri pants
- Dress sandals

2) Examples of casual business attire for males and females include:

- Casual slacks/khakis
- Jeans (neat and clean, no holes, patches or fraying)
- Sweater
- Sport shirt
- Sweatshirt
- Collarless shirt
- Casual shoes/boots

Examples of casual business attire for females also include:

- Casual blouse
- Casual skirt
- Casual Capri pants
- Casual sandals

### **C) Other Requirements**

Employees working in specialized fields may have additional or different dress requirements due to the nature of the tasks performed. Any approved deviations from or additions to the dress requirements above will be communicated to affected employees by their supervisors.

Supervisors shall have discretion to determine violations of the dress policy. Employees determined to be dressed inappropriately for the workplace may be required to change into proper work attire. If an employee must leave the office to comply with such a directive, he or she will be required to utilize accumulated leave entitlements for this purpose.

### **05.66.00 UNIFORM REGULATIONS**

Members of the Department who are issued a DPS uniform and commissioned law enforcement members of the Department who purchase a DPS uniform as provided by law for providing law enforcement services for persons and entities other than the Department will refer to the Texas Highway Patrol Manual and be guided by the instructions in the manual devoted to uniform regulations. Chapter 20.06.00.00 will be made available to all commissioned law enforcement personnel.

## 05.68.00 COMPLIMENTS

Employees of the Department shall not solicit commendations. Overestimating their value, employees will sometimes seek tactfully to “arrange” for commendations. Such action is unworthy of any sincere employee. Although compliments and commendations are graciously received by the Department, they do not within themselves constitute the basis for judging an employee.

## 05.70.00 VOLUNTEER PROGRAM

1. **Volunteer.** A volunteer is any individual who donates time and service to facilitate Department of Public Safety (DPS) programs. Volunteers may serve as committee or task force members, interpreters, resource developers, office assistants, or interns performing non-paid work to meet degree requirements and could be involved in any aspect of policy, planning, and program development.

2. Volunteers may use DPS office space, supplies, files and records, equipment, and computers as deemed necessary to complete their assigned duties. DPS will maintain files that include records of donated time and services, a volunteer registration form, a confidentiality agreement, training records, emergency information, DPS volunteer evaluation forms, and commendations. Information from these files may be used for recognition and employment (internal/external) purposes.

3. Volunteer candidates must undergo a standard background check or record check depending on their volunteer positions. This check must be completed before the volunteer begins their duties. A conviction and/or probated or suspended sentence on any felony will disqualify the volunteer candidate. Volunteers must adhere to DPS policies and procedures. Failure to do so will terminate the volunteer relationship with DPS.

4. Volunteers must wear appropriate identification and will have access to their designated workstation.

5. **Students, interns, and other volunteers.** An intern is a person enrolled in a high school, university, or college who desires to volunteer for limited periods of time; or who is enrolled in university/college courses which require “internship” programs that utilize business/agency practical experience and training for course credit and/or pre-professional training and work experience. Student interns are not employees of the agency and are considered “volunteers.” These interns must adhere to DPS policies and procedures. It is the responsibility of the students and interns to communicate their class requirements before they are placed as volunteers.

6. **Supervisor responsibilities for volunteers.** Each volunteer working directly for DPS must be supervised by a staff person. Although a volunteer may work with more than one staff person, the volunteer’s supervisor should be clearly identified. That supervisor must have at least the level of job responsibility as the volunteer being supervised. The supervisor is responsible for making sure adequate training, guidance, and instruction are provided for the volunteer.

7. **Supervision.** Supervisors of volunteers are responsible for the day-to-day supervision of their volunteer(s). It is the responsibility of each supervisor to have planned activities and/or projects and to have adequate workspace and materials for their volunteer(s). Supervisors should be available to monitor the progress of the volunteer(s), and be accessible to answer any questions.

8. **Mentoring.** Supervisors of volunteers should provide training, guidance, and support for their volunteer(s). It is the responsibility of the supervisor to set a good example and to be a role model for their volunteer. Supervisors should provide enrichment and learning opportunities to their volunteer(s).

9. Supervisor must have approval of their chain of command to utilize a volunteer.

#### **05.73.00 RACIAL PROFILING**

Members of the Department shall not engage in racial profiling. Racial profiling is defined as “a law enforcement initiated action based on an individual’s race, ethnicity, or national origin rather than on the individual’s behavior or on information identifying the individual as having engaged in criminal activity.” Racial profiling is illegal, inconsistent with the principles of American policing, and an indefensible public protection strategy.

Complaints on incidents of racial profiling shall be handled through policies and procedures as established in Chapter 7A of the General Manual. Racial profiling is a major infraction, and employees involved in such activity will be subject to disciplinary action.

The Department will submit an annual report of the traffic stops conducted by its officers to the Public Safety Commission no later than March 1st of each year. The report will include the race or ethnicity of the individual detained, and whether a search was conducted and, if so, whether the person detained consented to the search.

#### **05.74.00 REQUEST FOR CONSENT TO SEARCH**

Absent probable cause to search a vehicle, troopers must assess the circumstances present on every traffic contact made and decide, based on training and experience, whether any activity outside of a traffic violation exists. Consistent with the expectations set by the Texas Appeals Courts, it is the policy of the Texas Department of Public Safety that a decision to request consent to search a person’s vehicle shall be based only on articulable, reasonable suspicion that the occupant(s) may be engaged in criminal conduct.

#### **05.75.00 CONFIDENTIAL INFORMATION**

The nature of departmental business requires that employees frequently deal with confidential information. No employee shall divulge to any unauthorized person any confidential information obtained through the execution of departmental duties or by other means.

**75.01** The release of criminal history information is governed, in particular, by Section 411.085 of the Texas Government Code and its provisions that:

1. A person commits an offense if the person knowingly or intentionally:

- a. obtains criminal history record information in an unauthorized manner, uses the information for an unauthorized purpose or discloses the information to a person who is not entitled to the information; or
- b. violates a rule of the Department adopted under this subchapter.

2. An offense under Subsection 1 is a Class B misdemeanor, except as provided by Subsection 3.

3. An offense under Subsection 1 is a felony of the second degree if the person:

- a. obtains, uses, or discloses criminal history record information for remuneration or for the promise of remuneration; or
- b. employs another person to obtain, use, or disclose criminal history record information for remuneration or for the promise of remuneration.

**75.02** Only those individuals whose job duties include dissemination of confidential information will provide this information in response to authorized inquiries.

**75.03** A breach of this policy is grounds for disciplinary action, up to and including termination, and a breach of the associated laws may result in criminal penalties.

#### **05.76.00 PUBLIC SPEECHES AND ARTICLES**

The public statements of employees must conform to the prescribed policies of the Department. Any statement for public release concerning affairs of the Department which have not been released to the public must be authorized by the Director.

#### **05.78.00 PUBLIC STATEMENTS**

Members shall not publicly criticize or ridicule the Department, its policies, or other members by speech, writing, or other expression where such speech, writing, or other expression is defamatory, obscene, unlawful, tends to undermine the effectiveness of the Department, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity.

#### **05.79.00 SOCIAL NETWORKING POLICY**

##### **79.01 Definitions:**

Social media (Web 2.0) is an umbrella term encompassing various activities that integrate technology, social interaction, and content creation. This includes blogs, wikis, photo and video sharing, podcasts, social networking (Facebook, My Space, Twitter, etc.), mash-ups, and virtual worlds, as well as similar applications or technologies currently in use or which may be developed in the future.

##### **79.02 Policy**

All Department members shall be aware that social media content is subject to the same standards as other kinds of public statements or behavior. Members shall ensure that any content they contribute will not cause undue embarrassment to the Department, damage the reputation of the Department, or erode the public's confidence in the Department.

Members will be held accountable for material which has a detrimental impact on the workplace or the functions of the Department.

##### **79.03 Application of Other Policies**

General Manual provisions which govern social media content include, but are not necessarily limited to, Sections 05.76.00 and 05.78.00.

#### **05.80.00 DECORUM FOR SPECIAL OCCASIONS**

##### **80.01 The Salute to the Flag and Respect for Honored Songs**

1. **Occasion.** When the flag is passing or the National Anthem is being played, uniformed personnel will come to attention and render the right-hand military salute facing the flag or music.

2. **Distance and Time.** When the flag approaches in a parade, all persons within sight should face the flag until it passes in review. The proper salute should be rendered when the flag is six paces away and held until the flag has passed beyond this distance. When the National Anthem is played where the flag is present, the proper salute will be rendered to the flag and held until the anthem is finished.

3. **Civilian Dress.** Employees in civilian dress will pay their respects to the flag or National Anthem by taking the headdress in the right hand and holding it over their heart. If no headdress is worn, the employee will stand at attention and place the right hand over the heart. During inclement weather, the headdress may be held directly over the head.

4. **Attention.** While rendering either salute, the person must be standing at attention with left hand down and alongside seam of trousers and heels together.

5. **Retreat.** When retreat is sounded on a military reservation, any Department personnel attending, officially or otherwise, will render the proper salute.

6. **Special Songs.** On public occasions when special school or state songs are played, officers will show their respect by standing at attention. If in civilian clothes, the hat will be removed and held down alongside side seam of trousers in the right hand.

**80.02 Invocations and Benedictions.** During invocations, benedictions, or other public prayers, Department personnel will respect the custom of removing the headdress (if worn) and bowing the head.

**80.03 Escorts.** When serving as an escort for state officials or other dignitaries, an officer's dress should be immaculate and his bearing military at all times, both when on foot and while sitting in an automobile. If an escorting officer is introduced to an official, he should dismount from car or motorcycle, remove his right glove, if worn, come to attention, and indicate with a firm handclasp that he is honored to serve the individual.

Upon official military or semimilitary occasions, unless otherwise directed by the senior officer present, officers entering automobiles or other conveyances will enter in the inverse order of rank, with the right rear seat being reserved for the senior officer, and will leave the conveyance in the order of rank.

**80.04 Civilian Funerals.** Any Department of Public Safety personnel in uniform or civilian clothes attending funerals as honorary pallbearers or otherwise will stand at attention uncovered, and hold the headdress over the left breast whenever the casket is being moved (by the pallbearers outside the building) including its being lowered into the grave. During any prayer attendant to the funeral service, the head must be uncovered and bowed.

1. **Side Arms.** During funeral services, side arms will be worn as a part of the uniform unless circumstances indicate otherwise.

2. **Pallbearers.** Uniformed officers serving as pallbearers may all remain covered or all uncovered while carrying the casket according to prearranged plans.

3. **Point Control.** An officer assigned to point control of traffic where a funeral procession is entering or leaving the highway will, if conditions permit, stand at attention and salute with hat over heart while the hearse is passing.

4. **Escorts.** If an escort terminates at the entrance to a cemetery, the escorting officers will stand at attention with headdress over heart facing each other from each side of gate entrance until the procession has entered. When the

Department is called upon to assist in the burial of a dignitary and several men are needed as an escort, an officer shall be placed in charge of the detail. He will be charged with responsibility for the appearance and conduct of members of the escort.

**80.05 Funeral of DPS Member.** If a deceased Department member's family requests civilian pallbearers, uniformed officers will be deployed as follows: two officers at entrance of church, residence, or funeral home and two officers at entrance to hearse. These officers will stand at attention with hats over heart while casket is being moved. At the cemetery, two officers will resume their positions at the hearse. The other two will station themselves at the entrance to the burial square, burial tent, or mausoleum. Other uniformed officers will form a lane 12 to 15 feet wide between the hearse and the funeral building and the hearse and the burial place by dividing equally and facing each other. These officers will also stand at attention with headdress over heart while the casket is being moved. If uniformed pallbearers are requested, six or eight additional officers will carry the casket. These officers will remain near the casket at all times. Seats during funeral services should be prearranged by the funeral director. After placing the casket in the grave the bearers should step back, evenly distribute themselves three or four on each side, and stand at attention with hats (if worn) over heart until the casket is lowered into the grave or the services are completed.

From the first notification that a DPS employee has been killed in the line of duty until after the funeral constitutes a period of mourning. During this period, Texas State flags are to be flown at half mast at all DPS offices where flagpoles are available and flags are normally flown. Uniformed members of the Department may wear a strip of black tape or a Department issue "In Memory Of" badge cover horizontally across the face of their badge.

The DPS communications facility serving the area where a funeral service is to be conducted for a member of the Department, who was killed in the line of duty, will observe a one-minute period of radio silence at the time the memorial or funeral service is scheduled to begin.

At the time the service is to begin, the appropriate DPS communications facility will make the following broadcast: "As a memorial to \_\_\_\_\_, who was killed in the line of duty, this station will observe, except for emergency traffic, one minute of radio silence."

**80.06 Funeral Processions.** Through custom, funeral processions should be given the following respect from all motorists:

1. When meeting or being overtaken by a funeral procession, pull to the right and stop when practicable, remove headdress, and wait for the procession to pass. When stopping is not practicable, slow down, remove headdress, and continue on slowly.

2. In general do not overtake and pass a funeral procession.

3. Never "cut in" or through the procession line.

If conditions make exceptions to the above customs necessary, such exceptions should be made in the most respectful manner possible. Overtaking and passing in a lane not being used by a funeral procession may be done on busy multiple lane highways when traffic conditions make it safer to continue on your way.

## **05.81.00 REGIONAL HONOR GUARD**

### **05.81.00 REGIONAL HONOR GUARD AND PIPE AND DRUM CORPS**

The purpose of the Regional Honor Guard and Pipe and Drum Corps is to provide appropriate honors at the funeral of Department personnel killed in the line of duty. The Regional Honor Guard and Pipe and Drum Corps may also be used

to represent the Department at funerals of Department personnel, both active and retired, who have died under other circumstances. Upon approval of the Director, Deputy Director of Law Enforcement, or the Assistant Director of the Texas Highway Patrol, Honor Guard personnel may also be used to represent the Department at funerals for state police officers in other states and during Police Officer Memorial Week in Washington D.C. Use and assignment of the Regional Honor Guard and Pipe and Drum Corps will be as directed in Annex #9.

All requests for the Pipe and Drum Corps will be approved by the Assistant Director of the Texas Highway Patrol Division.

## **05.82.00 EXECUTING A CLANDESTINE LABORATORY SEIZURE**

**82.01 Policy.** Department personnel shall not participate in the execution of a search warrant on suspected illegal laboratories or clandestine chemical storage facilities unless accompanied by a person certified in clandestine laboratory seizure. Texas Highway Patrol traffic stops which result in the detection of illegal clandestine laboratories and/or hazardous chemicals shall immediately be referred to a certified DPS Narcotics officer or chemist for seizure and processing of evidence, equipment, and raw material.

Handling of any chemical or clandestine laboratory equipment by Department personnel will, for safety reasons, be only at the direction of the certified Narcotics officer or chemist. Personnel requested to assist another law enforcement agency shall advise them of the policy and assist them in arranging for the appropriate DPS support.

### **82.02 Precautions to be Taken**

1. Many of the chemicals that are necessary for the manufacture of drugs in a clandestine laboratory have dangerous explosive and/or cancer-causing properties.

- a. Wear protective clothing and face mask or self-contained breathing apparatus.
- b. Follow Narcotics Service guidelines published in the Clandestine Laboratory Safety Guidelines for Law Enforcement.
- c. All employees who are exposed to clandestine laboratories or hazardous chemicals will fill out and submit to the immediate supervisor the Clandestine Laboratory Chemical Exposure Report. (See Annex #4.)

2. The most immediate dangers in these laboratories are fires or explosions, inhalation of fumes, and chemical burns. Upon entering a functioning laboratory or chemical storage facility, the above-mentioned dangers should be kept in mind, as well as the following:

- a. Be wary of ignition sources. Do not turn on the lights in the laboratory.
- b. Do not smoke at the scene.
- c. Do not take photographs using a flash bulb.
- d. Do not directly handle, taste, or smell any chemicals.

**82.03 Responsibility for Reporting.** Whenever Department personnel are exposed to hazardous chemicals and/or precursors in the line of duty, it is the responsibility of that employee to submit a report of that exposure on the Clandestine Laboratory Chemical Exposure Report.

**82.04 Procedure for Reporting.** The form, Clandestine Laboratory Chemical Exposure Report, will be completed as follows:

#### **1. Form Preparation**

- a. SSN: Enter Social Security number.



- b. Name: Enter first name, middle initial, and last name of the person reporting.
- c. I.D.: Enter ID number.
- d. Service: Enter assigned service.
- e. District/Area: Enter assigned district and area.
- f. Station: Enter assigned station.
- g. Location of Laboratory: Enter the city/county where lab was seized.
- h. File Number: Enter Narcotics Service file number. THP personnel must obtain this number from the Narcotics Service.
- i. Date and Time: Enter date and time.
- j. Type of Structure: Enter home, apartment, motel, etc.
- k. Type of Lab: Enter type of lab seized.
- l. Activity: Enter purpose for entry into lab.
- m. Length of Exposure: Enter minutes or hours employee was exposed to chemicals.
- n. Chemical Exposure:
  - 1) Chemicals Present: List chemicals seized.
  - 2) Form: Enter liquid, powder, etc.
  - 3) How Contracted: Check inhaled, ingested, or skin contact.
- o. Symptoms and Treatment: Describe any symptoms or medical treatment.

## 2. Distribution

- a. CLE personnel will submit one copy through channels to district level and one copy to Human Resources Bureau.
- b. Crime Laboratory personnel will follow reporting procedures as per Crime Laboratory policy.
- c. THP personnel will submit one copy through channels to district level and one copy to Human Resources Bureau.

## 05.83.00 EVACUATION PLANS FOR DEPARTMENT OCCUPIED FACILITIES

**83.01 Policy.** Any fire, bomb threat, emergency situation, or expressed threat to Department personnel or property will be considered a bona fide emergency and will call for the activation of this plan to evacuate appropriate facilities. The Department emergency evacuation procedures will be observed in any situation requiring the evacuation of personnel from Department facilities. Deliberate violations of these guidelines which place lives or property in danger will be cause for disciplinary action in accordance to Chapter 7A of the General Manual.

Fire evacuation drills may be conducted on an “as needed” basis, but must be done at least annually. The same provisions apply during a drill as would apply during a real emergency requiring building evacuation.

### 83.02 Planning

1. Each Department facility is required to have a written evacuation plan individually tailored from the components listed in this section to meet the needs of the facility. This plan is to be communicated to each Department employee within the facility.

2. The division having principal responsibility for the facility will be responsible for ensuring these written procedures are developed for the entire building without regard to the various DPS divisions co-located but what is best for all Department employees as a whole. It is recommended that a planning committee be formed during the initial writing of these procedures so each division is represented and able to participate in developing emergency evacuation procedures.

3. Employees who office in buildings not owned or leased by the Department shall adhere to the owner's evacuation plan. If one is not developed, a written evacuation plan with a designated assembly site should be developed for Department personnel. In addition, the evacuation route should be posted in strategic locations such as the reception area for the public.

4. Each regional commander or other field supervisor having principal responsibility for the facility will notify, in writing, their respective chief when the plans are complete. In addition, notification should be provided to the region's lieutenant responsible for safety education duties and the Department's Risk Manager. The regional commander shall appoint one individual to be responsible for ensuring all facilities (except Headquarters), located in their region has complied with this section. The name of this individual should be forwarded to the Department's Risk Manager.

5. The Chief of Administration shall maintain an emergency evacuation procedure plan for the Headquarters complex. (Refer to Chapter 22, Section 15.00, for additional details.)

**83.03 Components of the Written Emergency Evacuation Plans.** The emergency evacuation procedures to be included in the written plan designed for Department facilities are summarized below. A copy of the master plan, HR-100 (9/04), used by the headquarters evacuation coordinators is on file in the Health and Safety Section of the Human Resources Bureau and will also be available from Reproduction and Supply of the General Services Bureau should you need additional assistance developing an emergency evacuation plan.

1. Definitions of the terms used in the emergency evacuation procedures. Terms that should be included are: the "all clear" signal signifying it is safe to return to the building, evacuation alternates, assembly sites, audible alarm system, Building Evacuation Coordinator, Emergency Command Center, Emergency Coordinator, Evacuation Buddy, Floor Evacuation Coordinator (if necessary), primary evacuation route, and secondary evacuation route. (For examples of definitions, see Chapter 22, Sec. 5.03.)

2. Assign a specific individual who will be responsible for reviewing the evacuation plan for each facility. These plans should be reviewed at least annually. In addition, this individual is responsible for providing annual training in the evacuation procedures for all building and floor evacuation coordinators and evacuation buddies. This individual may be the same as the building evacuation coordinator.

3. Emergency information sheets should be included and posted in prominent places around the building. The emergency information sheets shall contain the following information:

- Building Location
- Emergency Numbers
- Emergency Personnel
- Building Evacuation Coordinator
  - Name and extension
- Building Evacuation Coordinator (Alt)
  - Name and extension
- Building Evacuation Coordinator (Alt)
  - Name and extension
- Floor Evacuation Coordinators
  - Name and extension (one per floor)
- Floor Evacuation Coordinators (Alt)
  - Name and extension (one per floor)
- Evacuation Buddies
  - Name and extension (one per floor)

4. Description of how the occupants will be notified to evacuate the building and who should be contacted when an emergency situation develops.

5. "Evacuation Procedure" instructions for employees and other occupants should be included. Refer to Section 83.04 for guidance in writing this portion of the procedures. Due to the sensitivity of the fire detection equipment, it is possible that false alarms will occur. All employees are required to evacuate during an alarm. Always assume that an alarm is real unless informed otherwise by the Building Evacuation Coordinator.

6. Descriptions of the specific procedures each of the evacuation coordinating staff shall follow. Included in this section should be the Building Evacuation Coordinators, the Floor Evacuation Coordinators, and the Evacuation Buddies.

7. Include procedures to address how persons with disabilities who are unable to evacuate via the stairwells will be safely evacuated. All procedures will be written to maintain the dignity of the individual and confidentiality of the disability.

8. Include maps detailing routes of egress to the exterior of the building. Post these maps in strategic locations so visitors and employees can clearly determine the quickest way to exit the building during an emergency.

9. Include maps that direct where each section will meet outside of the building. Also determine where the initial emergency command post will be set up. Communicate this to each employee and post this information in strategic places in the building.

10. The plan should contain procedures to address evacuation during a fire emergency, including the written procedures in Section 05.85.00 on how to properly use a fire extinguisher.

11. The plan should contain information on what to do should a bomb threat be received and, if necessary, the evacuation procedures to be followed. Information in Section 84.03 should be incorporated into the written bomb threat procedures.

12. Also address other emergencies such as power failures, severe weather, elevator malfunctions, and after hours emergency procedures.

13. List the responsibilities during an emergency for personnel in the top management positions to all employees. In addition, describe the responsibilities of the Building Evacuation Coordinators, Floor Evacuation Coordinators, and Evacuation Buddies.

**83.04 "Evacuation Procedure" Instructions.** Follow these instructions when notified of the need to evacuate the facility:

1. Evacuate the building immediately by way of the nearest evacuation route. Do not call any of your fellow employees to determine if you must evacuate. If you are duly notified verbally or through an alarm system, you must evacuate immediately.

2. Follow the instructions of the evacuation coordinators. Stop what you are doing and walk—do not run—to the nearest exit. Close all doors behind you but do not lock them.

3. Take all personal belongings such as purses, coats, and car keys only if they are within reach. Do not return to your office to get personal belongings.

4. Enter stairs single file and stay to the right of the stairway.

5. Go to your designated assembly site so your presence can be accounted for. Contact your Floor or Building Evacuation Coordinator if you are not sure where your assembly site is located.

6. Do not use the elevators. If the power fails, you may become trapped in the elevator. During fire alarms, elevators are taken out of service and returned to the ground floor and the doors will remain in an opened position.

7. If you require assistance from an Evacuation Buddy, proceed to the area of rescue and wait for further instructions or to be evacuated. If you have not already been assigned an Evacuation Buddy, contact your Building Evacuation Coordinator.

8. Do not smoke during the evacuation because of the danger of flammables and employees are located in close proximity to each other in the assembly areas. If necessary, employees may smoke after the all clear signal has been given.

9. Do not move vehicles. Many emergency vehicles will be trying to gain access to the facility and numerous pedestrians will be in the parking lot making it difficult for vehicles to leave the area. If there is an emergency and you need to leave the campus, then you must receive permission from the command post to move your vehicle.

10. Do not reenter the building until the appropriate person has given the all clear signal. The all clear signal is an announcement that it is safe to return to the building.

**83.05 Evacuation During a Bomb Threat.** If employees are required to evacuate, these procedures should be followed:

1. Employees should search their work area for suspicious objects. Since this is their primary work area, they are the most familiar with what does or does not belong.

2. Report suspicious objects to the evacuation coordinator or command post from a safe location. Leave the suspicious object alone. Try to recall any suspicious circumstances or events out of the ordinary and report this as well.

3. Warn fellow employees/visitors in the near vicinity that a suspicious object has been found. Follow the "Evacuation Procedure" instructions, Section 83.04.

## **05.84.00 RESPONSE TO BOMB THREATS (Rule §1.101)**

### **84.01 Policy**

1. The primary responsibility for police action designed to search for a reported bomb at any location, other than premises occupied by the Department, lies with the principal local law enforcement agency in whose jurisdiction the reported bomb threat is located. We will assist these agencies as requested and within the limits of our capabilities.

2. The Department will not train and equip bomb disposal squads. As a matter of policy, we will depend on the Explosive Ordnance Disposal service available from military installations or local law enforcement agencies, to remove a discovered bomb in those instances where we must accept the responsibility for its removal.

3. The Department will assume primary responsibility for necessary evacuation and search of any premises occupied by the Department and in which a bomb has been reported.

4. The ranking Department supervisor present will be in command of all Department personnel involved in the search for a reported bomb.

5. A comprehensive written plan will be developed outlining the proper search and evacuation of each property owned or rented by the Department which will be included in the Emergency Evacuation Plan required by Section 83.00.

#### **84.02 Liaison With Local Agencies**

1. Each regional commander will be responsible for making each sheriff, chief of police, and city marshal within the region aware of the fact that we stand ready to assist local officers in a search for a reported bomb.

2. Each regional commander will also acquaint each police department and sheriff with the information found in Section 84.05 which is pertinent to that particular county.

#### **84.03 Report of Bomb Threat on Department Occupied Facilities**

1. Information concerning the presence of a bomb usually will be received by telephone, by a letter, or note. Every bomb threat must be considered genuine when it is originally received. All threats should be investigated.

2. If you receive a bomb threat by phone, try to notice and remember as much as possible while the caller is on the line. Normally a phone call will be of short duration. Upon receiving a bomb threat by phone, if possible ask:

- a. Where is the bomb located?
- b. When will the bomb detonate?
- c. What does the bomb look like?
- d. What type of bomb is it and how will it be detonated?
- e. What is your name?
- f. Will it endanger innocent people?
- g. Is there a specific target?
- h. Why did you place the bomb?

Upon hanging up, immediately initiate the notification procedures as outlined in #4 of this section. Use a confidential manner of communication to reduce the possibility of panic.

3. If the threat is communicated by letter or note, limit the handling of the note and/or any envelope. Immediately initiate the notification procedures as outlined in #4 of this section.

4. Contact the executive officer on duty or the highest ranking peace officer immediately available. If none of these persons are immediately available, telephone your division chief's office during normal office hours or the nearest communications facility during nonstandard office hours. Austin Headquarters personnel should contact the Headquarters Security Detail at extension 3333. Follow the instructions of the official contacted.

5. The contacted official should immediately inform the Chief of Criminal Law Enforcement who will be responsible for handling the investigation into who may have made the bomb threat.

#### **84.04 Report of Bomb on Premises Other Than Those Occupied by the Department**

1. The person receiving notification that there is a bomb at a place other than premises occupied by the Department will take the information offered and then advise the person giving the information that he or she should call the city police if the location in question is in a city having a police department. If there is no police department responsible for the area in which the bomb is said to be located, the person should be advised to give the information to the sheriff.

2. The Department employee will then immediately notify the highest ranking Department peace officer or noncommissioned supervisor available at the time (in that order), who will in turn pass the information received to either the police department or sheriff. The peace officer or supervisor will at this time offer the assistance of the Department in any search the local authority might contemplate.

**84.05 Disposition of Explosive Devices.** Since personnel of this Department generally have had no formal training and have no technical knowledge concerning the removal or disposal of suspected explosive devices, it will be our policy to rely on trained units outside the Department for such assistance when suspected devices are discovered and the Department has accepted responsibility for removal. Recognizing, of course, that the local police or sheriff's department has the primary responsibility for this duty.

#### **05.85.00 USING A FIRE EXTINGUISHER**

Learn the location of the nearest extinguisher. Evacuate all occupants of the room before using an extinguisher. Do not use the fire extinguisher if the fire has spread past the point of origin. Be sure your safe exit is not blocked by the fire or other obstacles.

Follow the operating instructions by remembering the PASS-word.

- Pull the pin.
- Aim the extinguisher nozzle at the base of the fire. (Approach no more than 8-10 feet from the fire.
- Squeeze the trigger while holding the extinguisher upright.
- Sweep the extinguisher from side to side, covering the area of the fire with the extinguishing agent.

#### **05.86.00 OUT-OF-AGENCY STAFF DEVELOPMENT**

Out-of-agency staff development is education or training authorized by the Department for selected individual staff members. Such education may consist of workshops, seminars, institutes, training sessions, college courses (with or without academic credit) and other special programs or activities offered either within or outside the State. These will be conducted primarily for the benefit of the Department. Out-of-agency staff development must be of a concentrated, precise content and designed to improve the individual's professional or technical knowledge in the performance of his present or prospective duties and responsibilities.

**86.01** The objective of out-of-agency staff development is to improve the efficiency and the economy of departmental operations by:

1. Developing a well-trained staff, both professional and supportive.
2. Assisting employees in achieving their highest potential usefulness.

**86.02** Out-of-agency staff development programs will be used to:

1. Identify staff members for staff development programs and to determine the exact kind and scope of programs needed.
2. Train individuals for current assignments and develop them for future assignments as a means of improving the quality and quantity of work done.

3. Qualify supervisors in the Department to assume and discharge their primary responsibility for the maximum utilization of personnel, the training of staff members, and the maintenance of sound employee relations.

### **86.03 Participation in Out-of-Agency Staff Development**

1. All training and education so authorized must be related to the individual's current or prospective duty assignment (it may be considered as the employee's current duty assignment during the period of his participation in the training program).

2. Training must be recommended by the appropriate supervisor or commanding officer and approved by the Director. The program must be of a concentrated, precise content and designed to improve the individual's professional or technical knowledge.

### **86.04 Administration**

1. Employees receiving Department authorized out-of-agency staff development training will be obligated to fulfill such terms and conditions as the Director may prescribe, compatible with the nature and extent of the training or education provided.

2. If the training or education is of an extended duration, these conditions may include an agreement by the persons to remain in the employ of the Department for a fixed period of time or the repayment of the cost of such training in the event the individual for any reason, except circumstances beyond his control, fails to complete the approved training or otherwise defaults on any of the provisions of the agreement.

## **05.88.00 IN-SERVICE TRAINING AND EDUCATION**

In-service training and education is defined as job oriented training which is provided essentially within the Department. It may include on-the-job training, training in preparation for job assignment, and continuing training programs which are basically job oriented.

This type of training is intended to equip an individual to perform a particular task within a particular situation and/or to equip the employee to deal with new technological and legal developments, to develop additional work capabilities, or to increase his level of competence.

**88.01 Program Elements.** For convenience, in-service training and education programs are divided into three principal areas: Orientation, Basic Training for a Specific Task, and Advanced Training.

1. **Orientation.** This type of training serves the purpose of orienting the employee to a new job situation. It does not include the development of skills for that particular job.

2. **Basic Training for a Specific Task.** This will include recruit type training involving job knowledge and/or the development of skills required for a specific task. It will also include training in supervisory and managerial skills.

3. **Advanced.** Advanced training is intended to include the development of a higher level of skill, an increase in job knowledge, and instruction in new concepts and changing aspects of job responsibility.

### **88.02 Administration**

1. The Department recognizes a basic responsibility to provide training as the individual situation may require. It is recognized that the need for some of these programs will vary according to skills required within the Department itself

and the availability of preemployment training. Manpower needs and the availability of skilled applicants may also be a determining factor.

2. While the Department has the responsibility for providing the training, the employee has an obligation to successfully complete the prescribed program. Both the Department and the employee will discharge this responsibility as a continuation of the selection process.

**3. In-Service Training - Law Enforcement Divisions.** Enforcement services of the Department will conduct in-residence in-service training programs at the Law Enforcement Academy each two years. Preferably, training programs shall be initiated in the year immediately following the legislative session. Additional in-service training may be conducted in the field through the use of field training units as the need arises.

In-residence in-service training will consist of a minimum of 40 schedule hours and a written examination will be given covering the material presented in each school. Each person must be in attendance for at least nine-tenths of the scheduled class hours and, make a score of 75 or above in order to receive a certificate.

**4. In-Service Training - Administration Division.** In-service training for members of the Administration Division will be conducted as the need arises.

**5. In-Service Training Committees.** The Director will appoint a training committee for each service in the Texas Highway Patrol, Driver License, Criminal Law Enforcement, and Ranger Divisions. The Criminal Law Enforcement Division Training Committee shall consist of one member from each service within the Division. Each of the committees shall consist of three service commanders, an Inspector from the Office of Audit and Inspection, and the Director of Training. Except for the Inspectors and Director of Training, who shall be permanent members, committee members shall be appointed on an annual basis so as to give stability and continuity to the membership of the committees. The Administration Division Training Committee shall consist of one member from each service within the Administration Division. The members will be appointed on an annual basis with permanent members being the Assistant Chief, Administration Division, Staff Support Services, Commander of Training; and the Administration Division Training Coordinator. Refer to Annex #1 for current list of training committee members.

It will be the duty of each committee to evaluate service training needs, to recommend instructors and curriculum for in-service training, and to work with the Director of Training on the development of training units for service training manuals.

Although it is required by policy that all training curricula including lesson plans receive the approval of the in-service training committees, unforeseen changes in subject matter can occur during an in-service period.

It shall be the responsibility of the in-service committees to ensure that the in-service field coordinators assign a member of each in-service class (one person per week) to prepare a complete set of class notes. This should also include books and other printed literature given to students. The Administration Division Training Coordinator will make such assignments when necessary for Administration Division in-service schools.

At the conclusion of each scheduled in-service school, the in-service field coordinator or Administration Division Training Coordinator shall obtain the complete set of class notes and submit them to the Training Bureau. The Training Bureau In-Service School Coordinator will maintain a file of the notes and inform the in-service training committees concerning variations in the subject matter of any course.

6. Scheduled dates for in-residence law enforcement in-service training for each fiscal year shall be recommended by September 1 of that year.



7. Training curricula will be presented for approval well in advance of the scheduling of the classes, preferably six months, with the exception of new legislation, information on which may not be available at the time of original planning.

8. Members of this Department selected as instructors will be required to adequately prepare for their teaching assignments, to construct detailed lesson plans, and to present their material to the committee for suggestions and recommendations prior to final preparation for teaching.

9. Materials to be used for in-service training requiring reproduction will be submitted to the Training Bureau 90 days before scheduled use.

**88.03 Guidelines for In-Service School Coordinators.** The following guidelines will be followed by all supervisors or commanders assigned as school coordinators for any in-service school conducted at the Law Enforcement Academy.

1. The field coordinator in charge of each school will call students together, on the afternoon of their arrival at the Academy, at a designated time, in the assigned classroom and brief them on rules, regulations, and conduct while attending the training.

2. The field coordinator will exhibit an attitude of enthusiasm for the training throughout the school and convey this feeling to all students and supervisors.

3. Each instructor will be introduced by the field coordinator with appropriate remarks.

4. Each field coordinator and supervisory personnel who may assist him will be at the Academy or immediately available at all times. In case the coordinator must leave the Academy he will designate someone from the group to perform his duties.

5. The coordinator will be responsible for the attendance of all students and their being on time for all classes. The field coordinator may excuse a student for an emergency or illness. Purchasing gasoline, delivering mail, conducting personal business, visiting friends, having cars repaired, or picking up supplies shall not be valid absences from class for either operations or supervisory personnel.

6. Any misconduct by students, either on or off campus, shall be investigated by the coordinator or his designee. A report of such misconduct shall be prepared and submitted to the miscreant's commander with appropriate copies for his supervisor via the chief's office. Corrective action will be initiated by the individual's field supervisor and in some instances by their Division Chief.

7. The staff coordinator from Training will work closely with the field coordinator, providing materials, projectors, equipment, and any assistance required in conducting the training.

8. Exams, grading of papers, and recording of the training record will be supervised by the staff coordinator from Training.

**88.04 Supplemental Training Based on Changes in Policy, Law, Etc.** Changes occur periodically in policy, law, and practice which become essential to the effective discharge of the Department's mission. Often it becomes necessary to incorporate these changes in the various types of training courses we provide for our operations personnel. This section is intended to provide a method to accumulate the needed information, that it comes to the attention of those who plan training courses, that it is presented properly, and that a permanent record is kept as proof that the training was provided to the students.

1. **Training Committees.** The various training committees are responsible for:

- a. Collection of all material required to keep the service personnel the committee represents properly informed. This, as a minimum, shall include all law changes including pertinent court decisions, new and modified policies, and the latest law enforcement procedures. Normally, the inspector assigned to the committee will assume this responsibility.
- b. Selection of course material to be presented.
- c. Selection of instructors which will come from the field services.
- d. Recommending instructors which will come from outside the field services.
- e. Assisting the Training Bureau in planning course schedules.
- f. Reviewing lesson plans prepared by the various instructors.
- g. Previewing the course presentations prior to actual instruction.
- h. Monitoring the classes from time to time to assure that the material is being presented properly and completely.
- i. Advising all instructors selected for a particular course that they are to submit to the Training Bureau two (2) exam questions for each hour of instruction.
- j. Ensuring that all instructors and attendees understand that TCLEOSE rules require full attendance of all classes. Excused absences must be made up and the make-up method must be approved by the Training Bureau staff coordinator.

**2. Training Bureau.** The Training Bureau will be responsible for:

- a. Assigning the dates for in-service schools for all services. This will be done in consultation with training committees, but this bureau must retain control of the dates because of classroom, dormitory, and cafeteria limitations.
- b. Providing a coordinator for each school planned by the training committees.
- c. Assuring that the coordinators work closely with the committees to produce the best training possible.
- d. Providing a training atmosphere which promotes learning.
- e. Providing all administrative support necessary to successfully complete the training planned by the committees.
- f. Maintaining a permanent record of all training including those who are trained, the course content, and signed copies of the lesson plans as prepared by the instructors.
- g. Assembling exam questions submitted by instructors into a meaningful exam to be given at the end of each school, arranging for grading of exams and recording of scores, and arranging for make-up exams for those who did not pass.

**3. Division Chiefs.** The division chiefs are expected to see that their employees are adequately trained to perform their duties in an efficient, courteous, and lawful manner.

## **05.90.00 INTERNSHIP TRAINING**

Internship training is that type of learning experience which can be obtained only through actual work experience. Internship programs will generally be considered to be of longer duration than other types of training discussed under the headings In-service and Staff Development.

These programs allow the Department to screen potential employees while simultaneously enjoying the advantages of a recruiting position. Such programs will also facilitate the infusion of new people and new ideas by establishing a desirable relationship between the Department and the sponsoring university or agency. Such programs will allow the Department to gain trained personnel who can carry a heavier work load in a relatively short time. Although internship programs will produce a work product, this is not the primary justification for the program.

## **90.01 Program Types and Elements**

1. Type I will include persons who are not usually employed by the Department, but who are engaged in an educational program, an important aspect of which is a job-related situation in the Department for a specific period of time.

2. Type II involves a person employed by the Department who is broadening his knowledge and gaining additional skills by placement within another agency for a specified period of time.

## **90.02 Responsibility and Requirements of Type I**

1. The responsibility for developing, coordinating, and supervising the overall internship program is assigned to the Training Bureau. Responsibility for local assignments and personal supervision will be assumed by departmental members as designated by the division chiefs or regional commanders.

2. The program should be 10 to 12 weeks in length with each intern workweek consisting of up to 40 hours. The number of work hours, from 120 to 480, are to be completed for each college semester. The number of hours shall be determined by mutual agreement of the university representative and the Department's Internship Coordinator.

3. Applicants must be a student of an accredited college or university and meet the minimum eligibility requirements of that institution's internship program. Additionally, they shall not be on scholastic probation at the time of application or during intern tenure.

4. Students will not be assigned to obvious high-risk activities nor those of a confidential nature. Emphasis should be on organizational structure, administration, management and supervisory relationships, communications, personnel and training procedures, traffic law, and laboratory activities. They should be broadly exposed to the daily activities of all uniformed services.

5. The student will be subject to the normal rules and regulations of the Department pertaining to dress, appearance, supervision, and personal conduct. Lack of cooperation, misconduct, unusual absences, or any other undesirable action shall be grounds for terminating internship. The Training Bureau shall serve as liaison between the Department and the college advisor(s) and shall inform the advisor(s) of any undesirable behavior.

6. All applicants for internship must be processed through the respective colleges. No individual requests will be considered.

7. Students may be assigned to the Austin headquarters or to any regional or district areas where ample observation and participation opportunities are available. Location assignments will be made at the discretion of the Department, with consideration given to the needs of the individual student.

8. Department supervisors shall submit evaluation reports as specified. A final report will be compiled by the Training Bureau and forwarded to the respective college.

## **90.03 Procedure for Type I**

1. Texas colleges and universities shall notify the Department of Public Safety of the number of students desiring internship.

2. The Training Internship Coordinator shall evaluate the requests and inform the colleges of the positions available.

3. The applicant shall have the respective college Internship Coordinator forward a letter to the Department's Internship Coordinator indicating that the applicant is enrolled in that respective college and meets the minimum qualifications for an internship for that particular college.

4. Formal applications and letters of endorsement shall be submitted by the respective college internship coordinator. Additionally, each prospective intern must complete an HR-1 State of Texas application for employment, HR-2 DPS supplement to state application, HR-9 Personal History Statement, Rider Waiver of Liability as well as an official copy of transcript. A background investigation shall be conducted by the Department, and the student shall be advised of his/her acceptance and the location of the internship. All paperwork shall be turned in to the Department's Internship Coordinator at least eight (8) weeks prior to the beginning of the internship.

5. Evaluation reports will be submitted to the Training Bureau at the conclusion of the internship.

6. Regional commanders and/or chiefs shall advise the Training Bureau of any unusual conduct exhibited by the intern and make recommendations for corrective action.

7. A final evaluation will be compiled by the Training Bureau and submitted to the college advisor.

## **05.92.00 ADMINISTRATION AND FINANCING**

The Training Bureau of the Staff Services Division will serve as the staff service agency for the Department in the administration and coordination of its training and educational programs.

**92.01 Financing.** The training and educational programs will be financed by appropriations and grants as allocated by the Public Safety Commission and appropriate statutes.

**92.02 Definitions and Procedures.** The Training Bureau shall keep accurate records of all training activities described herein and an annual summary shall be furnished the Director, Assistant Director, and Chief of Staff Support Services.

### **1. Field Training Record Categories**

Field Training Records submitted to Training are distinguished in three categories: DPS, Non-DPS, and Non-Law Enforcement Agencies, with each category being unique in design and process. Each category defines the responsibilities related to submission of training reports to Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and the Department's Training Database.

a. **Category 1 - Department of Public Safety (DPS) TCLEOSE Provider.** DPS training coordinators conduct training on behalf of the Department to both DPS personnel and outside law enforcement agency personnel inclusive of commissioned and telecommunication personnel. The training locations are held at the DPS Training Academy or other designated Field Training facilities statewide. Training is provided by qualified DPS instructors, Non-DPS instructors, and approved personnel.

The Training Bureau is responsible for submitting all training hours to TCLEOSE for credit and entry into their database. Additionally, the course title, date and hours will be recorded in the Department's Training Database. Training records shall be sent to the Training Academy Field Training Technician for submission.

Training record discrepancies shall be directed to the Training Academy Field Training Technician.

b. **Category 2 - Outside Agency (Non-DPS) TCLEOSE Provider.** Periodically, DPS personnel attend educational training opportunities sponsored by a Law Enforcement Agency or TCLEOSE Contract Training Provider other than DPS such as: Police Departments, Sheriff Offices, Federal and Government entities or State Universities, etc.

The sponsoring Law Enforcement Agency or TCLEOSE Contract Training Provider is responsible for submitting all TCLEOSE training hours conducted under their supervision. It is the DPS employee's responsibility to verify their training hours with the training sponsor to ensure TCLEOSE credit.

A completed TR-35 and proof of attendance (copy of certificate) shall be submitted directly to the Training Academy Field Training Technician to be recorded into the Department's Training Database.

Training record discrepancies concerning TCLEOSE submission shall be directed to the sponsor of the training. Department Training record discrepancies should be directed to the Training Academy Field Training Technician.

c. **Category 3 - Non-Law Enforcement Agency (Non DPS) Non TCLEOSE Provider.** DPS personnel attending educational programs consisting of TCLEOSE approved content, sponsored by Non-Law Enforcement Agency Providers, shall submit a completed TR-35 and proof of attendance (copy of certificate) to be recorded into the Department Training Database and TCLEOSE training hours submission.

Training record discrepancies shall be directed to the Training Academy Field Training Technician.

## 2. Procedure

a. **Record Retention.** It is the responsibility of the Field Training Coordinator to maintain all documents of Field Training at the training site or designated field location in compliance with applicable file retention guidelines.

b. **Training Record Report, TR-35.** The Training Record Report, TR-35, will be completed and shall be submitted to Training no later than ten (10) days after the conclusion of formal training. The TR-35 is available in electronic format and must be typed when submitted. (See Example: General Manual, Chapter 5, Annex #22)

c. **Registration.** Student information shall be collected on the first day of class by completing the TR-35.

d. **Schedule.** A schedule inclusive of daily time blocks with each subject title, subject hour(s), and subject instructor(s) are to be retained in the course files by the Training Coordinator. Training Schedules must be kept updated. (See Example: General Manual, Chapter 5, Annex #23)

e. **Instructor Biosketch.** Each participating instructor must have an updated biosketch on file with the Training Coordinator to be retained in the course files. (See Example: General Manual, Chapter 5, Annex #24)

f. **Lesson Plan.** Each participating instructor must have an updated lesson plan on file with the Training Coordinator to be retained in the course files. (See Example: General Manual, Chapter 5, Annex #25)

g. **Certificates, TR-91B.** Pre-printed certificate blanks shall be obtained from the Reproduction Section of the General Services Bureau by the Training Coordinator.

**92.03 Training Coordinator Responsibility.** It shall be the responsibility of the Division Chief, Ranger Captain, and Regional Commander (for region wide training programs), and Service Supervisor or Service Captain (for district service training programs and/or schools for local officers) to designate the Field Training Coordinator. It is the responsibility of

the Field Training Coordinator to ensure compliance in the administration of the training and submit the Field Training Record Report, TR-35, no later than ten (10) days after the ending course date to the Training Academy Field Training Technician.

Officers will not be entitled to receive certificates unless they met all of the course requirements and are in attendance during at least nine-tenths of the scheduled class hours. To provide adequate records, formal training in the following areas shall be reported:

1. In-house DPS Law Enforcement Academy schools
2. Regional and district training programs
3. Outside schools assisted by Department personnel
4. Department personnel given training at both in-state and out-of-state training courses
5. All other Department training

The TR-91B certificate shall be completed and issued as determined by the Training Coordinator responsible for the training.

Classes should not be scheduled for less than ten (10) officers or students.

#### **92.04 Promoting Efficiency and Uniformity**

1. Supervisors who schedule a training course for other police agencies should assign only competent, qualified personnel to serve as instructors.

2. Close supervision should be maintained over all instruction to police officers, both the Department and outside agencies.

3. All instruction should conform to Department policy and follow recognized principles of group instruction.

4. Procedures taught in techniques or courses should closely conform to Department of Public Safety procedures.

5. All matters relating to local policies should be handled by the local officials.

6. Whenever practicable, local prosecutors should be encouraged to participate as instructors in classes devoted to Laws of Arrest and Rules of Evidence.

7. Department of Public Safety instructors should utilize, where practicable, Department outlines, standardized lesson plan forms, and other materials. Department outlines containing policy statements, tolerances, and other confidential information will not be made available for distribution to outside agencies.

8. Students must be assessed over the material taught to establish comprehension of the learning objectives. A minimum passing score of 70 percent must be achieved on all written examinations to receive credit. The manner of testing must be documented but the individual test scores will not be recorded or maintained.

#### **05.95.00 USE OF ELECTRONIC CONTROL AND CHEMICAL WEAPONS**

## USE OF CHEMICAL WEAPONS

**95.01 Purpose.** Police officers have a lawful authority to use force to protect the welfare of the public or in situations which constitute self-defense. In order to reduce the risk of injury to the public and the officers during possible physical confrontations resulting from threats of violence, authorized personnel may use approved chemical agent sprays. The use of approved chemical agent sprays as a tool shall be restricted to circumstances authorized by law and only to the degree necessary to accomplish a law enforcement objective.

For the purposes of this section, the definition of chemical agent is defined as oleoresin capsicum, and is referred to as "OC" and "pepper spray." Only chemical agent sprays which have been approved by the Department may be issued and carried by authorized personnel.

**95.02 Issuance.** The appropriate major division assistant director will designate the personnel within the respective division who are authorized and/or required to carry the approved chemical agent spray. Only personnel who receive proper training and who are certified will be authorized to carry and use approved chemical agent sprays. Commissioned personnel authorized to carry chemical agent spray shall only carry a chemical agent spray issued by the Department. Noncommissioned personnel who are authorized to carry a chemical agent spray while on duty shall only carry a chemical agent spray issued by the Department. This section does not apply to noncommissioned personnel who choose to carry a nonissued chemical agent spray for their own personal safety.

**95.03 Training and Certification.** Proper training and certification procedures will be established and updated by the Law Enforcement Education section under the direction of the Deputy Assistant Director of Education, Training and Research and approved by the Director. The implementation of these procedures will be coordinated by the Law Enforcement Education section and will provide for utilization, exposure, and decontamination.

**95.04 Use of Approved Chemical Agents.** Authorized personnel of the Department may use chemical agents as a tool, only when the use of force is justified and that use must stop as soon as the imminent threat of bodily harm no longer exists. Authorized personnel may utilize a chemical agent spray when attempting to prevent further escalation of force or threat of violence. Caution and good judgment must be exercised in the use of the chemical agent sprays. The chemical agent will be carried in the assigned pouch and never displayed or pointed at another individual, except as provided by law and policy. This policy does not preclude the use of a chemical agent spray on a dangerous animal (as defined in the Texas Health and Safety Code, Section 822.041-(2)), if the authorized person perceives the animal as posing a threat.

**95.05 Decontamination.** Authorized personnel who use a chemical agent spray on a subject pursuant to this policy are required to follow prescribed decontamination procedures as soon as practicable. All persons exposed to a chemical agent spray shall be decontaminated. Proper decontamination procedures established as part of the approved training curriculum will be followed. When authorized personnel apply a chemical agent spray to any person and the authorized person perceives that conditions exist that warrant medical evaluation in addition to decontamination procedures, the authorized person should arrange for the subject to be evaluated by appropriate medical personnel.

**95.06 Reporting.** Authorized personnel who utilize chemical agent sprays for any reason other than training shall report the use of the chemical agent through channels to the appropriate major division assistant director. The Incident Report, HQ-12, will be submitted within ten (10) working days (See General Manual, Chapter 8, Annex #1). After review by the major division assistant director or designee, this report will be forwarded to and maintained by the Education, Training, and Research Section for statistical analysis, and for evaluation of the effectiveness of the chemical agent spray and of the established training procedures.

## USE OF ELECTRONIC CONTROL WEAPONS

**95.07 Purpose.** Police Officers have the lawful authority to use force to protect the welfare of the public or in situations which constitute self-defense. In order to reduce the risk of injury to the public and officers during possible physical confrontations resulting from threats of violence, authorized personnel may use approved electronic control weapons. The use of approved electronic control weapons as a tool shall be restricted to circumstances authorized by law and only to the degree necessary to accomplish a law enforcement objective.

For the purposes of this section, only electronic control weapons which have been approved by the Department may be issued and carried by authorized personnel.

**95.08 Issuance.** The appropriate major division assistant director will designate the personnel within the respective division who are authorized and/or required to carry approved electronic control weapons. Only personnel who are certified will be authorized to carry and use approved electronic control weapons. Commissioned personnel authorized to carry electronic control weapons shall carry only those electronic control weapons issued by the Department. This section does not apply to noncommissioned personnel who choose to carry any non-issued electronic control weapon for their own personal safety.

**95.09 Training and Certification.** Proper training and certification procedures will be established and updated by the Law Enforcement Education section under the direction of the Deputy Assistant Director of Education Training, and Research and approved by the Director. The implementation of these procedures will be coordinated by the Law Enforcement Education section and will provide for utilization, exposure, and after-deployment care that is in accordance with manufacturer requirements and standards.

**95.10 Use of Approved Electronic Control Weapons.** Authorized personnel of the Department may use electronic control weapons as a tool only when the use of force is justified and the use must stop as soon as the imminent threat of bodily harm no longer exists. Authorized personnel may use an electronic control weapon when attempting to prevent further escalation of force or threat of violence. Caution and good judgment must be exercised in the use of the electronic control weapons. The electronic control weapon will be carried in the assigned holster and never displayed or pointed at another individual, except as provided by law and policy. This policy does not preclude the use of an electronic control weapon on a dangerous animal (as defined in the Health and Safety Code, Section 822.041-(2)), if the authorized person perceives the animal as posing a threat.

**95.11 After Use Procedures.** When authorized personnel who use an electronic control weapon on a subject pursuant to this policy perceives that conditions exist that warrant medical evaluation in addition to after-deployment care procedures, the authorized person should arrange for the subject to be evaluated by appropriate medical personnel.

**95.12 Reporting.** Authorized personnel who utilize an electronic control weapon for any reason other than training shall report the use of the electronic control weapon through channels to the appropriate major division assistant director. The Incident Report, HQ-12, will be submitted within ten (10) working days (See General Manual Chapter 8, Annex #1). After review by the major division assistant director or designee, this report will be forwarded to and maintained by the Education, Training and Research section for statistical analysis, and for the evaluation of the effectiveness of the electronic control weapon and of the established training procedures.

## **05.96.00 DEFENSIVE FIREARMS TRAINING, COMPETITIVE SHOOTING PROGRAMS, AND USE OF WEAPONS POLICY**

**96.01 Philosophy.** The Department's firearms program is designed to ensure that all DPS commissioned officers and field-based communications personnel are adequately trained and qualified and that they maintain proficiency in the proper use of issued firearms and those authorized to be carried in lieu of, or in addition to, issued firearms. This program does not intend to regulate DPS employees' lawful and prudent use of privately owned firearms for other purposes such as recreation.



1. The Training Bureau Firearms Training Lieutenant is charged with the responsibility for administering the Department's Firearms Training Program.

2. All references to the Firearms Training Unit or Firearms Training Facility for purposes of this Chapter are referring to the training unit and facility located in Florence.

**96.02 Carrying Firearms.** Commissioned officers are authorized to carry firearms at all times and places in compliance with the laws of the state of Texas, or outside of the state of Texas, in the performance of duty commensurate with the law and custom of the jurisdiction in which the employee is physically located.

Department issued shotguns are provided for employee protection purposes in most Communication centers. Employees having access to these firearms will be guided by the portions of this policy applicable to shotguns and will be provided shotgun training consistent with the policy except that qualification may be accomplished with buckshot rather than rifled slugs.

1. All officers will carry the firearm issued by the Department unless granted authorization to carry a firearm other than issued as provided in Section 96.03.

2. Semiautomatic handguns will be equipped with factory or Hogue brand grips and no other accessories are permitted.

3. Laser devices are not approved, except for specialized applications such as the SWAT Team, special response teams, and other appropriate applications approved by the appropriate Division Assistant Director.

4. Department issued shotguns may be equipped with slings, sidesaddles, sights or replacement stocks approved by the Department. Only one-piece magazine tubes are allowed.

5. Department issued rifles may only be equipped with Department approved accessories.

6. Officers will receive training from the Department and will be required to qualify with the firearm before authorization will be given for the firearm to be carried on duty.

7. Officers shall also be able to safely and proficiently load, reload, unload, clear stoppages or malfunctions, and field strip firearms that are issued to them. Any firearms carried in addition to or in lieu of their issued firearm will require qualification and the officer must demonstrate safe and proficient use of the firearm as described above.

8. All **pump** shotguns shall have the magazine fully loaded but the chamber shall be empty. The trigger shall be pulled and the safety off.

**9. Semi-automatic shotguns may be carried with a round in the chamber with the safety on.**

10. All rifles shall have the magazine fully loaded but the chamber shall be empty with the safety on.

11. Rifles equipped with holographic sights will be kept within DPS issued vehicles with the backup iron sights in the up position and the holographic sights turned off. This will allow a clear sighting picture if the rifle has to be employed quickly. When employing the holographic sight, the unit will be turned on and the backup sights will be flipped down for operation. New batteries will be installed each year during annual qualifications.

12. Returning a rifle from a deployed state to a patrol carry condition:

a. Remove the magazine from the rifle to remove the ammunition from the shoulder firearm.

- b. Cycle the **charging handle** several times visually and physically observing that the weapon is unloaded.
- c. Close the bolt and latch the charging handle.
- d. Move the safety switch to the safe position.
- e. Reload the rifle leaving the chamber empty. Pull down on the magazine to ensure that it is properly secured by the magazine latch.
- f. Close the dust cover.
- g. The rifle is now ready to be carried in the patrol unit with the trigger not pulled, chamber empty, and safety on.

12. Returning a **pump** shotgun from a deployed state to a patrol carry condition:

- a. Manipulate the slide on the shotgun to remove the ammunition.
- b. Cycle the slide several times visually and physically observing that the weapon is unloaded.
- c. Close the slide.
- d. In a safe location, point the shotgun in a safe direction and pull the trigger.
- e. Reload the shotgun leaving the chamber empty.
- f. The **pump** shotgun is now ready to be carried in the patrol unit with the trigger pulled, chamber empty, and safety off.

### 96.03 Carrying Other Than Issued Firearms

1. All firearms carried shall be in compliance with federal firearms regulations. The use of fully automatic firearms shall be restricted to commissioned personnel of this Department who have completed a training course prescribed by the Department for qualification in the use of fully automatic firearms and conducted by an instructor that has been certified to instruct in the use of fully automatic firearms. Service captains will approve and assign, on a need to basis, officers who are to receive training in the use of fully automatic firearms. All short-barrel rifles and shotguns that have been approved to be carried in DPS units or kept in DPS offices that are for law enforcement purposes will be carried on DPS inventory.

2. Firearms that have been approved for museum or display purposes will be carried on DPS inventory.

3. Authorization to carry other than issued firearms on duty may be granted by the Department. Each such authorization shall be recorded through use of form HQ-130, Authorization to Carry Other Than Issued Firearm.

a. Any request to carry a firearm other than those issued by the Department must include any accessories or alterations to the firearm. Approval will not be given to carry a firearm that has been altered in any manner, which affects the normal and safe function of the firearm.

b. Procedure. Each commissioned officer desiring to carry a firearm on duty in lieu of the issued firearm shall make a request on form HQ-130 to the appropriate Division Assistant Director. Each commissioned officer that desires to carry a firearm in addition to the one issued shall make a request on form HQ-130 to the appropriate district, service, unit, or company commander. The firearm identified shall be presented with the HQ-130 to a DPS certified firearms instructor who will inspect the firearm for safe and proper function. If the instructor approves the firearm, the form will be forwarded through channels to the Division Assistant Director when required. The firearm in question will not be carried until an approved form is returned to the employee, and qualification is successfully completed.

Requests by the Division Assistant Directors, Regional Commanders, and director's staff under this section will be made to the Deputy Director of Law Enforcement.

The form, HQ-130, original and one copy, will be submitted to the appropriate Service Commander or Division Assistant Director. The original of the approved HQ-130 will be placed in the employee's central personnel file in headquarters and the copy returned through channels to the employee.

**96.04 Care of Firearms.** Commissioned officers shall keep all issued and authorized firearms that are carried on duty, loaded, clean, and in proper working order.

1. All firearms shall be unloaded before being cleaned or inspected.

2. The exterior of all firearms carried shall be wiped with a cloth treated for this purpose, cleaned, and inspected weekly by the employee to whom the firearm is issued to ensure function capabilities.

3. After firing, firearms will be cleaned thoroughly with proper cleaning equipment prior to leaving the range unless extenuating circumstances exist. Ammunition will be removed before spraying any firearm with penetrating solvents and lubricants, and the firearm will be wiped off prior to reloading.

4. Issued firearms needing repair shall be sent to the DPS Firearms Training Unit; however, DPS Certified Armorers may make repairs or adjustments in the field if they are currently certified on that type of firearm.

5. All repairs to DPS firearms made in the field will be reported by interoffice memorandum to the DPS Firearms Facility or entered directly into the Firearms Inventory Tracking System by the certified armorer making the repair. Repairs reported to the Firearms Facility shall contain at a minimum the nature of the repair, inventory and serial numbers of the firearm, and name of the person to whom it is assigned.

6. After a firearm has been cleaned or repaired, a function test of the weapon will be conducted following these steps:

a. Remove the magazine from the rifle or manipulate the slide on the shotgun to remove the ammunition from the shoulder firearm.

b. Cycle the slide/bolt several times, visually and physically observe that the weapon is unloaded.

c. Close the action and place the safety switch (if applicable) in the safe position.

d. Press the trigger to ensure that the safety functions correctly (if applicable.)

e. Place the safety switch in the fire position (if applicable.) Press the trigger to make sure the weapon engages the firing pin. Continue to hold the trigger to the rear.

- f. Cycle the slide once more while holding the trigger to the rear.
- g. Slowly release the trigger and listen for the disconnecter to release the firing mechanism.
- h. Rotate/Press the safety switch to the safe position (if applicable.)
- i. If equipped, inspect the optical site to verify good battery condition.

**96.05 Ammunition.** Except in an emergency, only DPS-issued ammunition shall be carried in issued firearms or in approved firearms carried in lieu of issued firearms. A list of Department approved ammunition can be found in Annex #21.

- 1. All duty ammunition should be inspected to ensure correct caliber as well as casing, bullet, and primer condition.
- 2. All reloaded/remanufactured ammunition used for practice must be approved by the Firearms Training Lieutenant or designee.
- 3. Ammunition shall not be carried in a firearm longer than one year.
- 4. All rifles, shotguns, and handguns, whether DPS issued, carried in lieu of, or in addition to, shall be sighted in with the ammunition being carried.

**96.06 Security of Firearms.** In unlocked offices, firearms shall not be stored in unlocked desks or cabinets or otherwise left accessible to unauthorized persons. Extra care should be taken to ensure the secure storage of firearms to prevent access by minor children.

1. **Handguns.** Commissioned personnel shall take precaution with handguns left unattended to ensure their safety and security, both on and off duty. Handguns shall not be left unsecured in the passenger compartment of a Department or personal vehicle when unattended.

**2. Shoulder Firearms.**

a. Shoulder firearms may be carried in the passenger compartment of the vehicle while the unit is in service and attended, or briefly unattended (for a period not to exceed two (2) hours) during the normal course of duty where there is no apparent risk of theft, and the vehicle is locked. Commissioned personnel are to use great care to ensure that shoulder weapons cannot be accessed by prisoners or suspects that may occupy the passenger compartment of the vehicle.

b. When the vehicle is left unattended for an extended period of time such as overnight, while in a garage for service or repairs, or at any other time where it would be prudent the following guidelines apply:

1) Shoulder firearms will be locked in the trunk or stored in a secure place if the vehicle does not have a trunk.

2) When the firearm is stored in the trunk, if the trunk has a separate key, the operator will retain the key.

3) Vehicles used to store firearms and other law enforcement equipment in the trunk will be equipped with a secondary chain locking system. When firearms and other law enforcement equipment are stored in the trunk under the

conditions stated in #8 above, the secondary locking system will be used. Members assigned to routine patrol activities will disengage the secondary locking system while on duty in order to have immediate access to emergency equipment stored in the trunk.

**96.07 Control of Firearms.** Employees authorized to carry firearms must be aware of those situations where they may be required to relinquish control over their firearms and must comply with all appropriate regulations. Traveling by common carrier (airline), visiting penal or correctional institutions, and testifying in court are instances where the employee may be required to remove the firearm from his personal control. In those instances where the firearm is removed from the personal control of the employee, safety in the handling of the firearm is paramount. The employee will assure that the same firearm is returned to him upon completion of the travel or visit. When firearms are placed in briefcases or luggage for air travel, the airline will be notified in advance and the employee will be responsible for assuring that the luggage or briefcase is secured.

Employees shall not use or handle firearms in a careless or imprudent manner. Dry firing a firearm is prohibited in a DPS building or a building that houses DPS personnel except as follows:

1. DPS certified Armorers may dry-fire a firearm while making repairs and adjustments.
2. DPS certified Firearms Instructors and DPS Inspectors may dry-fire a firearm to check the function of the firearm.
3. Applicants for trooper positions may dry-fire firearms while under the supervision of a commissioned officer who has been designated to conduct applicant testing.
4. Firearms training will be conducted only at a firing range or other location approved by the Service Commander.

**96.08 Discharging Firearms.** Employees who discharge a firearm shall notify their supervisor of the circumstances as soon as possible. This shall also include incidents involving the discharge of a firearm by a person acting at the direction or under the authority of an employee. This requirement shall not apply to those conducting laboratory examinations, participating in firearms training, hunting, sport or target shooting, etc., unless a firearm's discharge results in injury, death, or property damage.

It shall be the responsibility of the employee's supervisor to ensure Headquarters and each level in the chain of command is notified by the quickest means available that the incident has occurred, including all information available at that time. The Firearm Discharge Review Board will assign a file number to be used in the reporting and tracking of the incident.

**96.09 Discharge of Firearm Investigations.** This procedure establishes guidelines to ensure the highest degree of continuity and standardization in the handling of employee-involved firearm discharges, as well as establishing responsibilities and procedures regarding the thoroughness, objectivity, and integrity of the investigation(s) of the incident.

**1. Firearm Discharges Not Resulting in Injury or Death.** The immediate supervisor of an employee involved in a firearms discharge not resulting in death or injury will conduct an administrative firearms discharge investigation. The report of the investigation will be submitted through channels to the Regional Commander or Ranger Company Commander within twenty-eight (28) days of the incident, unless an extension is granted by the Major Division Assistant Director.

The investigation report shall follow form F-1. (See Annex #13.) A Firearms Discharge Investigation Checklist is provided to assist the investigator in making a complete and thorough investigation. (See Annex #14.)

a. The Regional Commander shall make the report available to the Firearms Discharge Review Board.

**2. Firearms Discharges Resulting in Injury or Death.** Firearms discharges resulting in injury or death, including apparent accidental discharges, will be investigated by a Ranger Investigative Team as a criminal investigation intended for prosecutorial review and grand jury presentation. The immediate supervisor of an affected employee will complete the administrative requirements outlined in 96.09(1) and the officer involved shooting report required under section 06.12 of this chapter of the General Manual. In lieu of creating a duplicate investigative narrative on any related forms, the immediate supervisor shall refer to the investigative narrative completed by the Ranger Investigative Team.

“Ranger Investigative Team” means a selected group of Rangers from each of the seven companies who have been trained in the investigation of firearms discharges and are responsible for investigating all incidents within their company. In most incidents, the lead investigator on the Ranger Investigative Team will be the Ranger assigned to the area of the incident.

**3. Responsibilities of Involved Employee(s) and Responding Employee(s) and Supervisors.**

a. To ensure the scene is stabilized and all potential threats to officer safety are resolved, handcuffing an injured suspect may be appropriate to prevent additional assault. This includes the securing of all firearms.

1) An officer’s firearm may be secured by returning it to the officer’s holster or placing it within the interior of a vehicle (i.e., for rifles and/or shotguns).

2) Securing of a suspect’s firearm (or an officer’s firearm, if necessary) may include assigning an officer to guard a firearm to ensure the location and the action of the firearm are not disturbed.

3) When the hazards at the scene or the potential for the firearm to discharge exceed the evidentiary value, the firearm should be photographed to document its location and the position of its action before rendering the firearm safe. Photographs shall only be taken when the scene is stable and all potential threats are resolved.

4) An officer’s firearm may need to be taken for evidentiary purposes. Normally, an officer’s firearm should not be taken until a replacement can be provided. Removal of the firearm should be conducted in a discreet manner by a supervisor or the lead Ranger investigator. If the firearm must be removed at the scene and cannot be replaced, an armed companion officer should be assigned to stay with the involved officer.

b. To provide first aid to all parties when reasonable and request appropriate medical assistance.

c. To assume incident command responsibilities. Special consideration should be given to the following:

1) Gather information necessary to facilitate immediate follow-up and apprehension of outstanding suspects and vehicles and request broadcast of the information.

2) Request additional personnel (if needed).

d. Security and protection of the scene for evidentiary purposes.

1) Establish a perimeter around the scene utilizing crime scene tape, rope, patrol cars, or other available materials. The perimeter should be of sufficient size to provide safety, security, and confidentiality.

2) Identify, protect, and secure all evidence at the scene. Do not move anything unless absolutely necessary. Whenever possible, the item should be photographed in place before it is moved.

3) Establish a preliminary command post (outside of the perimeter of the scene).

4) Keep all personnel (including those from law enforcement and related agencies who have not been assigned duties) outside of the perimeter. Establish a log and record the name, agency, reason, and time of entry and exit of anyone entering the perimeter of the scene.

5) Canvass the area for witnesses. Obtain positive identification of all individuals in the immediate area that may have been involved or witnessed the incident, even if they say they did not see anything. Ensure witnesses are cared for and kept separated.

6) Record the license numbers of all vehicles within close proximity of the incident for possible investigative leads.

7) If necessary, identify a specific area for the media to meet with a designated spokesperson. Ensure the media is kept outside of the perimeter and away from the preliminary command post and involved employees. Do not allow employees involved in the incident to speak to the media. If a designated PIO has not arrived at the scene, any statement to the media should be at the direction of supervisory personnel and, whenever possible, coordinated with the lead Ranger investigator.

8) Be alert to the need to diminish open radio and cellular communications regarding the incident.

**e. Care for injured employees.**

1) Assign an officer to accompany injured employees to the hospital.

2) Supervisory personnel should assign appropriate persons to facilitate personal notification of immediate family and make arrangements to transport the family to the hospital or appropriate location.

f. If a suspect is transported to the hospital, assign an officer to:

1) Remain with the suspect and record spontaneous statements and/or dying declarations.

2) Receive, maintain, and preserve appropriate evidentiary items (i.e., suspect's clothing).

g. In coordination with the lead Ranger Investigator, supervisory personnel should make arrangements for the employees involved in the incident to be removed from the scene as soon as possible and be taken to a quiet, secure setting.

1) Involved employees should not be placed in the back seat of a unit prior to removal from the scene. Although it is not required that involved employees be separated, in order to maintain the integrity of the investigation and any subsequent interview and statement, employees should be instructed not to discuss their observations and the incident among themselves.

2) Ensure involved employees are not subjected to interviews at the scene except to obtain necessary information to assist in locating suspects, witnesses, etc., until the lead Ranger Investigator can be consulted.

3) Whenever possible, involved employees should be allowed to contact a family member to advise them of their status before they hear of the incident from other sources, such as media reports.

h. Ensure nonessential personnel return to routine duties as soon as possible.

#### **4. Responsibilities of Police Communications Operator**

a. Broadcast any necessary information in order to assist in the apprehension of any wanted suspects and/or vehicles.

b. Ensure adequate backup and assistance is sent to the scene.

c. Notify the involved employee(s) supervisors.

d. Notify the Texas Ranger assigned to the area and/or the Ranger captain for that company.

e. Place the DPS Crime Scene Unit for that area on standby.

f. Notify the THP trooper serving as the local PIO for that area.

g. Notify Austin Communications Center in order that the Director's Office, Major Division Assistant Director, PIO, Firearms Discharge Review Board Chairman, and Psychological Services can be notified.

h. Notify the Critical Incident Response Team regional contacts and Psychological Services Regional Counselor.

#### **5. Responsibilities of Ranger Investigative Team**

a. Upon arrival at the scene, assumes primary responsibility for the investigation.

b. If not already done by a supervisor, and in a discreet manner, obtain the weapon(s) of the involved employee(s). Whenever possible, this should not be done until a replacement weapon can be provided.

c. Make the following notifications and requests, if applicable:

- 1) Coroner's Office or Justice of the Peace
- 2) On-call Assistant District Attorney or Investigator
- 3) DPS Crime Scene Unit
- 4) Traffic Crash Reconstruction Team
- 5) Any additional specialist/assistance as needed

d. Ensure the scene is properly documented, photographed, videotaped (if possible), sketched, and diagrammed.

e. Ensure all evidence is properly processed and collected with complete chain of custody.

f. Responsible for all Miranda warnings, suspect interrogations, and taking their statements.



g. Responsible for all interviews of witness and taking their statements.

h. Responsible for interviews of all involved employee(s) and taking their statements.

1) An interview with the involved employee(s) at the scene should normally be limited to a brief account of what occurred in order to facilitate the investigation of the scene. Arrangements should then be made for the transportation of the employee(s) to a secure setting.

2) After completion of the on-scene investigation, the lead Ranger investigator shall make arrangements with the involved employee(s) for a detailed interview and statement. Because of the stressful and traumatic nature of these incidents, and in order to facilitate the best possible recall, the detailed interview and employee(s) statement should not ordinarily take place until the day following the incident and after the employee(s) has had a period of rest.

3) It is the intent of the Department that only one statement be taken from the employee(s). This statement should contain a detailed account of all aspects of the incident.

4) In incidents where video or audio recordings of the incident are available (i.e. - mobile video), the recorded media will not be viewed by the employee(s) prior to the interview. The interview will begin with a complete account of the incident from employee recall. At the exhaustion of recall, the Ranger investigator and the employee will view the recorded media together, continue the interview and then document the incident into a sworn statement. There will be only one statement of fact created, which will include all available information, to ensure the best evidence is presented.

5) Employee(s) will be interviewed separately.

6) Employee(s) should not be required to unnecessarily repeat an account of the incident.

i. Provide PIO or local trooper assigned these responsibilities with information that can be made available to the media.

j. Allow Critical Incident Response Team members access to involved employee(s) as soon as practical.

k. Ensure a log has been established to record the name, agency, reason, and time of entry and exit of anyone entering the perimeter of the scene. All persons, regardless of rank, entering the perimeter of the scene are required to write a report documenting their actions. The original of the report will be forwarded to the lead Ranger investigator for inclusion in the master case file.

l. Reports to be submitted to:

- 1) Appropriate District Attorney's office for review
- 2) Texas Ranger Division Assistant Director

## **6. Responsibilities of Victim and Employee Support Services**

a. Upon notification, that personal injury or death has occurred as a result of an employee-involved firearm discharge, a regional peer response coordinator or a regional VESS counselor will dispatch one or more peers to the scene of the incident, or to wherever the involved employee(s) have been taken. Members of the VESS Team will also consult with supervisory staff to determine the need for additional team members to

respond to others affected by the incident. If a mental health professional is requested by the employee(s), the VESS Counselor should be contacted to make the necessary arrangements.

b. The role of the VESS peers and any behavioral health professional initially dispatched to the incident will be to provide emotional support for the involved employee(s). VESS peer team members should clearly inform involved employee(s) of the limits of confidentiality and dissuade any discussion of the incident with the team member. Critical Incident Response Team Peer team members should provide assistance to the employee(s) and their families through activities such as providing transportation, making telephone calls, providing beverages or food, etc. Team members may also provide involved employee(s) with information on possible stress reactions and methods to cope with stress reactions.

c. The employee(s) involved in the incident will be required to attend an individual post-shooting interview with the Chief psychologist or a designated behavioral health professional. This meeting should occur while the employee(s) is on duty time. The meeting will ideally take place within seven days following the incident and will be conducted in coordination with the employee's chain of command. The meeting will provide education about, acute stress reactions, coping strategies, and the availability of follow-up counseling. The employee(s) may also choose to discuss the details of the incident in confidence but are not required to do so. The staff psychologist or designated mental health professional will be available to meet with family members to address the same areas.

d. The VESS Team upon request will provide a group critical incident stress management meeting for all affected employees, in coordination with the employees' chain of command. The intent of the group meeting is to provide an opportunity to demonstrate support for the affected employees and to provide education about and coping strategies for severe stress reactions. Group participation should be voluntary and all individuals in the group should be given the opportunity for an individual meeting if requested. It is not advisable for the officer(s) who have actually done the shooting to be included in a group meeting unless they truly desire it.

## **7. Administrative Leave and Restricted Duty**

Employees involved in the incident and their chain of command are reminded of the provisions of General Manual, Section 07.06.11, Administrative Leave and Restricted Duty. An employee should not normally be placed on administrative leave until after the employee has completed their statement to the lead Ranger Investigator.

## **8. Firearm(s) Examination**

Laboratory and investigative analysis of a firearm used in a firearm discharge resulting in injury or death may be ordered by the lead Ranger Investigator. After all laboratory analyses are complete and all criminal proceedings are resolved, any firearm discharged by an employee will be forwarded to the Department's Firearms Training Lieutenant for inspection.

## **9. Firearms Report(s)**

a. An inspection of an employee's firearm by the Firearms Training Lieutenant or designee in firearm discharges not resulting in injury or death is not mandatory. However, supervisors conducting these investigations should be alert to circumstances where it would be in the best interest of the investigation and the Department for this to be done, such as accidental discharges or any case where there is a question about the proper functioning or safety of the firearm.

b. The Firearms Training Lieutenant or designee will issue a written inspection report. After all criminal and administrative proceedings have been resolved the firearm may be returned to the employee.

## 96.10. Firearm Discharge Review Board

1. **Purpose.** The purpose of the Firearm Discharge Review Board is to receive and review investigative reports of all Department occurrences involving the discharge of a firearm by a commissioned member of the Department. Occurrences will be reviewed after all Department investigations have been completed. The Board will prepare a written memorandum that will:

- a. Classify the firearms discharge as: “consistent with policy,” “violates policy,” or “unintentional.”
- b. Identify policy, if any, violated by the discharge and articulate why discharge violated that policy.
- c. Make recommendations regarding policy or training practices.
- d. Include “additional findings” as appropriate.

All board findings are based upon DPS policy and do not constitute findings regarding criminal or civil liability.

### 2. Board Requests for Additional Investigation.

a. Administrative Investigations. The board may request that the Director instruct a supervisor who has conducted an administrative firearms discharge investigation to conduct additional investigation necessary to allow the board to classify the discharge according to policy.

b. Criminal Investigations. The board may request that the Director instruct the Office of Inspector General to conduct an administrative investigation in addition to the criminal investigation conducted by the Rangers when additional investigation is necessary to allow the board to classify the discharge according to policy.

### 3. Composition.

The Firearm Discharge Review Board will consist of 5 members:

A member from the Texas Highway Patrol Division; a member from the Criminal Investigation Division; a member from the Texas Ranger Division; ; a member from the Capitol region; and a member from the Education, Training and Research Bureau.

Respective Assistant Directors should appoint individuals holding the rank of Sergeant, Agent, Ranger or higher.

The initial board members will serve a minimum of twenty-four (24) months; thereafter, one-half of the members will be replaced at the beginning of each fiscal year. Each respective Assistant Director will be responsible for appointing new members. The Director will be responsible for appointing the Board Chairperson.

If a board member is involved in a firearms discharge occurrence, or is in the direct chain of command of the affected employee, that member will not participate in the proceedings when the occurrence is reviewed.

4. **Meeting Times and Places.** The Firearm Discharge Review Board will meet as frequently as necessary to ensure that all investigations are reviewed within 28 days of receipt by the board.

### 5. Reporting

**Regional Commander/Ranger Company Commander.** The Regional Commander or Ranger Company Commander of a Department member who is involved in a firearms discharge occurrence that does not result in

injury or death, will forward the complete investigative packet to the Firearm Discharge Review Board Chairman. The packet should include:

- a. A completed report of the investigation
- b. Original color photographs to assist in explaining the events
- c. Any video recording of the event
- d. Any other pertinent information

**Ranger Assistant Director.** The Assistant Director of the Texas Rangers shall provide a complete investigative packet of a firearms discharge, resulting in injury or death, to the Firearm Discharge Review Board Chairman as soon as possible following completion of the investigation by a Ranger Investigative Team. The packet should include:

- a. A completed report of the investigation
- b. Original color photographs to assist in explaining the events
- c. Any video recording of the event
- d. A scale diagram of the scene
- e. Grand Jury findings

**6. Board Findings.** The board will forward the investigation and findings of the board to the assistant director of the affected employee. The assistant director will forward the investigation along with recommendations regarding classification and disciplinary recommendations, if any, to the Office of General Counsel. The Office of General Counsel will provide a written legal evaluation of the investigation, recommended classifications and recommended discipline, if any, to the assistant director of the affected employee. The assistant director will provide final recommendations to the Deputy Director of Law Enforcement. The complete investigative packet will be returned to the Firearms Discharge Review Board for retention.

**7. Notification.** The assistant director will notify the affected employee of the outcome of the firearms discharge investigation and review process after final review by the Deputy Director of Law Enforcement.

**8. Periodic Reports.** The Firearm Discharge Review Board Chairman will provide an annual report to the Deputy Director of Law Enforcement detailing a summary of the Board's findings and recommendations.

The Firearm Discharge Review Board Chairman will provide a semi-annual report to the Assistant Director of Education, Training and Research Division of recommendations for improvements to Department training and pertinent statistical information regarding Department firearms discharges. When a special need or a new trend is identified that will warrant a quicker response, the Chairman will report this information to the Assistant Director of the Education, Training and Research Division as soon as practical.

#### **96.11 Firearms Instructors and Armorers.**

1. Personnel may qualify as a DPS Firearms Instructor by:

- a. Being a certified Department Instructor prior to attending the firearm training course.

b. Attending and passing a DPS Firearm Instructor School, or submitting evidence of successful completion of some other firearm instructor school such as; TCLEOSE Certified, NRA, FBI, or comparable Firearm Instructor Course to the Firearms Training Lieutenant. Prior approval of the curriculum is required before attending a Firearm Instructor Course conducted by someone other than the Department if certification is desired. The training shall include instructor training for handgun, rifle and shotgun.

1) A copy of the curriculum and a firearms proficiency report indicating evidence of firing 90% with a semi-automatic pistol, service revolver, service shotgun and rifle over a course of fire which would meet the standards of this Department must accompany the request.

2) After completion of an outside course, the Firearms Training Lieutenant may require the employee to take a written test and/or shoot the required minimum scores on Department courses of fire prior to making a recommendation concerning their status as a Department Firearm Instructor.

c. Personnel desiring to be an instructor in the use of fully automatic firearms would be required to meet all of the above requirements as well as completing a specialized course for training with these firearms. Prior approval of the curriculum by the Firearms Training Lieutenant is required if Department certification is desired.

2. The Firearms Training Lieutenant or designee shall recommend applicants for certification to the Director, who will make the final decision on those to be certified as DPS Firearms Instructors.

3. Membership in the National Rifle Association is not required.

4. Firearms Instructor emblems will be available at General Stores to qualified individuals, and may be worn on the uniform in the appropriate location.

5. Each major division shall appoint at least one Primary Firearms Instructor and one Primary Armorer (this can be the same person) in each district. The Firearms Training Lieutenant or designee will serve as the Administration Division's Primary Firearms instructor. The Primary Firearms Instructors shall attend Firearms Instructor In-Service Training provided by the Firearms Training Lieutenant. Within sixty days of completion of the in-service training it will be the responsibility of the District Primary Instructor(s) to conduct in-service training for Field Firearm Instructors within their districts. This will assure uniform and consistent training throughout the Department.

6. The District Firearm Instructor must certify the qualification scores of Field Firearm Instructors and report their scores to the Firearms Training Lieutenant within 30 days.

7. The DPS Certified Firearm Instructor duties are as follows:

a. Provide training for commissioned personnel in the use and safe handling of firearms.

b. Provide proper shotgun training guidelines and qualification courses for non-commissioned Communication Service personnel.

c. Give remedial training to personnel who fail to qualify, are assigned, or request such training.

d. Make recommendations to the Firearms Training Lieutenant for the improvement of the firearms program.

e. Conduct qualification courses in accordance with Department policy and ensure all targets are correctly and accurately scored.

f. Instruct firearms related courses at least once each year.

g. Shoot 90% on qualification courses with each issued DPS firearm annually.

h. Check and make recommendations concerning other than issued firearms submitted for approval on the HQ-130, if they are qualified to make the evaluation because of their familiarity and competency with the type of weapon to be certified.

i. Ensure all firearms are cleaned at the conclusion of any shooting activities.

j. Inspect all issued firearms and authorized firearms carried "in lieu of" or "in addition to" issued firearms during each training session. Examples of items to be checked are:

1) Check barrels for rust, dirt, foreign objects, etc.

2) Check actions for freedom of movement and function.

3) Check hammer fall tension on revolvers by holding the trigger to the rear and pulling the hammer to the rear several times.

4) Check action by dry-firing several times to see if trigger returns to forward position after firing each time.

5) Check for push-off by cocking the handgun and pushing forward on the hammer by applying a reasonable amount of pressure. If hammer can be pushed forward, the gun is not safe to carry and should be immediately taken out of service.

6) Check ammunition to insure Department approved ammunition is being used for duty purposes.

7) Check to insure each firearm is properly lubricated.

8) Check the sights on all firearms to insure they are in proper condition.

9) Check grip panel screws to make sure they are snug, and not missing.

10) Check the gas system on semi-automatic rifles and shotguns to ensure they are clean and in good condition.

11) Notify the employee and his immediate supervisor of any defects or safety issues found.

12) Re-inspect the firearm to ensure that problems or deficiencies are properly corrected and document the same.

8. Personnel may qualify as a DPS Armorer by:

a. Attending the basic Factory or Department Armorer Training Course as prescribed by the manufacturer of the type of firearm.

b. Maintaining proficiency and certification in specific manufacturer armorer techniques on file with the Firearms Training Lieutenant.

9. The DPS Certified Armorer duties are as follows:

a. Field Armorers shall record and submit a written copy of their repairs to the Firearms Training Lieutenant or designee timely, using the Rangemaster Pro or interoffice memorandum.

b. Attend recertification training as required by the manufacturer or the Department.

c. Maintain proficiency in Armorer techniques.

d. Maintain a repair log. This log shall contain, at a minimum, the name of the officer assigned the firearm, corrective action taken and what repairs were made.

**96.12 Responsibility for Qualification of Personnel with Firearms.** Firearms Instructors are delegated the responsibility for training and qualifying DPS field personnel on the range with the exception of headquarters personnel where the Firearms Training Lieutenant or designee is assigned this responsibility. If the area supervisor is not a DPS certified firearms instructor, a DPS certified firearms instructor will assist with the training and qualification of personnel. Employees will qualify with the firearms issued to them, and those firearms will be cleaned at the conclusion of qualification. Employees issued a replacement firearm shall qualify with that specific firearm before it is carried in an official capacity. An exception to this policy is a firearm issued following a shooting incident, whereupon the officer shall qualify with the replacement firearm as soon as is practicable.

**96.13 Qualification with Handguns.** All commissioned members of the Department are required to qualify during each six-month qualification period with issued handguns and the handgun carried in lieu of the issued handgun. The six-month qualification periods shall be from January through June and July through December each year. One qualification may be conducted in reduced light to reinforce the importance of training under a variety of situations. Qualification shall be conducted using a service equivalent load. Reduced load ammunition may not be used for qualification.

1. Permission may be granted by the commanding officer for good cause, such as temporary incapacitation, to waive qualification for an individual employee during one qualification period each year. When granted, all records will indicate the reason and who granted permission.

2. Only the course of fire listed in 96.13 will be used for the primary issued handgun or “in lieu of” issued handgun qualification.

3. Officers with secondary issued handguns and approved “in addition to” handguns shall be required to qualify with each handgun. If the handgun is carried in addition to an issued handgun the qualification period shall be once per calendar year (January 1 through December 31). The course of fire found in 96.14 or 96.15 may be used for qualification with secondary issued and approved “in addition to” handguns.

#### **96.14 DPS Primary Issued Handgun Qualification Course**

1. All magazines should be fully loaded prior to the start of the first string of fire. After the initial command to load, firearms will remain loaded during the remaining course of fire using a “Hot Line”.

2. A shooter should stay in the “on target” position until the target turns away or until instructed to go to the “ready” position, or holster.

a. “ON TARGET” is having the gun pointed toward center of mass, finger on the trigger while the target is engaged (facing the shooter).

b. “READY” position is having the muzzle lowered about 45 degrees to the target with finger outside the trigger guard and indexed along the side of the frame pointing in the direction you are aiming.

c. In either the “ON TARGET” or “READY” positions, both elbows and wrists should be locked out.

3. To successfully qualify, shooters must complete this course with a minimum of 80%.

4. If any malfunctions are encountered, the shooter will work through the problem and finish the course of fire. Alibis are not allotted for malfunctions as proper response to malfunctions are considered part of the qualification process.

5. The number of rounds allotted for each string of fire must be shot in that string of fire. Rounds that were not shot, or saved, cannot be caught up or shot in another string of fire.

### **96.15 Qualification with Secondary Issued Firearms or “In Addition To” Issued Firearms**

The qualification course begins with the handgun fully loaded (13 rounds) and each magazine loaded with 12 rounds with the exception of the final 25 yard line magazine which is loaded with the remaining 11 rounds. *Empty* magazines will be fully loaded before continuing the next sequence of fire and a hot line will be utilized during the qualification. A fully loaded magazine should be available at the completion of the qualification course to allow the shooter to reload and holster to replicate on duty status.

***Each shooter will have a gap or skipped target on each side to account for movement(s).***

**Stage I:** 3-yard line - 19 shots fired in the following sequence: (two-handed grip)

- From the holstered position on command draw while moving 2 steps to the right and engage the target with 3 shots. Re holster on command. Remain in position to the right of the target. *(time limit: 5 seconds)*
- From the holstered position on command draw while moving 2 steps to the left and engage the target with 2 shots. Re holster on command. Remain in position in front of the target *(time limit: 4 seconds)*
- From the holstered position on command draw while moving 2 steps to the right and engage the target with 2 shots. Re holster on command. *(time limit: 4 seconds)* (Upon command of the firearms instructor the shooters will center themselves on their target).
- From a holstered position on command draw and engage the target weapon hand only, standing position, with 6 shots in a 3-2-1 sequence without returning to the holster. Shooters will remain in place during this sequence of fire. *(time limit: 4-3-2 seconds)* Reload.
- From the ready position on command with support hand only, standing position, engage the target with 6 shots in a 3-2-1 sequence. Shooters will remain in place during this sequence of fire. *(time limit: 4-3-2 seconds)* (Load the empty magazine only before continuing the course)

**Stage II:** 7-yard line – 18 rounds fired in the following sequence:

- From the holstered position, on command draw and engage the target with 6 shots standing (two-handed grip), while reloading move one step to the right and engage the target with 6 more shots. *(time limit: 20 seconds)*

*(Upon command of the firearms instructor the shooters will center themselves on their target.)*

- From the ready position; engage the target with 6 shots support hand (two-handed grip). *(Time limit: 15 seconds)* Shooters will remain in place during this sequence of fire.

(Account for 37 shots on the target, conduct interim scoring and repair)

**Stage III:** 15-yard line - 12 rounds fired in the following sequence:

- From the holstered position, on command draw and engage the target with 6 shots standing (two-handed) move one step left and engage the target with 6 more shots.



*(Time limit: 20 seconds)* Reload and on command re center on target.

Stage IV: 25-yard line - 11 rounds fired in the following sequence:

- From the holstered position, on command draw and engage the target with 6 shots standing (two-handed) move one step right and engage the target with 5 shots standing or kneeling.

*(Time limit: 25 seconds)* Reload with a full magazine to replicate on duty status, re holster on command.

(Account for 23 shots on the target, score and add the interim score)

Total number of shots fired is 60. Qualifying score will be 240 or above out of a possible of 300 or 80 percent.

### **96.16 Handgun Qualification Proficiency Standards**

1. The minimum qualification with a handgun shall be 75%. Commissioned officers will be allowed two opportunities to qualify.

2. Commissioned officers who fail to qualify after two opportunities during an official qualification session in a single day shall be given additional training by a DPS certified firearms instructor as necessary to afford a reasonable opportunity to qualify. The Department member shall not be allowed carry the type of firearm with which they have failed to qualify if the required time frame for qualification with that firearm has been exceeded and they have not qualified.

3. Members who are unable to qualify after additional training in the field may be referred to the Firearms Training Lieutenant or designee for additional training at the Department's Firearms Range. If after this training, the member still fails to qualify, the member shall be placed in an unqualified status and shall not be assigned duties requiring the utilization of firearms.

4. Officers shall also be able to safely and proficiently load, reload, unload, clear stoppages or malfunctions, and field strip firearms that are issued to them. This shall also apply to the firearms carried in lieu of or addition to issued firearms. They shall also qualify with these firearms.

5. If unable to qualify after remedial training and additional qualification attempts, the employee will be referred to his/her immediate supervisor for administrative action.

### **96.17 Qualification with Shoulder Firearms.**

1. **Issued Rifle.** All commissioned members of the Department issued a rifle are required to qualify during each six-month qualification period with the issued rifle. The six month qualification periods shall be from January through June and July through December each year. Only if budgetary restraints limit the ability to qualify on both the optical sight and the mechanical sight during each six month period, the service commander may authorize the qualification of only the optical sight in the first six month period and the qualification of the mechanical sight during the last six month period.

2. **Issued Shotgun.** All commissioned members who are issued a shotgun shall qualify annually, (January 1 through December 31 of each year.)

### **96.18 Practical Shotgun Course**

Ten rounds will be fired in two stages, five buckshot and five rifled slugs. Qualification will be 80 percent for each string, or 4 hits out of 5. Scoring will be done on the TR-66 scorecard.

**Stage 1.** Five steel targets or five Department approved silhouette targets. The five targets shall be placed in a straight line parallel to the firing line and spaced at least four feet apart, thus eliminating the possibility of hitting two targets with one shot. 25 yards - Load five rounds of buckshot and fire from the shoulder at the target or targets called. Scoring - 10 points for each target hit. Possible score - 50 points

**Stage 2.** One steel target or one Department approved silhouette target. 50 yards - Load five rifled slugs and fire from the shoulder. Fire all five rounds in succession, taking time to aim the shotgun each time. Scoring - 10 points for each target hit. Possible score - 50 points

**96.19 DPS Patrol Rifle Qualification Course.** Thirty rounds will be fired and qualification will be 90% (135 out of possible 150). Department approved silhouette target and scorecard will be utilized for qualification for this course. A colored paster may be placed in the center as an aiming point. Two magazines will be loaded with 15 rounds each.

**Stage 1:** 10 Yard Line: four (4) rounds.

Shooters will assume the ready position with safety engaged.

2 Rounds fired in 4 seconds.

2 Rounds fired in 4 seconds.

**Stage 2:** 15 Yard Line: six (6) rounds.

Shooters will assume the ready position with safety engaged.

3 Rounds fired in 6 seconds.

3 Rounds fired in 6 seconds.

**Stage 3:** 25 Yard Line: ten (10) rounds.

**String 1** – Time limit 25 seconds

Shooters will assume the ready position with safety engaged.

3 Rounds fired from standing position.

2 Rounds fired from kneeling position.

Emergency reload, 1 Round kneeling.

**String 2** – Time limit 15 seconds

Starting from standing position, drop to kneeling position and fire 4 rounds

**Stage 4:** 50 Yard Line; ten (10) rounds.

Shooters may assume any shooting position (standing, kneeling, sitting, or prone).

10 Rounds fired in thirty (30) seconds.

\*If a 50 yard range is not available, then the last ten (10) rounds will be fired from the twenty-five (25) yard line within 20 seconds.

\*\*If issued rifles are equipped with a holographic sight system, this qualification course will be fired with the “backup” iron sights and a second course will be fired utilizing the holographic sight system.

**96.20 Failure to qualify on the Practical Shotgun and/or Rifle Course.** Commissioned officers who fail to qualify after two more opportunities during an official qualification session in a single day shall be given additional training by a DPS certified firearms instructor as necessary to afford a reasonable opportunity to qualify. The Department member shall not be allowed to carry the type of firearm with which they have failed to qualify if the required time frame for qualification with that firearm has been exceeded. Officers shall also be able to safely and proficiently load, reload, unload, clear stoppages or malfunctions, and field strip firearms that are issued to them.

Any shoulder firearm carried in addition to or lieu of the issued firearm will require qualification and the officer must demonstrate safe and proficient use of the firearm as described above.

### **96.21 Fully-Automatic Firearm Qualification Course.**

#### **1. Equipment Required**

- a. Fully automatic firearm
- b. Three magazines, each loaded with 25 rounds.
- c. Two silhouette targets per shooter.

#### **2. Course Description**

a. From 60-yard line, run to 50-yard line. Shoot five-rounds prone, five-rounds kneeling, and five-rounds sitting; to be fired at the left target. Score and repair.

Time allotted for this phase is 30 seconds (includes running from the 60-yard line).

b. Run from the 50-yard line to the 25-yard line. Firing at the left target, shoot five rounds weapon hand, kneeling behind a barricade, five rounds weapon hand, over the top of the barricade, reload and retain expended magazine, and then fire five rounds reaction hand, kneeling behind a barricade. Score and repair.

Time allotted for this phase is 35 seconds (includes running from the 50-yard line).

c. Run from the 25-yard line to 15-yard line. Standing without support, shoot five double-taps at the left target. Score and repair.

Time allotted for this phase is 15 seconds (includes running from 25-yard line).

d. Run from 15-yard line to 10-yard line. With the firearm in fully automatic mode, shoot ten-rounds in controlled two-three round bursts at the left target. Reload; shoot an additional ten rounds from the fully automatic mode in controlled burst at the right target.

Time allotted for this phase is 15 seconds (includes running from 15-yard line). Score and check sub-total score to see if qualification is possible, if so continue as per below.

e. Run from the ten-yard line to the seven-yard line. Shoot ten rounds in a burst of controlled automatic fire at the right target shooting center of mass. Shoot five additional rounds at the head of the right target.

These rounds are fired from the fully automatic mode, but are fired one round at a time, if possible. Score and total.

Time allotted for this phase is 15 seconds (includes running from 10-yard line).

3. **Target and Scoring.** This course shall be fired on an approved Department target. Scoring shall be at face value and will be scored at the 15, 10, and 7 yard line after each course of fire. Minimum score for qualification shall be 90%. Any misses from the 15, 10, or 7 yard line will disqualify the shooter from this qualification course.

#### **96.22 [Deleted]**

**96.23 Score Cards.** When firing for qualification, a score card (Tr-153) will be completed and presented to the DPS certified firearms instructor for credit. Targets will be scored by someone other than the shooter.

**96.24 Firearms Qualification Record.** A permanent firearms qualification record shall be maintained on each commissioned officer in the central personnel files. The Firearms Qualifications Form (HR-74) shall be completed by the DPS certified firearms instructor at the conclusion of each shoot, with only the notation "qualified" or "not qualified", as applicable, for each shooter, certified by his signature, and forwarded immediately to Human Resources Bureau with a copy to the appropriate service commander(s). Certified firearms instructors may certify their own scores, using the same system, when their targets are scored by another commissioned DPS officer and approved by the service commander.

The HR-74 will indicate the type of firearm used to qualify and shall be specific, such as 357 Sig-P-226, or 12-gauge Remington 870.

The Human Resources Bureau will enter "qualified" or "not qualified," as applicable on each officer's central personnel file record.

**96.25** The Director may suspend, alter, or waive any of the provisions contained herein.

#### **05.97.00 EMERGENCY AND PURSUIT OPERATIONS WITHOUT USE OF EMERGENCY WARNING DEVICES (Rule §1.191)**

The following guidelines will be observed by Department personnel when taking advantage of the exceptions provided for emergency vehicles in Transportation Code, Section 545.365, SPEED LIMIT EXCEPTION FOR EMERGENCIES, AND Chapter 546, OPERATION OF AUTHORIZED EMERGENCY VEHICLES AND CERTAIN OTHER VEHICLES.

**97.01 Guidelines.** When operating a unit so equipped, an officer will activate the siren and/or emergency lights before a pursuit or emergency run begins and will continue such activation until the pursuit or emergency run is concluded as required by Transportation Code Section 546.003.

The option (as provided by Transportation Code, Section 546.004) of not using the siren and/or emergency lights may be exercised when, in the driver's opinion, one or more of the following conditions exists:

1. If knowledge of a Department member's presence will cause a suspect to destroy evidence of a suspected felony or cause a loss of evidence of a suspected felony.

2. If knowledge of a Department member's presence will cause a suspect to cease a suspected continuing felony before sufficient evidence has been acquired to establish grounds for arrest.

3. If knowledge of a Department member's presence will cause a suspect to evade apprehension or identification of the suspect or his vehicle.
4. If traffic conditions on a multi-lane roadway are such that movements of motorists in response to the emergency warning devices may increase the potential for a collision or may unreasonably extend the duration of the pursuit or emergency run.
5. If the Department vehicle is not equipped with siren or emergency lights.

In deciding not to operate the emergency lights or siren in compliance with the above exceptions, the driver should give consideration to the safety of others as required by Transportation Code, Section 546.004.

## **05.98.00 ENFORCEMENT OF FEDERAL IMMIGRATION STATUTES**

U. S. Attorney General Griffin Bell in 1978 issued a policy statement declaring that the enforcement of the immigration laws rests with the Immigration and Naturalization Service. He suggested that local police forces observe the following guidelines:

1. Do not stop and question, detain, arrest, or place "an immigration hold" on any persons not suspected of crimes, solely on the grounds that they may be deportable aliens;
2. Upon arresting an individual for a non-immigration criminal violation, notify the service immediately if it is suspected that the person may be an undocumented alien so that the service may respond appropriately.

The Texas Attorney General has held (AG Opinion No. H-1029) that while "the power to regulate immigration is unquestionably exclusively a federal power" that the federal law has "nowhere indicated an intention to eliminate the power of state officers to arrest aliens illegally in the country where authorized by state law." However, the applicable Texas statutes together with the federal immigration laws make it necessary for arresting officers to have a complete understanding of the federal laws and circumstances under which they are applicable. As enforcement of U. S. immigration laws is not the primary responsibility of the Department of Public Safety, the following policy is adopted to guide Department members.

**98.01** Members of this Department will not engage in the enforcement of Federal Immigration Statutes by conducting road checks or business and residence searches unless assisting appropriate federal officers who have properly requested such assistance.

**98.02** Members may arrest aliens under the following situations:

1. When serving a valid warrant after checking to see that the warrant is current.
2. For violation of state laws the same as any U.S. citizen.

**98.03** Members will not arrest without a warrant an alien solely on the suspicion that he has entered the country illegally.

1. Members will not cause the incarceration or the placing of "an immigration hold" on an alien or a person suspected of being an alien. When such person is being held as a result of charges in the jurisdiction of the Department of Public Safety, notification to the Immigration and Naturalization Service will be initiated; however, the placing of the "immigration hold" should be the responsibility of the Immigration and Naturalization Service.

2. Members who arrest an alien for violation of the Federal Immigration Statutes with a proper warrant will execute an appropriate arrest report showing “illegal alien” as the offense charged and the warrant number. Where a “hold” has been placed on an alien, members will release the alien to the Immigration Service after the disposition of the state charge.

**98.04** Members will not seize alien registration cards, work permits, or other documents from persons.

## **05.99.00 PROCEDURES AND POLICIES RELATING TO DIPLOMATIC AND CONSULAR OFFICIALS (Rule §3.29)**

**99.01 General Policy.** Diplomatic and Consular Officers should be accorded their respective privileges, rights, and immunities as directed by international law and federal statute. These officials should be treated with the courtesy and respect that befit their distinguished positions. At the same time, it is a well-established principle of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect local laws and regulations.

### **99.02 Definitions**

1. **Diplomatic Officers.** Diplomatic Officers are Ambassadors, Ministers, Minister Counselors, Counselors, First Secretaries, Second Secretaries, Third Secretaries, and Attaches.

2. **Consular Officers.** Consular Officers are Consuls-General, Deputy Consuls-General, Consuls, and Vice Consuls.

3. Career Diplomatic and Consular Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers.

4. Family members of Consular Officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the receiving state as do Diplomatic and Consular Officers. If the relative is a juvenile, as in all juvenile cases, the subject should be released to the parent Diplomatic or Consular Officer.

### **99.03 Immunity**

1. **Diplomatic Officers.** Diplomatic Officers should not be arrested or detained for any offense.

#### **2. Consular Officers**

a. Under prevailing international law and agreement, a foreign career Consular Officer is not liable to arrest or detention pending trial except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. His immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.

b. Honorary Consuls have no immunity other than for official consular duties.

c. The following procedures are in effect for handling selected incidents, violations, or minor offenses by Consular Officers.

1) When a Consular Officer is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he is a Consular Officer and ascertaining that he possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him go with a warning of the danger of his actions or proceed with issuance of appropriate citation. Under

these circumstances the mere issuance of a traffic citation does not constitute arrest or detention in the sense referred to above.

2) The primary consideration for driving while under the influence should be to see that the Consular Officer is not a danger to himself or the public. DPS officers may elect to assist the Consular Officer by one of the following options:

- a) Take him to the station or a location where he can recover sufficiently to enable him to drive safely.
- b) Take him to a telephone so that he can call a relative or a friend to come for him.
- c) Call a taxi for him.
- d) Take him home.

3) While Consular Officials are immune from arrest, they are not immune from prosecution and the case should be presented to the local prosecutor when the facts so justify.

**99.04 Detention of Foreign Nationals.** The United States government and its political subdivisions are obligated under international treaties (Vienna Convention) and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States. The United States Department of State has advised the Department of Public Safety that these obligations are legally binding on our officers as well as other state and local governments.

1. Whenever a state or local authority arrests, imprisons, or otherwise detains a foreign national, such authority **MUST** promptly inform the detainee of the right to have his government informed of such event.

a. If the detainee asks to exercise this right, the detaining authority should inform the appropriate foreign consulate or embassy\* without delay and make a written record of such notification (see Annex #6 for list of Foreign Embassies and Consulates in the United States).

b. Subject to local laws and regulations regarding access to detained persons, consular officers\* have the right to visit their nationals who are in prison, custody, or detention to converse and correspond with them and to arrange for their legal representation. A foreign consular officer should not take action on behalf of such a person if the person being held expressly opposes such action.

c. In the case of Taiwan nationals, because relations between the United States and Taiwan are conducted on a unofficial basis, Taiwan is represented only by an unofficial organization, the Coordination Committee for North American Affairs (CCNAA). When a Taiwan national is arrested or detained, the local authorities should **IMMEDIATELY** inform the nearest office of the CCNAA. CCNAA personnel have the same rights as foreign consular officers to visit the arrestee/detainee.

d. While the above requirements are universally applicable, law enforcement personnel **MUST** be aware that treaties exist with certain countries, which require **MANDATORY** notification when these nationals are confined or detained. In these cases, the foreign national has no choice regarding notification, and law enforcement authorities **MUST** notify the consulate or the embassy of the situation without delay. The foreign national should be advised that his consul has been notified. The United States has these special treaties with the following **MANDATORY NOTIFICATION COUNTRIES AND JURISDICTIONS ARE:** (Refer to Annex #6a).

e. Summary of Requirements Pertaining to Foreign Nationals

1) When foreign nationals are arrested or detained, they **MUST** be advised of the right to have their consular officials notified.

2) In some cases, the nearest consular officials MUST be notified of the arrest or detention of a foreign national, regardless of the national's wishes.

3) Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.

4) When a government official becomes aware of the death of a foreign national, consular officials MUST be notified.

5) When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials MUST be notified.

These are mutual obligations that also pertain to American citizen's abroad.

#### f. Steps to Follow When Arresting/Detaining a Foreign National

1) Determine the person's citizenship. Record all transactions and steps taken to determine this information.

2) Determine the birth country of the individual. This is usually their citizenship country unless the person has been naturalized under the Constitution and laws of the United States.

3) If the foreign national's country of citizenship is NOT on the mandatory notification list, then:

a) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.

b) If the foreign national asks that the consular notification be given, notify without delay, the nearest consular official's office. Telephone and fax numbers to the consular official's office are located in Annex #6.

4) If the foreign national's country of citizenship IS on the list of mandatory notification countries, then:

a) Notify the country's nearest consular officials, WITHOUT DELAY, of the arrest/detention regardless of the foreign national's wishes.

b) Inform the foreign national that you are making this notification. For examples of these statements refer to Annex #6b.

c) An example of a suggested Fax Sheet for notifying consular officers of arrests or detentions may be found in Annex #6c. This form may be photo copied and may also serve as documentation of the notification.

2. When Taiwan nationals (who carry "Republic of China" passports) are detained, notification should be made to the nearest office of the CCNAA.

3. The cooperation of state and local law enforcement authorities is essential to carry out these obligations effectively and to ensure that Americans arrested or detained abroad obtain the treatment to which they are entitled.

If you have questions not addressed, contact:

OFFICE OF THE ATTORNEY GENERAL OF TEXAS



PROSECUTOR ASSISTANCE DIVISION  
FOREIGN PROSECUTIONS UNIT  
PO BOX 12548  
AUSTIN TX 78711-2548  
Telephone: (512) 463-2170  
Fax: (512) 474-4570

## **05.100.00 JUVENILE OFFENDERS**

Commissioned officers of the Department are required to be familiar with laws that pertain to the handling of juvenile offenders as outlined in the Family Code.

**100.01** When possible, officers should avoid taking children into custody. However, where in an officer's guided discretion it is necessary and appropriate to take a child into custody, strict adherence to Title 3 of the Family Code is required.

Where an officer deems it necessary to take a child into custody, he shall promptly make all reasonable efforts to notify the child's parent, guardian, or custodian and the office or official designated by the juvenile court.

In such event, the officer shall, without unnecessary delay and without first taking the child elsewhere, release or commit the child in accordance with the Family Code by:

1. Releasing the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court when requested by the court;
2. Bringing the child before the office or official designated by the juvenile court;
3. Bringing the child to a detention facility designated by the juvenile court; or
4. Bringing the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment.

Additionally, the officer may take the child to a law enforcement facility for a reasonable time while he is undertaking to notify the child's parents and juvenile court officer and to do necessary paperwork on the case. Otherwise, the officer shall restrict his involvement to the initial seizure and prompt release or commitment of the child offender as outlined above.

**100.02** No officer shall take a written statement from a child in his custody unless and until a juvenile court officer has referred the child back to the custody of the officer and the child has received a warning from a magistrate in accordance with the Family Code.

## **05.101.00 CELLULAR TELEPHONE POLICY**

### **101.01 Use of Statewide Contracts**

1. All Department cellular telephones should be on statewide contracts through the General Services Commission. Any requests for exception to this provision must be made in writing to the appropriate division chief for approval and reviewed by the Purchasing Section prior to entering into an off-contract agreement.

## **101.02 Cellular Telephone Usage and Reimbursement for Personal Use**

1. Cellular telephones should only be used for Department business and only when other means of communications are either unavailable or impractical and not for the convenience of the employee.

2. Supervisors should monitor all cellular telephone statements of subordinates under their command to ensure the most efficient and effective use, and to ensure the use of the cellular telephone complies with Department policy.

3. Personal calls, made on Department cellular telephones, should be held to an absolute minimum. Sound judgment in this area is essential to reduce on-line time.

4. ALL personal cellular telephone calls are to be fully reimbursed to the Department within 5 days of receipt of vendor's invoice (this includes both incoming and outgoing calls). Personal checks or money orders should be attached to the invoice on the prescribed form (see Annex #15).

An exception is if an employee is required to work unexpectedly beyond normal hours, that employee may use the cellular telephone to call their home and advise their family of the work situation. These calls should remain as brief as possible and are not subject to reimbursement by the employee.

5. Supervisory review and approval are required on all cellular telephone invoices prior to submitting them to the Purchasing Section of Accounting and Budget Control.

## **05.103.00 TRAINING ACADEMY RECRUIT INJURY INVESTIGATIONS**

### **103.01 Definitions**

1. "Serious injuries" are defined as those injuries that result in death, permanent disability, hospitalization, and permanent medical separation from the DPS training program.

2. "Training Injury Investigation Team" is defined as a team composed of the Training Commander, Health and Safety Program Administrator, Occupational Medical Physician and a Major from the Highway Patrol or Driver License Division.

**103.02 Policy.** Upon receiving notification of a serious injury occurring during recruit school training, the Training Commander will gather preliminary data regarding the incident. Once the preliminary data has been gathered, the Training Commander will immediately inform the Administration Division Chief and Director of the data. The Director will make a determination if an official investigation by the Training Injury Investigation Team is warranted.

The Training Injury Investigation Team is responsible for investigating instances when a recruit receives a serious injury as a result of recruit school training. The purpose of the investigation is to discover the facts and circumstances regarding the serious injury and make recommendations that will enhance the safety and efficiency of the training. The Training Commander will be responsible for ensuring that the team's report and any recommendations are forwarded through channels to the Director. The report shall be forwarded to the Director no later than 30 days after the occurrence of the injury.

The Training Injury Investigation Team report will include, at a minimum, a summary of the incident, review of the course lesson plans, instructor interviews, student/trainee interviews, supervisor interviews, review of the training equipment, and the findings and recommendations.

## **05.104.00 INTELLECTUAL PROPERTY**

**104.01.** In General. Employees of the Department may be in a position where they create or invent items during the course of their work. Inventions and copyrightable works are referred to as “intellectual property.” This section explains the Department’s policy regarding ownership and use of intellectual property. This intellectual property policy covers the following: inventions, discoveries, trade secrets, trade and service marks, writings, art work, and software. The policy also applies to other types of intellectual property not listed here, regardless of whether they may be protected by patent, copyright, trademark, trade secret or other law.

**104.02. Department Ownership.** The Department owns the intellectual property created by an employee if it is created under any of the following circumstances:

1. it is created within the scope of employment or as a “work-for-hire” under copyright law as explained below in Section 104.03;
2. it is created while on-duty; or
3. it is created with Department resources.

**104.03. Scope of Employment and Works-for-Hire.** Patentable inventions developed by a Department employee that are related to an employee’s job responsibilities or that have been created with Department resources or while on-duty, are Department property. An employee must complete and execute any required legal documents that are necessary to confirm Department ownership. Copyrightable works related to an employee’s job responsibilities, even if he or she created them solely on his or her own initiative, legally belong to the Department as works-for-hire. Intellectual property is related to an employee’s job responsibilities if it is the kind of work that the employee is employed to do and he or she does it, at least in part, for use at work or for use by fellow employees, by the Department, or by those served by the Department. The use of personal time or other facilities to create or develop the property will not change its basic nature if it is related to the employee’s job. However, works that are unrelated to an employee’s job duties will remain the property of the employee, so long as he or she does not use Department or other state facilities or equipment to create the work.

- Example: You are a manager in a local office and create a software program on your own initiative to run on Department employees’ computers to show locations of fire exits. This work is related to your job duties and belongs to the Department, even if no one asked you to create it, and even if you did the programming at home on your own personal computer.

- Example: You use your home personal computer to create a game for use on handheld devices. Because the program does not relate to your job, is not used by you or others at work, and was created on your own time, the intellectual property belongs to you.

- Example: You create and teach a course of instruction concerning search and seizure for a Department in-service. You create a syllabus and a video and develop a series of slides for use in the course. All of the materials belong to the Department, even if you created them at home on your own personal time.

### **104.04. Employee Responsibilities When Creating Intellectual Property.**

1. **Inventions and computer programs.** Because of patent law requirements relating to disclosure of inventions, an employee that has created an invention that is Department intellectual property must not share or disclose the invention to anyone outside the Department until management has reviewed and approved the disclosure.

**2. Written works and artwork.** Written works and artwork are protected by copyright rather than patent. Unlike patents, copyrighted works may be disclosed to the public without advance approval. Most written works by employees of the Department do not require any notices of copyright protection because they are prepared for the public to freely use. An employee should mark work as copyrighted only if guided by management to do so. Although work that constitutes Department intellectual property will only rarely be marked with terms of copyright protection, it should never have markings that indicate ownership in the work is vested in anyone other than the Department or the state without management approval. An employee that marks Department intellectual property as his or her own intellectual property has misappropriated state property.

#### **104.05. Employee Responsibilities When Using Copyrighted Material.**

Copyright protects the particular way authors have expressed themselves. It does not extend to any ideas, systems, or factual information conveyed in a work. Most books, journals, magazines, and other printed materials are copyrighted, and cannot be legally reproduced without prior permission of the copyright owner. Also, although often easily downloaded, clip art, video, and music that is on the internet or available through search engines are often copyrighted and may not be reproduced or used without permission. The fact that the employee intends to use the material for training or government purposes does not overcome the legal restrictions. Using copyrighted material without legal authority constitutes infringement and is a violation of Department policy. However, there are legal ways to use copyrighted material:

1. **Permission.** The Department may use other entities' copyrighted material if written permission is obtained from the copyright holder. However, acknowledging the source of the copyrighted material is not a substitute for permission and by itself is not a defense to infringement.

2. **Fair Use.** In its most general sense, a fair use is any copying of copyrighted material done for a limited and "transformative" purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner. In other words, fair use is a defense against a claim of copyright infringement. If the use qualifies as a fair use, then it would not be considered an infringement. However, the safest course is always to get permission from the copyright owner before using copyrighted material. A Department employee that is considering a "fair use" of copyrighted material should research the standards for fair use before copying the material. More information is available at <http://www.copyright.gov>.

#### **104.06. Violation of Policy.**

The following acts constitute specific violations of this policy:

1. misappropriation of Department intellectual property;
2. violation of copyright law; and
3. refusal to execute legal documents to confirm Department ownership in intellectual property as required by this policy.

#### **05.105.00 CARRYING OF HANDGUNS AND OTHER WEAPONS**

**105.01 General Policy.** Members of the public are authorized to carry handguns in accordance with state law in the areas of the Department that are generally accessible to the public. Department employees will not take actions to discourage members of the public from the lawful carrying of handguns in areas of the Department that are generally accessible to the public.

**105.02 On-Duty Prohibition for Non-commissioned Open Carry.** Non-commissioned employees shall not openly carry firearms or ammunition either on Department premises or while on-duty for the Department unless the employee has specific job duties that require firearms handling and the employee is handling firearms in the manner required for performing those job duties. A non-commissioned employee holding a handgun license under Government Code Chapter 411 may possess a handgun on department property if carried in a manner in which the presence of the handgun is not openly discernible to the ordinary observation of a reasonable person.

**105.03 Prohibition Relating to Department Clothing and Weapons.** A non-commissioned Department employee, whether on or off-duty, shall not wear any clothing, identification card, or other items identifying the employee as a Department employee while openly possessing items such as a firearm, Taser, nightstick, ammunition, or any other equipment normally carried by a peace officer for law enforcement purposes. A non-commissioned employee with a job duty that requires the handling or transportation of firearms or other law enforcement equipment may possess that equipment while wearing an approved uniform or Department identification in a manner approved by a supervisor.

**105.04 Commissioned Open Carry of Handguns While Off Duty.** A commissioned officer of the Department carrying a handgun openly while off-duty shall wear a visible Department badge at all times that the handgun is openly worn.

## PROFESSIONAL CONDUCT

### 01.06.00.00

#### 06.05.00 ORIGIN AND APPLICATION OF DPS CODES OF CONDUCT

**05.01 Origin of Codes.** The moral philosophy by which the members of respected professions are expected to govern themselves is expressed in Codes and Canons of Ethics approved by the profession.

The "Ten General Orders" long ago became the first Code of Ethics for the Texas Department of Public Safety. Revised in 1958, 1960 and 2014, these Ten General Orders are not simply an expression of the ideal conduct employees should strive to achieve. Rather, each member of the Department is expected to abide by each of the Ten General Orders as a condition of their employment.

The 55th Legislature, in 1957, enacted a Code of Ethics which is binding on all employees of the state of Texas and the Department has adopted the Code and Canon of Ethics of the International Association of Chiefs of Police to provide additional guidance on ethical conduct in the law enforcement profession.

**05.02 Application of Codes.** All of the ethical standards expressed herein are inclusive and together constitute the standards of conduct by which all members of the Texas Department of Public Safety are to be governed.

#### 06.10.00 DPS TEN GENERAL ORDERS

##### 10.01

The ten general orders listed in this section are the traditional code of conduct for the Texas Department of Public Safety (the department) and are binding in addition to any other code of ethics adopted. As a member of the department it shall be my duty:

- (1) To execute the mission of the department to protect and serve Texas.
- (2) To practice, at all times, the motto of the department: "Courtesy, Service, Protection."
- (3) To keep myself clean and presentable and in good physical, mental, and moral condition.
- (4) To know and obey at all times the U.S. and state constitutions, federal and state laws, and lawful orders and instructions.
- (5) To keep all state equipment issued to me fully accounted for, in proper working condition, and secure.
- (6) To register as a voter and vote my convictions as a citizen but refrain from political campaigns and endorsements except as specifically authorized by law and policy.
- (7) To conduct my duties in a straightforward, honest, and respectful manner, relying upon poise, competence, and soundness of character.
- (8) To report misconduct and matters that negatively impact me or other department personnel to my immediate supervisor and higher, if necessary.

(9) To make suggestions to improve department operations, policies, and services.

(10) To conduct myself, on and off duty, in a manner that merits the voluntary praise of those with whom I come in contact, so that my actions reflect well upon myself, the department, and the State of Texas.

## **06.15.00 IACP CODE AND CANONS OF ETHICS**

### **15.01 IACP Law Enforcement Code of Ethics**

1. As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality, and justice.

2. I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

3. I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice, or ill will, never employing unnecessary force or violence and never accepting gratuities.

4. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held as long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

### **15.02 IACP Canons of Police Ethics**

1. **Primary Responsibility of Job.** The primary responsibility of the police service, and of the individual officer, is the protection of the people of the United States through the upholding of their laws, chief among these is the Constitution of the United States and its amendments. The law enforcement officer always represents the whole of the community and its legally expressed will and is never the arm of any political party or clique.

2. **Limitation of Authority.** The first duty of a law enforcement officer, as upholder of the law, is to know its bounds upon him in enforcing it. Because he represents the legal will of the community, be it local, state, or federal, he must be aware of the limitations and proscriptions which the people, through law, have placed upon him. He must recognize the genius of the American system of government which gives to no man, group of men, or institution, absolute power, and he must insure that he, as a prime defender of that system, does not pervert its character.

3. **Duty to be Familiar With the Law and With Responsibilities of Self and Other Public Officials.** The law enforcement officer shall assiduously apply himself to the study of the principles of the law which he is sworn to uphold. He will make certain of his responsibilities in the particulars of their enforcement, seeking aid from his superiors in matters of technicality or principle when these are not clear to him; he will make special effort to fully understand his relationship to other public officials, including other law enforcement agencies, particularly on matters of jurisdiction both geographically and substantively.

**4. Utilization of Proper Means to Gain Proper Ends.** The law enforcement officer shall be mindful of his responsibility to pay strict heed to the selection of means in discharging the duties of his office. Violations of law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. If the law is to be honored, it must first be honored by those who enforce it.

**5. Cooperation With Public Officials in the Discharge of Their Authorized Duties.** The law enforcement officer shall cooperate fully with other police officials in the discharge of authorized duties, regardless of party affiliation or personal prejudices. He shall be meticulous, however, in assuring himself of the propriety, under the law, of such actions and shall guard against the use of his office or person, whether knowingly or unknowingly, in any improper or illegal action. In any situation open to question, he shall seek authority from his superior officer, giving him a full report of the proposed service or action.

**6. Private Conduct.** The law enforcement officer shall be mindful of his special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officers and the police service. The community and the service require that the law enforcement officer lead the life of a decent and honorable man. Following the career of a policeman gives no man special perquisites. It does give the satisfaction and pride of following and furthering an unbroken tradition of safeguarding the American republic. The officer who reflects upon this tradition will not degrade it. Rather, he will so conduct his private life that the public will regard him as an example of stability, fidelity, and morality.

**7. Conduct Toward the Public.** The law enforcement officer, mindful of his responsibility to the whole community, shall deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and require compliance with the law. He will do neither from personal preference nor prejudice but rather as a duly appointed officer of the law discharging his sworn obligation.

**8. Conduct in Arresting and Dealing With Law Violators.** The law enforcement officer shall use his powers of arrest strictly in accordance with the law and with due regard to the rights of the citizen concerned. His office gives him no right to prosecute the violator nor to mete out punishment for the offense. He shall, at all times, have clear appreciation of his responsibilities and limitations regarding detention of the violator; he shall conduct himself in such a manner as will minimize the possibility of having to use force. To this end he shall cultivate a dedication to the service of the people and the equitable upholding of their laws whether in the handling of law violators or in dealing with the lawabiding.

**9. Gifts and Favors.** The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus, he should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

**10. Presentation of Evidence.** The law enforcement officer shall be concerned equally in the prosecution of the wrongdoer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice. In so doing, he will ignore social, political, and all other distinctions among the persons involved, strengthening the tradition of the reliability and integrity of an officer's word.



The law enforcement officer shall take special pains to increase his perception and skill of observation, mindful that in many situations his is the sole impartial testimony to the facts of a case.

**11. Attitude Toward Profession.** The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement he shall strive to make the best possible application of science to the solution of crime and, in the field of human relationships, strive for effective leadership and public influence in matters affecting public safety. He shall appreciate the importance and responsibility of his office, hold police work to be an honorable profession rendering valuable service to his community and his country.

## **06.20.00 STANDARDS OF ETHICAL CONDUCT FOR STATE EMPLOYEES**

**20.01 Declaration of Policy.** It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and to strengthen the faith and confidence of the people of Texas in their state government, there are provided standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people of Texas and the government of the State of Texas in the performance of their official duties. It is the intent of the legislature that this Act shall serve not only as a guide for official conduct of these covered persons but also as a basis for discipline of those who refuse to abide by its terms.

Pursuant to Section 572.051(c) of the Government Code, the Department has adopted an ethics policy. This ethics policy prescribes standards of conduct for all Department employees. This ethics policy does not supersede any applicable federal or Texas law or administrative rule. The standards stated in this policy are derived from the state law and intended to comport to the Model Ethics Policy promulgated by the Office of the Attorney General for all state employees.

All employees must familiarize themselves with this ethics policy and all policies in Department manuals concerning ethical behavior.

All employees must abide by all applicable federal and Texas laws, administrative rules, and Department conduct policies, including this ethics policy. An employee who violates any provision of the Department's conduct policies is subject to discipline up to and including discharge from employment. An employee who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties in addition to any employment-related sanction.

### **20.02 Standards of Conduct.**

a. An employee shall not:

1. accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;

2. intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

3. disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Government Code Chapter 552), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position, or accept other employment, including self-

employment, or engage in a business, charity, nonprofit organization, or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position;

4. accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;

5. make personal investments, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;

6. utilize state time, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in direct cost to the state or Department, interfere with the employee's official duties, and interfere with Department functions;

7. utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

8. knowingly make misleading statements, either oral or written, or provide false information, in the course of official business; or

9. engage in any political activity while on state time or utilize state resources for any political activity.

b. An employee shall:

1. perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Department; and

2. report any conduct or activity that the employee believes to be in violation of this ethics policy to an appropriate authority.

c. The Deputy General Counsel is the Ethics Advisor for the Department.

## **06.21.00 ETHICAL DUTIES AS EMPLOYEES OF A REGULATORY AGENCY**

Because the Department is a regulatory agency, each employee of the Department is subject to ethics laws contained in Government Code Chapter 572 that are applicable to regulatory agencies.

### **21.01 Definitions.**

a. "Participated" means to have taken action through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

b. "Particular matter" means a specific investigation, application, request for a ruling or determination, contract, claim, acquisition, charge, arrest, or judicial or other proceeding.

c. "Business entity" means any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.

### **21.02 Ethical Duty As A Former Employee Of The Department.**

A former employee of the Department, who was compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1 - salary group 17 of the position classification salary schedule, may not represent any person or entity, regarding a particular matter in which the former employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility.

### **21.03 Ethical Duty In Dealing with Regulated Businesses.**

An employee of the Department may not solicit, accept, or agree to accept anything of value from a business entity regulated by the Department and from which the business entity must obtain a permit to operate that business in this state or from an individual directly or indirectly connected to that business entity.

## **06.22.00 ADDITIONAL ETHICS STANDARDS**

Nothing in the Department's Ethics Policy contained in this Chapter precludes major division chiefs or special section heads from adopting more restrictive standards for ethical conduct for their employees. A copy of such policies should be provided to the Department's Ethics Advisor.

## **06.23.00 GIFT PROHIBITIONS AND ACCEPTANCE**

Gift Defined: A gift is any benefit, favor, discount, loan, forbearance, or other tangible or intangible item having monetary value given to a state employee or to any other person in whose welfare the state employee has a direct and substantial interest. It includes services as well as transportation, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Compensation received as consideration for services performed is not a gift. However, compensation received from a source other than the department must be received in compliance with the department's secondary employment policies.

Employees may not accept gifts of any kind from any source, including gifts or benefits from anyone the employee knows is subject to regulation, inspection, or investigation by the employee or department except in the following circumstances:

- Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship independent of the official status of the recipient.
- Gifts based on a professional or business relationship. An employee may accept a gift or benefit from a professional or business relationship, independent of the official status of the employee as a public servant so long as the gift is not intended to influence the employee's official actions.

- Gifts of \$50 or less. An employee may accept unsolicited gifts having an aggregate market value of \$50 or less if offered under circumstances that clearly demonstrate a purpose other than attempting to influence the employee in the discharge of official duties. Employees may not accept gifts of cash or negotiable instruments, such as; gift cards, checks, cashier and travelers checks and certificates of deposit.
- Donations based on bona fide physical injury or illness. An employee may accept donations motivated by the intent to defray expenses related to an injury or illness of the employee or a family member.
- Discounts and similar benefits. An employee may accept a discounted price on retail sales if the discount is generally offered to all state employees or law enforcement officers.

*If there is any question or doubt surrounding the circumstances or intent of an unsolicited gift the employee must consult with their chain of command prior to accepting the gift. All doubt must be resolved in favor of declining questionable gifts so as to avoid even the appearance of bias or impropriety.*

## **06.25.00 CIVIC RESPONSIBILITIES**

By virtue of their employment all members of the Texas Department of Public Safety automatically assume these civic responsibilities:

**25.01 The Responsibility to Educate the Public in Safety Consciousness.** The rapid pace of modern civilization has created special problems in law enforcement and personal safety of which the public must be constantly aware. Regardless of all other efforts, in the final analysis, personal education of large new date numbers of individuals in the proper skills and attitudes will determine both the safety with which we travel our highways and the security with which we live in our homes and in our communities. Thus, the Department employee must be aware of and accept the many opportunities he has each day in his work to influence the public's thinking and behavior.

**25.02 The Responsibility to Act as an Ambassador of Good Government.** At some time or other, most adults come before a member of the Department of Public Safety—perhaps many times. No other agency or department has the opportunity to make such a mass statewide personal contact with so many people in all walks of life. Thus, the Department represents one of the main contacts which the state government has with all of its citizens. The manner in which these contacts are carried out may have a powerful influence upon the citizens' opinion not only of the Department of Public Safety, but of the state government as well. Therefore, as an employee of the Department you have an obligation to measure up to the American tradition expressed by Thomas Jefferson, "The care of human life and happiness and not their destruction is the first and only legitimate object of good government."

**25.03 The Responsibility to Assume Leadership as a Citizen.** The bane of progress is public complacency. The great need of any movement is the need for leadership. Behind the success of almost every undertaking are a few people who have been willing to work above and beyond the call of duty. People can be led, but without leadership they follow the paths of least resistance, "paths" which too often lead to death and destruction on our highways, and to other threats to personal and public safety. To fully discharge his responsibilities to society, a member of the Department must avail himself of the opportunities to divert these "paths of least resistance" to better ways. Opportunities open to you will include:

1. Professional contacts which will enable you to cooperate and counsel with other agencies working toward common goals of public welfare.

2. Everyday associations in the community which will enable you to tactfully leave conversational messages of safety.
3. Invitations to deliver safety talks, show films, or assist in instructing in special groups.
4. Youth work—Boy Scouts, boys’ clubs, church groups, teen-age meetings, etc.
5. Reading which will enable you to keep up-to-date professionally.

As representatives of the Department of Public Safety, we should “carry the public along with an up-to-date program” rather than lag so far behind that the public will be forced to carry us along with their demands.

**25.04 The Responsibility to Improve the Public Safety Program.** Any person who is capable of doing good work in any profession is capable of advancing that profession. If, in time, your ideas for improving the work you are in do not exceed your negative criticism of the way things are done—in both the written and the spoken word—it is time to take stock of yourself. The chances are you are in the wrong business. Very little talent is required to coast or plod along in a job and be unhappy. Even less intellectual capital is required to set up in the grumbling business. It is no surprise, then, that those who are happiest in their job and advance the fastest are those who do the most to advance their work.

**25.05 The Responsibility to Counsel With Individuals in Their Personal Safety Problems.** You should come to be known in your field as an expert. As such, you will in many ways be in the same position as authorities in other professions. Many people will come to you for counsel and advice. If the counsel sought is proper and within your field and you can help, you have the humanitarian responsibility to do so—whether the hour is between 8 a.m. and 5 p.m. or between 5 p.m. and 8 a.m.

#### **06.30.00 MAJOR INFRACTION APPLICABLE TO ANY MEMBER (Rule §1.114)**

**30.02** Any of the major infractions listed as follows may be deemed sufficient cause for the discharge, suspension, demotion, or removal of any member of the Department of Public Safety:

1. Failure to abide by the Code and Canons of Ethics or the standards of ethical conduct for state employees;
2. Violation of one or more of the ten general orders;
3. Violation of any rule, order, requirement, or failure to follow instructions contained in Department manuals;
4. Willful disobedience to any legal order properly issued to him by any superior officer to the Department;
5. Willful neglect of duty;
6. Making public any investigation or proposed movement or business of the Department to any unauthorized person;
7. Unnecessary and unwarranted violence to a citizen or person under arrest;
8. Use of indecent, profane, or harsh language while on duty or in uniform;
9. Unauthorized attendance while on duty at official legislative sessions;

10. Willful or inexcusable destruction or loss of state property;
11. Violations of law which are willful or inexcusable;
12. Acceptance of fees, gifts, or money contrary to the rules of the Department and/or laws of the state; or
13. Any act on or off duty which reflects discredit to the Department of Public Safety.
14. Racial profiling as defined in 05.73.00.

**30.03** The terms contained herein are those which appear in §§1.111-1.113 of this title (relating to Professional Conduct) and are intended by the Public Safety Commission to reflect and refer to those provisions.

# PERSONNEL POLICIES, PROCEDURES, BENEFITS, AND RECORDS

## 01.07.00.00

### 07.01.00 INTRODUCTION

Personnel policies for the Department are established by the Director, the Public Safety Commission or by legislation. They are hereby set forth for the guidance and direction of all employees.

The General Manual requires the Director's approval for a variety of Human Resources special benefits or waivers. The recent reorganization has resulted in the shift of a variety of duties in the executive staff and from this point forward these requests will be approved by the appropriate Deputy Director.

These requests are required to be sent to Human Resources for processing before going to the Deputy Director's Office. This has not changed. Assistant Directors will send the paperwork to Human Resources and Human Resources will prepare the paperwork for the appropriate Deputy Director's signature.

### 07.02.00 EMPLOYEE ABSENTEE RECORD

**02.01 Purpose.** The General Provisions of the Appropriations Bill provide that a record of the absence of each employee from duty will be recorded, with reasons therefor, and that such records will be available for public inspection.

**02.02 Policy.** It is the policy of this Department to require all employee absences, time-for-time compensatory accruals, overtime, and holidays earned to be entered into the automated record keeping system. Sick leave and vacation accruals are automatically entered.

The immediate supervisor of each employee must reconcile the monthly Employee Time Summary reports sent out each month by the Human Resources Bureau with employees' weekly reports and/or any other records maintained such as calendars, etc., to determine any discrepancies and make all necessary corrections. The Employee Absentee Record, HR-95, will be used by the immediate supervisor in documenting, tracking, and reconciling an employee's time record.

An employee should not enter their own time into the automated system. Another employee should input this information. This should be directed by the employee's supervisor.

**02.03 Procedure.** The major division chiefs and special section heads will require an Employee Time Detail Listing to be kept on each employee under their command.

1. A copy of the automated employee time record will be placed in each employee's personnel file and become a part of the permanent record at the end of each fiscal year.

2. All HR-11 cards signed by the employee will be retained at the point of entry into the automated system for a period of not less than three years.

3. When an employee transfers from one location or organizational unit to another, his or her employee time record will be forwarded to the appropriate officer of his or her new assignment and transferred in the automated system by the Austin Headquarters so that the record may be kept continuous. Field supervisors maintaining the Employee Absentee Record, HR-95, will also forward this record to the appropriate officer of the employee's new assignment.

4. In instances where an employee remains on the payroll beyond the last day of duty through the use of accrued vacation rather than lump sum payment, refer to paragraph 3d of section 06.05.

5. Upon the termination of an employee, the supervisor should assure that all HR-11 cards have been turned in to the point of entry to the automated system.

6. Upon the death of an employee, the unused vacation and sick leave entitlement shall be reflected on the HR-25. Attach the Computerized Employee Time Detail Listing sheet to the HR-25 and forward to the Human Resources Bureau.

#### **02.04 Off Duty Records**

1. State law requires the Department to maintain employee absentee records. Every employee who is off duty for any purpose other than on a regularly assigned day off duty must therefore complete the Time Accrued and Taken card, form HR-11. When a period of leave time begins in one month and ends in another (Example: July 29 - August 2), an HR-11 card must be completed for each month in which leave was taken. (Example: Submit one set of cards for July 29 - July 31 and one set of cards for August 1 - 2.)

2. Off duty cards should be submitted by the supervisors to the point of entry into the automated system on a weekly basis. Supervisors should assure that their employees submit off duty cards promptly.

3. If an employee has been off duty for more than one week under circumstances which prevented the employee from receiving prior approval by the supervisor of the absence (including illness or injury), then the supervisor will complete the off duty cards on the employee on a weekly basis until the employee returns to work. The supervisor will provide copies of any cards submitted under this provision to the employee affected.

**02.05 Exhaustion of Leave Entitlements and Unauthorized Absences.** If an employee is absent from work after exhausting all leave entitlements or is absent from work without authorization, the employee should be placed on administrative leave without pay. The supervisor of the employee will cause an HR-25 to be completed, placing the employee on administrative leave as of a specified date and time, and returning the employee to a pay status upon return to work. If the employee has already returned to work prior to the HR-25 submission, the HR-25 should reflect the exact number of hours that the employee was on Leave Without Pay (LWOP).

Supervisors will keep a record of time that employees were off work on unauthorized LWOP. Before designating time off as unauthorized, supervisors must ensure that doing so does not limit the rights of employees under the Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA).

#### **02.10 Alternative Work Week Program**

##### **Purpose**

The Texas Department of Public Safety is an agency of this state created to protect and serve the people of the state of Texas. In fulfilling that mission, it is our goal to provide world-class services. We strive to increase productivity and improve customer service, planning, and teamwork by introducing an Alternative Work Week program. Goals of the Alternative Work Week program policy are improved attendance, turnover reduction, and provision of a new recruitment strategy.

The benefits for employees would include: more control over their personal time, higher morale, increased job knowledge, increased control over work-life, increased flexibility, increased job satisfaction, reduction of energy consumption, and savings on commuting costs.



Each option of the Alternative Work Week program—Flextime and the Compressed Work Week schedules of 4/10/40 or 4/9/4/40 provide an alternative to the traditional 8:00 AM to 5:00 PM, Monday through Friday work week.

This policy and these procedures are intended to serve as guidelines for administration of the Flextime and the Compressed Work Week schedules. The policy is not intended to provide rules for each situation that may arise under the Flextime and the Compressed Work Week schedules.

It is the responsibility of each director, manager and supervisor to make continued fair, consistent and objective decisions when faced with circumstances that are not specifically addressed in these policies and procedures.

### **Definitions**

**Compressed Work Week-** The Compressed Work Week allows for work schedules to produce a full forty (40) hours of work in less than five (5) work days. This schedule includes a time frame established by each division during which all employees must be present. The following are the approved Compressed Work Week options:

4/10/40 – Four 10-hour days/40 hours per work week/one 8-hour day off.

4/9/4/40 – Four 9-hour days plus one 4-hour day/40 hours per work week/one 4-hour period off during a work week.

**Division Core Hours** - A flexible arrival/departure schedule revolves around the time frame during which all employees are required to be present (Division Core Hours). Employees should adhere to a set schedule throughout the work week. They may adjust their starting and quitting times within the established time frame through agreement between the employee and supervisor. The division's Assistant Director will determine the Division Core Hours.

**Flextime** - A generic term for work schedules that allow flexible work times within limits set by management. This schedule includes a time frame established by each division during which all employees must be present. For example, this time could be from 7:30AM to 4PM. Flextime requires that five 8-hour days (40 hours) be worked in a single work week. Each day will include at least a 30 minute lunch in the middle of the work day.

### **Policies (Provisions, Standards and Ethics)**

**Assistant Director's Role** – Each Assistant Director is responsible for determining which positions in his or her area are eligible to work an alternative schedule. If the employee is in the field, the Assistant Director must include the Regional Commander in the approval path to ensure that the coverage for field is not adversely impacted by the alternative schedule. The Assistant Director is required to give final approval to the employees who want to take part in this initiative.

**Regional Commander's Role** – Each Regional Commander is responsible for coordinating with the Assistant Director in determining which positions in his or her area are eligible to work an alternative schedule. If the employee is in the field, the Regional Commander must include the Assistant Director in the approval path to ensure that the coverage for field is not adversely impacted by the alternative schedule and that the positions selected is eligible for an alternative schedule. For employees in the field, both the Assistant Director and Regional Commander must give final approval to the employees who want to take part in this initiative.

**Management's Role** - Management is responsible for monitoring the quality and timely completion of work to ensure agency objectives are accomplished. Management is responsible for developing the specific Alternative Work Week schedule for each employee and ensuring that the work schedule meets the needs of management and the agency's customers.

Management may limit the number of employees participating in the Alternative Work Week programs at any time. Management may determine that an employee is not eligible, or is no longer eligible to continue, to work a Flextime or a

Compressed Work Week for any reason, including, but not limited to, operational factors, workload, and performance history.

Under normal circumstances, once a participant has been authorized to work an alternative schedule and has codified their regular schedule with the advice and approval of management, management will not modify the participants schedule without notice. In the event of a disaster or other emergency, management may suspend the Alternative Work Week program options for affected offices.

Management is responsible for ensuring that employees do not abuse the Alternative Work Week program. Employees who abuse the program should be counseled by management. If the abuse continues, management may restrict an employee's starting and stopping times, discontinue the Alternative Work Week program schedule entirely for a particular employee, and/or take other appropriate disciplinary action.

**Participant's Role** - The participant must provide the same level of productivity as with a traditional schedule. The participant will adhere to all sick leave, annual leave, leave without pay and compensatory time policies. The participant also understands that as operational needs change, Management may change work schedules accordingly. The participant understands that the Alternative Work Week program is a privilege; if the needs of our customers are not being met, management may opt to suspend or discontinue the Alternative Work Week schedule

Eligibility. To be eligible for a Flextime or Compressed Work Week, an employee must:

- Be a full-time non commissioned employee who has successfully completed a one-year probationary period.
- Have demonstrated the ability to work well with minimal supervision as determined by his/her supervisor.
- Have a thorough knowledge and full understanding of the operations of his/her work tasks.
- Have a history of reliable and responsible accomplishment of work duties.
- Have received "skilled" or higher on all applicable job duties on most his/her current progress report.
- Have not been placed on disciplinary probation status in the last two years.
- Be capable of working a 10-hour work day as determined by his/her supervisor/manager.

Employees who are supervisors are ineligible to participate in the Flextime or Compressed Work Week program.

#### **Administrative Alternate (Flex & Compressed) Work Week Standard Operating Procedures (SOP) for Managers**

This alternate workweek SOP is to be utilized for all divisions offering an alternative workweek including any flexible and/or compressed workweek. This SOP is a step by step process developed to assist with the implementation/monitoring of an alternate work week option.

1. Announce/introduce the alternative workweek policy and disseminate to all full-time employees.
2. Schedule a meeting to review the policy with all managers and supervisors.
3. Ensure employees, supervisors, and managers understand the regular work schedule is Monday through Friday, 8-5. Anything outside of that schedule is considered to be a flex schedule or alternate workweek schedule. An agreement must be prepared and schedule documented for either a flex or compressed workweek schedule.
4. Provide employees a sufficient timeframe for them to decide what schedule they wish to work.
5. Review all requests for the alternate workweek, flexible schedule or regular schedule.
6. Meet with all supervisors and managers to ensure adequate coverage during the core periods.
7. Review and resolve any schedule conflicts. Discuss conflicts with employees. If unable to resolve conflicts, use tenure and performance as a factor.
8. Once all schedules are finalized, approve and discuss with all employees individually.
9. Use the HR-46 Alternate Work Week form for this purpose.
10. Obtain signed agreements from employees on any flexible or compressed workweek.
11. Ensure everyone understands the agreement, and that changes cannot be made without prior approval and that adherence to schedules is required.

12. If any employee regularly arrives late or leaves early, the agreement may be revoked by management as noted in the policy.
13. Managers and supervisors should regularly review schedules to ensure division goals are being met.
14. File a copy of the work schedule agreement with HR.

### **Alternative Work Week Program Requests**

All requests for participation shall be made through the approval process designated in these policies and procedure. Eligible employees need to complete an "Employee Work Alternative Request Form" to request Alternative Work Week scheduling.

NOTE: Employees requesting Flextime or Alternative Work Week schedules are required to commit to their requested schedule for a minimum of six months. Exceptions may be made on a case-by-case basis. We require this to avoid possible abuses of the system and to reduce administrative costs.

After the employee completes the form, he/she signs it and forwards it to his/her chain of command for approval.

The following forms should be used when requesting the Alternative Work Week program Option (All forms are now available on the DPSnet Forms Repository):

[Flextime Schedule Form.](#)

[Compressed Work Week, 4/10/40 and 4/9/4/40.](#)

If approved, management will provide a copy to the employee and maintain a copy in their division and/or timekeeper files.

## **07.03.00 FAMILY AND MEDICAL LEAVE**

a. **Policy.** The Texas Department of Public Safety grants family and medical leave to eligible employees in accordance with the federal Family and Medical Leave Act (FMLA) and applicable state law for medical events affecting an employee or an employee's family member. The DPS shall grant leave without regard to race, color, religion, sex (gender), national origin, age, disability, genetic information or uniformed service status. No employee shall be subjected to harassment or retaliation for opposing or reporting an alleged violation of a federal or state law relating to leave entitlements or for opposing or reporting employment discrimination.

The Human Resources area will be responsible for managing the DPS FMLA Program. This includes responsibility for receiving and processing all FMLA documents.

b. **Definitions.**

**"Applicable Leave"** - accrued leave that may only be used under certain conditions. Leave is defined as sick leave, vacation, overtime and compensatory time.

**"As Soon As Practicable"** – as soon as possible and practical, taking into account all of the facts and circumstances in the individual case.

**"Care for a Covered Servicemember"** – up to 26 workweeks of job protected leave during a single 12-month period available to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember caring for the servicemember. The single 12-month period begins on the first day the eligible employee takes FML to care for the covered servicemember and ends 12 months after that date. If an eligible employee does not take all of the 26 workweeks of leave entitlement during the single 12-month period, the remaining part of the 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

**“Child”** – biological, adopted, or foster son or daughter, stepchild, legal ward, or a child (other than the above) for whom an individual is standing “in loco parentis.”

**“Covered Servicemember”** – (1) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the five-year period preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

**“Family”** – for the purposes of family and medical leave, includes an employee’s spouse, parents, and son(s) or daughter(s).

**“Family and Medical Leave (FML)”** – leave granted in accordance with the provisions of the Family and Medical Leave Act (FMLA), which is a federal law entitling an eligible employee to a specific number of workweeks of job-protected leave, with or without pay, during a 12-month period for a qualified reason as set forth in the FMLA. All qualifying reasons, except Military Caregiver Leave, entitle an employee up to 12 workweeks of job-protected leave. Military Caregiver Leave entitles an employee with up to 26 workweeks of such leave during a single 12-month period. Note: DPS uses a rolling 12-month period when calculating FML.

**“FML Certification”** – written documentation that supports an employee’s need for leave. Types of certification include: a) Medical certification issued by the health care provider of the employee, or the health care provider of a covered family member, documenting a serious health condition, or b) Documentation supporting a qualifying exigency.

**“Health Care Provider”** – doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, licensed acupuncturist, nurse practitioner, nurse midwife, clinical social worker who is performing within the scope of their practice as defined under state law, any health care provider recognized under the Texas Employees Group Benefits Program, or a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

**“Health Care Provider’s Statement”** – written statement from an attending health care provider that identifies the following: (1) the medical fact(s) associated with the injury/illness; (2) the expected duration of the injury/illness; and (3) if the statement is for the care of a family member, the type and duration of assistance required from the employee, and projected date that the employee’s assistance shall no longer be required.

**“Immediate Family Member”** – defined as spouse, son or daughter, and parent.

**“In Loco Parentis”** – a person having day-to-day responsibilities to care for and financially support a child or having had such responsibility for an employee when the employee was a child. A biological or legal relationship is not necessary. A host parent of a foreign exchange student is standing “in loco parentis” for the foreign exchange student.

**“Incapable of Self-Care”** – the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities” of daily living (ADL) or “instrumental activities of daily living.” ADLs include bathing, dressing, cooking, eating, shopping, paying bills, using telephones, and taking public transportation.

**“Intermittent Leave”** – FML taken in separate blocks of time due to a single qualifying reason.

**“Marriage”** – the two types of marriage recognized by the State of Texas are “ceremonial marriage” and “common-law marriage.”

- “Ceremonial Marriage” is a marriage documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.
- “Common-Law Marriage” (referred to in Texas Family Code 2.401 as an “informal marriage”) is a marriage that is not necessarily documented through a county clerk but is valid when a man and woman perform all of the following: (1) agree to be married; (2) after the agreement, live together in the State of Texas as husband and wife; and (3) represent to others that they are married.
- If a declaration of informal marriage as defined in Texas Family Code 2.402 is utilized, it must be signed on a form prescribed by the bureau of vital statistics and provided by the county clerk.

**“Next of Kin of a Covered Servicemember”** – the nearest blood relative other than the covered servicemember’s spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as the nearest blood relative for purposes of military caregiver leave under FMLA.

**“Parent”** – biological, adoptive, step, or foster father or mother, or an individual who stands or has stood “in loco parentis” to an employee when the employee was a child. This term does not include parents “in law.”

**“Physically Worked”** – the hours an employee reports for duty. The hours an employee is on leave with pay (administrative, compensatory, holiday, overtime, sick, or vacation leave) or leave without pay (LWOP) do not count as hours physically worked.

**“Reduced Leave Schedule”** – leave schedule for an employee taking FML that reduces the employee’s usual number of working hours per workweek or hours per regularly scheduled workday for a period of time.

**“Release to Return to Work”** – written statement from an employee’s attending health care provider that identifies a date the employee may return to work and (1) restrictions or limitations and whether they are of a temporary or permanent nature, or (2) no restrictions or limitations, which shall result in the statement being considered an unconditional release to return to work.

**“Rolling 12-Month Period”** – the 12-month period measured backward from the date an employee uses any FML. An eligible employee’s total FML entitlement is limited to 12 workweeks within a rolling 12-month period. When the employee requests FML, we look backward 12 months to determine if the employee took FML anytime in the previous 12 months. If not, the rolling 12-month period begins on the date that an employee initially takes FML for an authorized incident.

**“Serious Health Condition”** – for the purpose of FML is an illness, injury, impairment, or physical or mental condition that involves:

- (1) inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacitation or any subsequent treatment in connection with such inpatient care;
- (2) continuing treatment by a health care provider, which includes a period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes a period of incapacity lasting more than three (3) consecutive, full

calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also include:

- (i) treatment of two (2) or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
  - (ii) one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (i.e., prescription medication, physical therapy); or
  - (iii) any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence;
- (3) chronic conditions requiring treatment by a health care provider at least twice a year, such as asthma, diabetes, or epilepsy;
- (4) permanent or long-term conditions, so long as the employee is under the care of (though not necessarily receiving active treatment by) a health care provider, such as a stroke; or
- (5) conditions requiring multiple treatments for restorative surgery after an accident or other injury or a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as chemotherapy for cancer or dialysis for kidney disease.

**“Serious Injury or Illness”** – for the purpose of FML, is (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or an injury or illness that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**“Spouse\*”** – for the purpose of FML, as defined in the statute, means a husband or wife to the other person with whom an individual entered into marriage as defined or recognized for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) was entered into in a State that recognizes such marriages, or (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. *State means any State of the United States or the District of Columbia or any Territory or possession of the United States.*

*\* For coverage under FML for a spouse, a copy of the marriage certificate or declaration of informal marriage will be required.*

c. **Employee Notification of Rights and Responsibilities.** In addition to this policy, DPS employees are notified of their rights and responsibilities under the FMLA through the notice prescribed by the United States Department of Labor (Employee Rights and Responsibilities under the FMLA). This notice is:

1. Provided to each newly hired and rehired employee during New Employee Orientation.

2. Posted in employee common-use areas by Human Resources at the Headquarters and Regional Headquarters in the region

d. **Service Eligibility Requirements.** To be eligible for FMLA, an employee must meet the following two service requirements:

1. An employee must have at least 12 months of total state service. If the employee had a break in state service that was longer than seven (7) years, the service accrued prior to the break will not count toward the 12-month service requirement. The only potential exception is a break due to the employee's fulfillment of his/her National Guard or Reserve military service obligation.
2. An employee must have physically worked at least 1,250 hours during the 12-month period immediately prior to the beginning of FML leave.
  - A. Under the Uniformed Services Employment and Reemployment Rights Act, an employee returning from fulfilling his/her National Guard or Reserve military obligation shall be credited with the hours of state service that the employee would have performed if the employee had not been performing such military service. Accordingly, the hours that the employee would have worked for the state during the period of such military leave must be added to any hours the employee actually worked for the state during the previous 12-month period to determine if the employee meets the required 1,250 hours.
  - B. Time on any leave other than military leave described above does not count toward the required 1,250 hours.

e. **FMLA Qualifying Reasons.**

1. **Birth, Adoption, or Foster Care.** An eligible employee is entitled to FMLA leave for the birth of his/her child, or for the placement of a child with the employee for adoption or foster care.
  - A. FMLA leave for the birth of a child is available to both the parents of the child.
    - i. For the birth mother, leave for the birth of a child may include periods of leave based on:
      - I. the mother's physical/medical limitations (for which medical certification is required and which may be taken on an intermittent basis); and
      - II. time to bond with and care for the newborn child (for which medical certification is not required and which may be taken intermittently).
    - ii. For the parent not giving birth to the child, FMLA leave for the birth of a child may include periods of leave based on:
      - I. a medical need to care for the spouse during a period of incapacitation of the spouse due to pregnancy or childbirth (for which medical certification is required, and which may be taken on an intermittent basis); and
      - II. time to bond with and care for the newborn child (for which medical certification is not required and which may be taken intermittently).
    - iii. An employee's entitlement to FMLA leave for the birth of the employee's child expires at the end of the 12-month period after the birth date of the child.

- B. An eligible employee is entitled to FMLA leave for the placement with the employee of a child for adoption or foster care as follows:
  - i. The employee may take FMLA leave when absence is required for the adoption or placement to proceed (i.e., counseling sessions, court appearances, attorney consultations, travel to another country to complete an adoption), and the leave may be taken on an intermittent basis.
  - ii. The employee may take FMLA leave for time to bond with and care for the newly placed child. FMLA leave for this purpose may be taken intermittently.
  - iii. An employee's entitlement to FMLA leave for adoption or foster care expires at the end of the 12-month period after the date of placement.

## 2. **Serious Health Condition.**

- A. An eligible employee is entitled to FMLA leave:
  - i. because of a serious health condition that makes the employee unable to perform the functions of the employee's job; or
  - ii. to care for the employee's spouse, son, daughter, or parent with a serious health condition.
- B. FMLA leave to care for an employee's son or daughter is limited to a son or daughter who, at the time the leave is to begin, is:
  - i. under age 18; or
  - ii. age 18 or older and incapable of self-care because of a mental or physical disability.
- C. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in work, school, or daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of:
  - i. incapacitation of more than three (3) consecutive calendar days combined with:
    - I. treatment by or at the direction of a health care provider two or more times within thirty (30) days of incapacitation, with the first in-person treatment visit within seven (7) days of the first day of incapacitation; or
    - II. at least one in-person visit to a health care provider within seven (7) days of the first day of incapacitation followed by a regimen of continuing treatment (i.e., prescription medications or therapy).
  - ii. incapacitation due to pregnancy or for prenatal care;
  - iii. incapacitation due to a chronic serious health condition which continues over an extended period of time and requires periodic visits to a healthcare provider for treatment at least twice a year;
  - iv. incapacitation due to a permanent or long-term condition for which the employee or family member is under the continuing supervision of a health care provider; or



- v. conditions requiring multiple treatments by or on orders or referral from a health care provider due to restorative surgery or for a condition that, if left untreated, would likely result in incapacity of more than three (3) days (i.e., chemotherapy, radiation treatments, physical therapy or dialysis).

### **3. Military Family Leave – Qualifying Exigency Leave.**

- A. An eligible employee is entitled to FML because of any “qualifying exigency” arising out from the foreign deployment of the employee’s spouse, son, daughter, or parent with the Armed Forces, or to care for a servicemember with a serious injury or illness if the employee is the servicemember’s spouse, son, daughter, parent or next of kin. Covered active duty means: 1) for members of the regular Armed forces, duty during deployment of the member with the Armed Forces to a foreign country; or 2) for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.
- B. A qualifying exigency is a non-medical activity that is directly related to the covered military member’s active duty or call to active duty status, and may include the following:
  - i. short-notice deployment (leave permitted up to seven days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the day of deployment);
  - ii. military event and related activities;
  - iii. childcare and school activities arising from the active duty or call to active duty (i.e., temporary, but not on-going childcare arrangements; enrollment in a new school; parent-teacher conferences relating to the call to active duty);
  - iv. financial and legal arrangements arising from the active duty or call to active duty;
  - v. attendance at counseling session by a non-medical counselor (i.e., clergy member) arising from the active duty or call to active duty (includes counseling for the covered military member, employee, son or daughter);
  - vi. rest and recuperation (leave permitted of up to five (5) days for each instance when the military member is on short-term, temporary rest and recuperation leave during the period of deployment);
  - vii. post-deployment military activities (i.e., attend arrival ceremonies); or
  - viii. additional activities approved on a case-by-case basis by the Human Resources Director or designee.
- C. A call to active duty for the purpose of a qualifying exigency, must be a federal call to active duty. State calls to active duty are not covered unless under order of the president of the United States in support of a contingency operation.

### **4. Military Family Leave – Military Caregiver Leave (also known as Covered Servicemember Leave).**

- A. An eligible employee is entitled to FML to care for a current member of the Armed Forces (including National Guard or Reserves), or a member who is on the temporary disability retired list if:

- i. the servicemember has a serious injury or illness for which he/she is undergoing medical treatment, recuperation, or therapy; and
  - ii. if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember as defined by the FMLA;
- B. An employee may not take leave under this provision to care for a former member of the Armed Forces or a member on the permanent disability retired list.
  - C. If the covered servicemember's medical condition does not fall under the requirements for military caregiver leave, the employee may still be eligible for FMLA leave due to a serious health condition of a family member.
  - D. A veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.
  - E. For a current servicemember, a serious injury or illness is one that may render the service member medically unfit to perform his or her military duties. For a veteran, a serious injury or illness is one that rendered the veteran medical unfit to perform his or her military duties, or an injury or illness that qualified the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work. For veterans, it includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty.

f. **Maximum Amount of Family and Medical Leave.**

- 1. **Except for military caregiver leave**, an eligible employee's total FML entitlement is limited to 12 workweeks within a rolling 12-month period. When the employee requests FML, we look backward 12 months to determine if the employee took FML anytime in the previous 12 months. If not, the rolling 12-month period begins on the date that an employee initially takes FML for an authorized incident.

**Example:** The employee is placed on Family and Medical Leave for a serious health condition on October 1, 2011. The rolling 12-month period for this employee begins on October 1, 2011 and ends 12 months later on September 30, 2012.

The employee remains on FML through October 30th. The employee returns to duty on October 31<sup>st</sup>. The employee has used 4 (four) weeks (or 160 hours of FML). The employee has a balance of 8 (eight) weeks or 320 hours of FML remaining. The remaining balance can be used for any other FML event (s) following this incident through the rolling 12-month end date of September 30, 2012.

- 2. Special provisions apply when both employees requesting FMLA are DPS employees. The amount of leave taken by one spouse for any of the following FML qualifying reasons will count against the other spouse's FML entitlement:
  - A. birth of a child and care for the child (excluding FML due to a serious health condition of the mother or child);
  - B. placement of a child with the employee for adoption or foster care, (excluding FML due to a serious health condition of the child);

- C. care for a parent due to a serious health condition (i.e., if a wife uses 8 weeks to care for her parent, the husband will only be entitled to 4 weeks to care for his parent in the same rolling 12-month period; neither spouse may use FML to care for a parent-in-law); and
- D. military caregiver leave.

3. An eligible employee's military caregiver leave entitlement is limited to 26 workweeks during a single 12-month period. The single 12-month period will be measured forward from the date the employee first uses military caregiver leave.

- A. If an employee requires military caregiver leave to care for more than one covered servicemember or requires a combination of military caregiver leave and other Family and Medical Leave, the employee's FML entitlement is limited to a maximum combined total of 26 weeks during any single 12-month period. The limitation of 12 weeks during a rolling 12-month period for other FMLA leave will still apply, even if the employee uses less than 14 weeks of military caregiver leave.
- B. Once a single 12-month period expires, the employee is eligible for another 26 weeks of military caregiver leave during a subsequent single 12-month period to care for a different covered servicemember or to care for the same covered servicemember if he/she incurs a subsequent serious injury or illness (excluding aggravation or complication of an earlier serious injury or illness for which the employee took military caregiver leave).

**g. Intermittent or Reduced Schedule Leave.**

1. An eligible employee may take FML on an intermittent or reduced schedule basis when it is:

- A. certified as medically necessary due to a serious health condition of the employee or the employee's spouse, son, daughter, or parent (i.e., for periodic medical treatments);
- B. certified as medically necessary for military caregiver leave; or
- C. necessary because of a qualifying exigency.

2. If an employee needs intermittent or reduced schedule leave for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt DPS operations.

3. If an employee is on intermittent FML, he/she must indicate when calling in that it is for the FML related condition; in other words they must invoke their FML with the supervisor when they call in for the approved FML condition. If an employee simply calls in sick and does not indicate it is related to the approved FML condition, the leave will not be designated as FML.

**h. Use of Paid Leave Benefits in Connection with Family and Medical Leave.** An employee must exhaust all applicable accrued (earned) sick leave, vacation, overtime, compensatory or holiday time and any special leave awards while taking FML prior to being placed on a LWOP-FML status. Employees taking sick or vacation leave under FML must abide by the requirements of Sections 06.02-6 and/or 06.05-4(e).

***NOTE: Available leave does not include leave that an employee chose to freeze while receiving workers' compensation benefits or disability benefits.***

i. **Coordination of FML with Other Leave and Disability Policies.**

1. **Sick Leave Pool.** Sick Leave Pool must be requested in accordance with Section [07.06.04](#). All Sick Leave Pool time granted and utilized shall be counted toward the employee's FML entitlement.
2. **Workers' Compensation.** An employee on FML who is receiving Workers' Compensation income benefits may choose not to use any paid leave balance while on FML. A Workers' Compensation absence will run concurrently with the employee's FML entitlement when the injury is one that meets the criteria for a serious health condition. The [HR-25](#) showing LWOP status for Workers' Compensation disability must indicate whether the leave is FML as well.
2. **Temporary Disability Income Benefits.** An employee on FML who is receiving lost-time or lost-wage benefits through the disability insurance programs administered by the Employees Retirement System may choose not to use all available leave balances until the exhaustion of FML.
3. **Disability Leave Without Pay.** Employees who exhaust their FML entitlement and who do not otherwise qualify for Sick Leave Pool and who are not on Workers' Compensation benefits may apply for Temporary Disability Leave Without Pay.

j. **Impact of Unpaid FML on Employee Benefits.**

1. An employee's benefits will be impacted by unpaid FML only if the employee is on unpaid FML for a full calendar month (i.e., on the first day of the month through the end of the last day of the same month).
2. If an employee is using unpaid FML for one or more full calendar months, the employee's benefits will be affected in the following ways:
  - A. The employee will not accrue or be paid for sick leave, annual leave, holiday leave, or administrative leave.
  - B. The employee will not earn state service credit for purposes of longevity pay or hazardous duty pay rates or annual leave accrual rates.
  - C. If the employee has optional health insurance (spouse, children) or other optional benefits (life, disability, etc.), the employee's portion of the cost will no longer be deducted from the employee's pay. Upon receiving notification of an employee's use of LWOP-FML from DPS Human Resources, the Employees Retirement System of Texas (ERS) will bill the employee for his/her portion of the costs. The bill will be sent to the employee's personal address listed with ERS. If the employee does not make timely payments, the optional coverage(s) may be canceled.
  - D. State contributions toward the cost of employee health insurance coverage shall continue and remain the same while an employee is taking LWOP-FML as if the employee were taking paid leave.
  - E. Although DPS pays the employee's own health insurance premium during unpaid FML, the employee may be required to reimburse DPS if the employee fails to return from FML for a reason other than:
    - i. the continuation, recurrence, or onset of a serious health condition which would entitle the employee to additional FML; or

ii. other circumstances beyond the employee's control.

k. **Reinstatement Entitlement.** When an employee who takes leave under FML returns to work on or before the expiration of approved leave, he/she is entitled to be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment. The employee may be subject to applicable fitness-for-duty certification requirements and will be required to provide a completed [HR-87](#) from the healthcare provider.

I. **Procedures.**

1. **Notice of Intent to Use Leave.**

A. **Employee Responsibilities.** An employee who fails to comply with the following procedures may have FML denied.

1. When an employee foresees the need to use leave (i.e., a planned surgery), the employee is required to provide at least 30 days advance notice before the leave period is to begin by submitting the Application for Family and Medical Leave, [HR-63](#) to the Human Resources Compliance Specialist.
2. If the need for leave is not foreseeable (i.e., due to a medical emergency), an employee shall give notice as soon as practicable to both his/her supervisor and the Human Resources Compliance Specialist. Such notice may be provided by the employee's adult family member or other responsible party if the employee is unable to personally provide the notice. When an employee is required to provide notice of an absence as soon as practicable, the employee should provide the notice on the same day or the next business day after the employee becomes aware of the need for leave.
3. The employee shall have 15 days from the date of the Notice of Eligibility and Rights and Responsibilities - Family and Medical Leave ([HR-64](#)) or 15 days from the date of the Family and Medical Leave Recertification Notice ([HR-65](#)), to provide the appropriate Healthcare provider certification, [HR-66](#).

B. **Supervisor Responsibilities.** To help ensure the Human Resources Compliance Specialist is aware that an employee is absent due to an FML qualifying reason or possible FML qualifying reason, a supervisor must notify the HR Compliance Specialist within one business day of learning that a supervised employee is or will be absent:

- i. for more than three (3) scheduled workdays due to any medical reason, including illness or injury, whether incurred on or off the job;
- ii. in order to obtain inpatient care in a hospital, hospice, or other residential care facility;
- iii. due to pregnancy or prenatal care;
- iv. due to a chronic medical condition;
- v. in order to care for a family member with a serious health condition;
- vi. for the birth of a child, or for placement of a child with the employee for adoption or foster care;

- vii. due to a qualifying exigency; or,
- viii. for military caregiver leave.

Supervisors should not contact the employee's healthcare provider to obtain information. Only the HR Compliance Specialist may contact the employee's healthcare provider.

## **2. Documentation Requirements.**

### **A. Birth, Adoption, or Foster Care.**

- I. The HR Compliance Specialist will provide the employee with a Notice of Eligibility and Rights & Responsibilities – Family and Medical Leave form, [HR-64](#), within 5 business days of receipt of notice. The [HR-64](#) will indicate whether the employee is eligible for FML and whether complete and sufficient certification has been provided or must be provided by a date identified on the form.
- II. When FML is based on birth, the employee is not required to provide a Certification of Health Care Provider but must provide proof of the event for the birth of the employee's child. A birth bracelet, hospital certificate or birth certificate may be used as proof of the event. In the event there are complications during the pregnancy or after the birth of the baby, the employee is required to submit the Certification of Health Care Provider for Employee's Serious Health Condition, [HR-66](#), or Certification of Health Care Provider for Family Member's Serious Health Condition, [HR-66A](#). The employee must provide proof of the event to the HR Compliance Specialist no later than 15 calendar days from the date of the [HR-64](#). In the event that Certification of Health Care Provider must be provided, the employee must submit the [HR-66](#) or [HR-66A](#) to the HR Compliance Specialist no later than 15 calendar days from the date of the [HR-64](#), unless the employee is granted additional time due to special circumstances.
- III. When FML is based on adoption or foster care, the employee must provide proof of the event for the placement of child with the employee for adoption or foster care. The employee must provide proof of the event to the HR Compliance Specialist no later than 15 calendar days from the date of the [HR-64](#), unless the employee is granted additional time due to special circumstances.
- IV. If proof of the event is not received within 15 calendar days, FML may be denied by Human Resources and the HR Compliance Specialist will notify the employee's supervisor.
- V. Once proof of the event is received, the HR Compliance Specialist will mail the Family and Medical Leave Designation Notice, [HR-64](#), to the employee within 5 calendar days and notify the employee's supervisor of the employee's FML approval/disapproval.

### **B. Serious Health Condition**

- I. The HR Compliance Specialist will provide the employee with a Notice of Eligibility and Rights & Responsibilities – Family and Medical Leave form, [HR-64](#), within 5 business days of receipt of notice. The [HR-64](#) will indicate whether the employee is eligible for FML and whether complete and sufficient certification has been provided or must be provided by a date identified on the form.

- II. When FML is based on a serious health condition of the employee or the employee's family member, the employee is required to provide a certification of medical need for leave from a health care provider. The employee must provide a Certification of Health Care Provider for Employee's Serious Health Condition, [HR-66](#), or Certification of Health Care Provider for Family Member's Serious Health Condition, [HR-66A](#), to the HR Compliance Specialist no later than 15 calendar days from the date of the [HR-64](#), unless the employee is granted additional time due to special circumstances.
- III. If the [HR-66](#) or [HR-66A](#) is not received within 15 calendar days, FML may be denied by the HR Compliance Specialist and the employee's supervisor notified of the denial.
- IV. Upon receipt of the [HR-66](#) or [HR-66A](#), the HR Compliance Specialist shall determine if the certification supports the FML request. Upon approval/disapproval by the HR Compliance Specialist, HR will mail the Family and Medical Leave Designation Notice, [HR-64](#), to the employee within 5 calendar days and notify the employee's supervisor of the employee's FML approval/disapproval.

#### **C. Military Family Leave – Qualifying Exigency Leave**

- I. The HR Compliance Specialist will provide the employee with a Notice of Eligibility and Rights & Responsibilities – Family and Medical Leave form, [HR-64](#), within 5 business days of receipt of notice. The [HR-64](#) will indicate whether the employee is eligible for FML and whether complete and sufficient certification has been provided or must be provided by a date identified on the form.
- II. When FML is due to a qualifying exigency, the employee must provide a completed Certification of Qualification Exigency for Military Family Leave, [HR-66B](#), to the HR Compliance Specialist. The first time the employee requests such leave, the employee must also provide the HR Compliance Specialist written documentation confirming the covered military active duty or call to active duty status in support of a contingency operation. The employee must provide these documents to the HR Compliance Specialist no later than 15 calendar days from the date of the [HR-64](#), unless the employee is granted additional time due to special circumstances.
  - i. The employee will only be required to provide the written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation the first time the employee requests leave for this purpose.
  - ii. The employee will be required to provide a completed HR-66B whenever the leave is due to a reason unrelated to a previous qualifying exigency (i.e., the first request was for short-notice deployment and the second request is one year later for rest and recuperation).
- III. If the [HR-66B](#) is not received within 15 calendar days, FML shall be denied and the HR Compliance Specialist will notify the employee's supervisor.
- IV. Upon receipt of the [HR-66B](#), the HR Compliance Specialist shall determine if the certification supports the FML request. Upon approval/disapproval, the HR Compliance Specialist will mail the Family and Medical Leave Designation Notice, [HR-64](#), to the employee within 5 calendar days and notify the employee's supervisor of the employee's FML approval/disapproval.

#### **D. Military Family Leave – Military Caregiver Leave**

- I. The HR Compliance Specialist will provide the employee with a Notice of Eligibility and Rights & Responsibilities – Family and Medical Leave form, [HR-64](#), within 5 business days of receipt of notice. The [HR-64](#) will indicate whether the employee is eligible for FML and whether complete and sufficient certification has been provided or must be provided by a date identified on the form.
  - II. When FML is to care for a covered servicemember with a serious injury or illness in the line of duty, the employee must provide a completed Certification for Serious Injury or Illness of Covered Servicemember, [HR-66C](#), to the HR Compliance Specialist. The employee must provide the [HR-66C](#) no later than 15 calendar days from the date of the [HR-64](#), unless the employee is granted additional time due to special circumstances. Recertification is not required.
  - III. When FML is to care for a covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness, an employee is required to provide a completed [HR-66V](#). A covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period may extend beyond the five year period following the guidelines established by the Department of Labor.
  - IV. Upon receipt of the [HR-66C](#), the HR Compliance Specialist shall determine if the certification supports the FML request. Upon approval/disapproval, the HR Compliance Specialist will mail the Family and Medical Leave Designation Notice, [HR-64](#), to the employee within 5 calendar days and notify the employee's supervisor of the employee's FML approval/disapproval.
- E. **Recertification.** A new medical certification (a recertification) is required:
- i. upon any significant change in the circumstances described in the initial or previous medical certification (i.e., upon any extension of the projected return to work date, any significant change in the severity of the condition, applicable work restrictions, diagnosis, etc.);
  - ii. upon expiration of the minimum period of incapacitation indicated on the most recent certification (unless the employee is released for return to work at or before the minimum period of incapacitation indicated on the medical certification);
  - iii. within 30 days of the date of a previous medical certification that did not indicate a minimum period of incapacitation (unless the employee is released to return to work at or before the end of the 30 days); and
  - iv. every 6 months (for long-term or chronic serious health conditions that result in a continuing or periodic need for FML, even if the minimum continuing or periodic need for FML in the previous medical certification is longer than 6 months).

If an employee requires FML that extends beyond the original certification, the HR Compliance Specialist shall send the Family and Medical Leave Recertification Notice, [HR-65](#) to the employee within 7 workdays of expiration of the original certification. The Recertification Notice will notify the employee that an additional certification is required within 15 calendar days from the date of the notice.



- F. **Failure to Provide Certification or Recertification.** Completed certification and recertification forms must be submitted to the HR Compliance Specialist for approval. If a required certification or recertification is not provided by the due date, or if a submitted certification or recertification does not support the need for leave, any time missed will be:
- i. not be protected by the FMLA;
  - ii. deducted from any available leave balances; and
  - iii. counted as unauthorized absence, subjecting the employee to disciplinary action up to and including termination of employment.
- G. **Incomplete or Insufficient Certifications.** All required certifications must be complete and sufficient. A certification is considered to be insufficient if it is vague, ambiguous, or non-responsive.
- I. If any required certification (including, but not limited to, any required medical certification, recertification, or evaluative medical status report) is incomplete or insufficient, the HR Compliance Specialist will provide the employee with the Family and Medical Leave Designation Notice, [HR-64](#), of what additional information is needed to make the certification complete and sufficient.
    - a. Upon receipt of the written notice indicating that the certification provided was incomplete or insufficient, it is the employee's responsibility to either:
      - i. provide a new certification that is complete and sufficient; or
      - ii. furnish the health care provider any necessary authorization from the employee or the employee's family member so that the health care provider may release a complete and sufficient certification to the employer.
    - b. **Upon receipt of written notice that a certification is incomplete or insufficient, the employee will have 7 calendar days to submit or have the health care provider submit the requested additional information (unless not practical to do so under the circumstances, despite the employee's diligent, good faith efforts, in which case the employee must submit the requested additional information or authorize the health care provider to provide the information as soon as practicable).**
  - II. **The provision regarding a 7 calendar day period to resubmit complete or sufficient certification does not apply when the employee has failed to submit a required certification. It only applies when the certification submitted is incomplete or insufficient.**
  - III. If DPS has reason to doubt the validity of a medical certification, we may require the employee to obtain second opinion with a physician of our choosing and at our expense and to include out of pocket travel expenses. While that action is pending, the employee is provisionally entitled to the benefits provided under the FMLA, which includes maintenance of group health benefits. If the certifications do not establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under DPS policies. If a third opinion is required, the third opinion will be final and binding.
  - IV. Copies of all medical opinions shall be provided to the employee upon request and within five business days of that request.

3. **Return to Work.** If an employee qualifies under FML for job-protected leave, the employee may return to work before the employee's FML entitlement has expired to a modified or alternate duty position, instead of continuing FML until the entitlement has been exhausted. This is so even if when the employee qualifies for both Workers' Compensation benefits and FML. However, under the provisions of the Workers' Compensation law and the Department's Return to Work program, the employee may lose Workers' Compensation income benefits if the employee has been offered a bona fide position of employment that the employee is reasonably capable of performing. This section does not prevent an individual from freely accepting a modified duty or alternate duty assignment, un-coerced and not as a condition of employment, in lieu of FML. If an employee accepts a modified or alternate duty assignment, the employee retains his or her right to the original or an equivalent position until his or her FML entitlement has expired. Refusing a light duty or an alternative assignment offered under the Workers' Compensation program may result in a suspension of Workers' Compensation benefits as determined by the state Workers' Compensation rules.

Employees do not have a right to return to a light duty status once their FML has concluded, although an employee may be able to return to work pursuant to the departmental Return to Work Program. If an employee is unable to return to duty at the end of the leave entitlement because the employee's health condition is such that the employee is unable to perform the assigned job duties, the employee may be subject to removal under the provisions of Chapter 7A of the General Manual. However, if an employee is unable to return to duty and meets the definition of disability under the Americans Disabilities Act, the employee may be eligible for reasonable accommodation under the ADA by making a request for accommodation.

#### **A. Employee's Responsibilities**

- i. While on leave the employee is required to promptly notify his/her supervisor and the HR Compliance Specialist in writing if the employee does not intend to return to work as scheduled.
- ii. If, during the FML period, the employee's circumstances change and the employee is able to return to work earlier than the scheduled return date, the employee will be required to notify his/her supervisor and the HR Compliance Specialist prior to the date the employee intends to report to work.
- iii. If FML is due to the employee's own serious health condition, the employee must present the Evaluative Medical Status Report, [HR-87](#) to return to work, unless the supervisor has received written notification (i.e., email or memo) from the HR Compliance Specialist that the employee may return to work.

#### **B. Supervisor's Responsibilities**

- i. The supervisor must not allow the employee who has been on FML due to the employee's own serious health condition to return to work unless the supervisor has received the Evaluative Medical Status Report, [HR-87](#) from the employee or written notification (i.e., email) from the HR Compliance Specialist that the employee may return to work.
- ii. Upon the employee's return to work from FML for a reason other than the employee's own serious health condition, the supervisor must provide the HR Compliance Specialist and the timekeeper verbal or written notice of the employee's return to work on the same calendar day or shift that the employee returns to work.

### **C. Human Resources Responsibilities**

- i. Once notified of an FMLA event, the HR Compliance Specialist will contact the employee and the supervisor to begin the process.
- ii. HR will review the request and send the appropriate forms if not submitted with the original request.
- iii. HR will then approve or deny the FML request and notify the employee and the supervisor of the decision.
- iv. If approved, HR will monitor the FML event until such time as the employee is released to return to work or the FML period has expired.

In all cases, HR and the supervisor shall maintain ongoing communication regarding the employee's status.

#### **03.01 Right to Express Breast Milk in the Workplace**

This policy allows a Department employee the right to express breast milk at the employee's workplace. The Department shall make reasonable accommodations for the needs of employees who express breast milk.

**a. General Requirements.** Supervisors are required to provide "reasonable break time for an employee to express breast milk each time such employee has need to express the milk." Supervisors are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

**b. Discrimination Prohibited.** The Department may not discipline or otherwise discriminate against an employee because the employee has asserted her rights under this chapter.

#### **07.04.00 REASONABLE ACCOMMODATION OF COMMISSIONED OFFICER PREGNANCY**

A commissioned officer of the Department, who has been certified by her doctor as being unable to perform the duties of the officer's permanent work assignment because of the officer's pregnancy, shall:

1. have her working conditions temporarily modified so as to meet her medical restrictions if the temporary modifications can be made through reasonable efforts by the Department; or
2. be assigned a temporary alternate work assignment if a temporary alternate work assignment that the officer may perform is available.

Temporary assignments are not considered a demotion and the officer will continue to receive her normal rate of pay, including any regular changes in pay grade.

#### **07.05.00 MILITARY ACTIVATION**

All employees who are former military members or members of a reserve component of the military who are subject to recall to active duty are required to inform their supervisor of their military commitment upon initial employment in

their position and after any reassignment. The nature of the commitment must be explained so that the supervisor can make appropriate arrangements for any routine training obligation. This shall be done on the Military Data Form, HR-81.

Employees on extended activations are required to provide their supervisor with information on how to contact the employee, if possible, or with an alternate contact person. Employees also are required to keep their supervisor informed concerning any changes in their military assignment and forward any new or amended orders when available. Supervisors need to monitor the return date of any employee on extended activation and make contact to ask for additional information/orders if the employee has exceeded the time on the original orders.

Information on other reporting procedures is found in Section 05.02, Military Activation Documentation.

### **05.01 Types of Military Activation**

**1.a. Annual Training or Other Authorized Military or Urban Search and Rescue Duties [Paid Leave (MLT)].** An employee who is a member of the state military forces, a reserve component of the armed forces or a member of a state or federally authorized Urban Search and Rescue Team is entitled to a paid leave of absence from the employee's duties on a day on which the employee is engaged in authorized training (including travel to and from assignment location) or duty ordered or authorized by proper authority for not more than 15 workdays in a federal fiscal year (begins October 1st). During a leave of absence the employee will not be subjected to loss of efficiency rating, sick leave or vacation time. The Department shall adjust the work schedule of any employee who is a member of the state military forces or any reserve component of the armed forces so that two of the employee's non-work days per month coincide with military duty to be performed by the employee.

1.b. The employee who is called up for military training or duty may carry over the net balance of the unused military leave (15 workdays per federal fiscal year) to the next fiscal year, but not to exceed a total of 45 days. 1.b. is effective September 1, 2011.

1.c. Effective September 1, 2015, the employee who is a member of the state military forces, a reserve component of the armed forces or a member of a state or federally authorized Urban Search and Rescue Team is entitled to receive a written notice pertaining to the paid military leave. Each employee that meets the aforementioned definition is entitled to 15 workdays of paid military leave for training purposes. This statement will include the number of workdays of paid military leave utilized in the fiscal year and the balance remaining beginning the new fiscal year. This is as defined in HB445 effective 9-1-2015.

**2. State Emergency Activation Texas National Guard [Paid Emergency Leave].** An employee called to state active duty as a member of the state military forces by the governor because of an emergency is entitled to receive paid emergency leave without loss of military leave under sub-section 1 above or annual leave. An employee who is called to other types of active duty as a member of the state military forces may not receive the employee's state salary except as provided by sub-sections 1 and 3.

[Note: It is not possible to tell from the military orders whether an employee is being activated under this section. If an employee in the Texas National Guard is activated by the Governor to handle a local emergency call the Human Resources Director's office. Human Resources will contact the Adjutant General's Office to determine the type of call up.]

**3. National Emergency Activation [Unpaid Leave].** An employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Title 10 or 32, United States code, is entitled to an unpaid leave of absence. The employee continues to accrue state service credit for purposes of longevity or hazardous duty pay while on unpaid military duty described in this section. The employee may retain any accrued vacation or sick leave and is entitled to be credited with those balances on return to state employment from

unpaid military duty. The following can be used while on military deployment to remain on the payroll with the Department and/or supplement military pay:

a. **Differential pay [Emergency Leave].** The Director will grant sufficient emergency leave as differential pay to an employee if the employee's military gross pay is less than the employee's actual state gross pay and the employee is on an unpaid military activation to serve in response to a national emergency as a member of the state military forces called by the governor or as a member of a reserve component of the armed forces of the United States called by the president. In addition, an employee activated for military service as described whose military pay is equal to or more than their state salary will be granted one hour of emergency leave. This will allow the employee to retain the state's contribution to their health insurance and other benefits.

In addition to the differential leave, the employee may use any accrued vacation leave, earned state or holiday compensatory leave, or overtime compensatory leave available at the time of their activation as outlined below.

Differential emergency leave will only be granted to employees that are on active military duty. Once an employee has been released from duty, they must notify their supervisor immediately and either return to state service the next working day, use some form of approved leave entitlement (earned prior to their military leave), or go on unpaid military leave status. This requirement does not restrict the employee in any way from taking advantage of the re-employment rights granted under The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). (See Section 05.04, Return From Military Activation.)

b. **Leave Accruals.** The employee may use any accrued vacation leave, earned state or holiday compensatory leave, or overtime compensatory leave available at the time of their activation. Leave accruals can be used in lump sum at the beginning of the unpaid military activation, can be used as a certain number of hours each month while on unpaid military activation or both. Leave accruals are often used by employees to assure continuity between Department and military payrolls or to maintain benefits (payroll deductions) for the employee or the employee's dependents while the employee is on unpaid military activation. Leave earned while in a paid leave status is credited to the employee's balance and available for use when the employee returns to active state employment.

If an employee refuses differential pay or decides not to use leave accruals and goes off the payroll, then the employee will not accrue retirement credit, vacation or sick leave, nor will the state pay any portion of their insurance coverage during any entire calendar month the employee is on an unpaid military leave of absence. (See Retirement Information on the Military Information and Leave Notification Form, HR-82, for explanation of reasons for remaining off the payroll.)

4. **Other Military Activation [Unpaid Leave].** All other military activations will be unpaid leave. Examples of other types of unpaid activations: additional training not covered by Section 1; basic training; officer and/or promotional training; advanced specialty training; deployments for assignments not related to or in support of a state of emergency. An employee called for unpaid military leave can choose to use some or all available accrued leave (other than sick leave) before going on unpaid status. Also, paid leave can be used intermittently while on extended activations.

If an employee decides not to use leave accruals and goes off the payroll, then the employee will not accrue retirement credit, vacation or sick leave, nor will the state pay any portion of their insurance coverage during any entire calendar month the employee is on an unpaid military leave of absence. (See Retirement Information on the Military Information and Leave Notification Form, HR-82, for explanation of reasons for remaining off the payroll.)

## 05.02 Military Activation Documentation

**1. Annual Training or State Emergency National Guard Activation.** An employee required to take paid military leave shall notify their chain of command concerning a need for leave for a military training assignment (05.01(1)) or state military activation (05.01(2)), as soon as possible on Military Data Form, HR-81, through the level of regional or service commander or special section heads. Copies of the military orders, if available, shall be attached to the form and forwarded through proper channels. The original documents shall be forwarded by the chain of command to Human Resources for inclusion in the personnel file. Additionally, supervisors shall provide a copy of the HR-81 to Human Resources, Psychological Services, Payroll and the Regional Commander or Assistant Director within 72 hours of receiving the HR-81 from the employee. Employees will designate the leave as MLT on their Time Accrued and Taken Cards, HR-11.

It should be noted that orders for routine training are not always available. If this is the case, the employee will so specify.

**2. National Emergency (Unpaid Leave) - with Differential Pay.** The employee shall notify their chain of command concerning a need for leave for a military assignment, as soon as possible, on Military Data Form, HR-81, through the level of regional or service commander or special section heads. Copies of the military orders, if available, shall be attached and forwarded through proper channels. The original documents shall be forwarded by the chain of command to Human Resources for inclusion in the personnel file. Also a copy of the form and orders shall immediately be faxed to Payroll. Employees must notify their supervisor on the form concerning the types and amount of leave accruals, if any, that the employee wishes to utilize while on military activation. [Note: Sick leave can not be used while on military activation.] The supervisor will notify the Payroll section of the exact date and time the employee will be going off the payroll and how much leave, if any, the employee is choosing to use on a per month basis after that date.

It should be noted that orders for activation are not always immediately available. If this is the case, the employee will so note on their Military Leave Data Form, HR-81, and forward a copy of their military orders to their supervisor as soon as possible after receipt. Also, should an employee's activation change or be extended, those new orders must also be forwarded to the supervisor. These orders will be forwarded by the supervisor through the chain of command to Human Resources for inclusion in the personnel file.

The Payroll Office will determine the differential pay (number of emergency leave hours) to be granted to each employee by comparing their military earnings each month against the employee's state earnings for the month. If the military earnings are lower than their state pay, then emergency leave will be granted to make up the difference in gross pay. If the military earnings are equal to or higher than their state pay, then one hour of emergency leave will be granted.

In order to determine the proper payment for our employees on military activation, each employee must provide the Payroll Office with a copy of their military End of the Month Leave and Earnings Statement (EOM LES). Since the military pay may vary from month to month, the exact calculations for the state salaries will have to be done monthly for each employee.

Employees on military leave whose military salary is less than their state salary are responsible for ensuring that a legible copy of their military EOM LES for each month is mailed, faxed, or e-mailed to the Payroll Office at the following address:

Texas Department of Public Safety  
Accounting & Budget Control - Payroll Office  
PO Box 4087  
Austin, TX 78773-0130  
FAX: (512) 424-5945  
wynonie.bell@txdps.state.tx.us

Because the payment for differential emergency leave entitlements will be processed on supplemental payrolls around the 15th of the month, employees must submit their EOM LES for the previous month to the Payroll Office no later than the 10th day of each month or their payment will be further delayed.

The Payroll Office will be responsible for notifying the employee's supervisor of the actual emergency leave hours that will be granted to the employee each month on the Military Emergency Leave Entitlement Calculation form. The form will also contain the number of hours of leave accruals the employee previously indicated they would be using monthly. No Personnel Action Form, HR-25, or Pay Dock Form, ACT-12, will be necessary because the employee will be on the payroll during a portion of each month and Payroll will be initiating the form to set how much payment will be authorized each month. Because this form will originate in Payroll, it is vitally important that the supervisor monitor leave accruals and notify Payroll when the activated employee is going to run out of available leave accruals.

The employee's supervisor will ensure that the HR-11 cards for any additional leave entitlements are completed and entered into the Employee Time System. The supervisor must fax a copy of the front of the HR-11 cards to Human Resources monthly at (512) 424-7210.

State law requires an activated employee's supervisor to provide an employee activated to military service as a member of the reserve component of the armed forces with a statement containing the balance of the employee's accrued state compensatory time; and accommodate an employee's request to use the balance of the employee's accrued state compensatory time before the compensatory time expires. In addition the supervisor will review the information on leave use, employment status, retirement and insurance issues with the employee going on military leave. This information is found in the Military Information and Leave Notification Form, HR-82. The original of this form will be signed by the employee and sent to Human Resources for inclusion in the personnel file. A copy will be provided to the employee.

When returning to duty, the employee shall initiate a memorandum listing the date they will be returning to work and attach a copy of their release orders. This memorandum will be forwarded by the supervisor through the chain of command to Human Resources for inclusion in the personnel file. See Section 5.04, Return From Military Activation, for more information about returning to duty.

Differential pay (emergency leave) will only be granted to employees that are on active military duty. Once an employee has been released from duty, they must notify their supervisor immediately and either return to state service the next working day, use some form of approved leave entitlement (earned prior to their military leave), or go on unpaid military leave status. This requirement does not restrict the employee in any way from taking advantage of the re-employment rights granted under The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). (See Section 05.04, Return From Military Activation.)

If an employee will be on unpaid leave after being released from the military, the supervisor will notify the Payroll section of the exact date and time the employee will be going off the payroll and will cause a Personnel Action Form, HR-25, to be completed also indicating the date and time the employee goes on unpaid military leave. An additional HR-25 will be completed placing them back on the payroll upon their return to employment.

**3. Unpaid Military Activation - Without Differential Pay.** The employee shall notify their chain of command concerning a need for leave for a military assignment as soon as possible on Military Data Form, HR-81, through the level of regional or service commander or special section heads. Copies of the military orders, if available, shall be attached to the form and forwarded through proper channels. The original documents shall be forwarded by the chain of command to Human Resources for inclusion in the personnel file. Employees must notify their supervisor on the form concerning the types and amount of leave accruals, if any, that the employee wishes to utilize while on military deployment, including any military leave they may have available. [Note: Sick leave can not be used while on military activation.]

It should be noted that orders for activation are not always immediately available. If this is the case, the employee will so note on their Military Leave Data Form, HR-81, and forward a copy of their military orders to their supervisor as soon as possible after receipt. Also, should an employee's activation change or be extended, those new orders must also be forwarded to the supervisor. These orders shall be forwarded by the supervisor through the chain of command to Human Resources for inclusion in the personnel file.

When returning to duty, the employee shall initiate a memorandum listing the date they will be returning to work and attach a copy of their release orders. This memorandum will be forwarded by the supervisor through the chain of command to Human Resources for inclusion in the personnel file. See Section 05.04, Return From Military Activation, for more information about returning to duty.

State law requires an activated employee's supervisor to provide an employee activated to military service as a member of the reserve component of the armed forces with a statement containing the balance of the employee's accrued state compensatory time; and accommodate an employee's request to use the balance of the employee's accrued state compensatory time before the compensatory time expires. In addition the supervisor will review the information on leave use, employment status, retirement and insurance issues with the employee going on military leave. This information is found in the Military Information and Leave Notification Form, HR-82. The original of this form must be signed by the employee and sent to Human Resources for inclusion in the personnel file. A copy will be provided to the employee.

When an employee is activated, the supervisor will notify the Payroll section of the exact date and time the employee will be going off the payroll and will cause a Personnel Action Form, HR-25, to be completed also indicating the date and time the employee goes on unpaid military leave. The supervisor will also notify Payroll and cause an HR-25 to be completed placing them back on the payroll upon their return to employment. This would normally be the only paperwork associated with unpaid military leave. However, an employee going on unpaid military leave is allowed intermittent use of leave accruals to remain on the payroll each month for insurance and/or retirement related reasons. If an employee makes this election, a Pay Dock Form, ACT-12, rather than an HR-25 will be completed. The ACT-12 will need to be completed monthly. In addition, an HR-11 card will need to be done monthly indicating the leave accruals used.

**05.03 Employee Status While On Extended Activations.** Employees called to active duty in the military will not be able to work their Departmental job assignment until they are released from active duty. However, if written permission is given by their military commanders, the deployed employee can resume work with the Department while using terminal leave with the military. Employees on activation will be able to compete in promotional processes. It will be up to the employee to stay in contact with his supervisor concerning promotional opportunities and the employee must be able to appear for any written testing or oral board examinations.

1. **Unpaid.** Employees who are off the payroll on military leave for extended periods of time will receive at the time of their return to duty at the Department any legislative salary increases, career ladder promotions (based on tenure in the position) or other salary action that they would have been entitled to if they had not been activated. Employees returning from military service are entitled, for purposes of pay and benefits, to be treated as if their time in the military had been served at the Department. The legislative salary increase will be automatic, but other changes will need to be initiated using the normal paperwork.

2. **Paid.** Employees who are on military leave but on the payroll at least part of every month through the use of differential pay and/or leave accruals will receive any legislative salary increases, career ladder promotions (based on tenure in the position) or other salary action that they would have been entitled to if they had not been deployed at the time the salary action should be taken. Tenure is based on months of service including months the employee is on military leave. Supervisors will be required to cause a Personnel Action Form, HR-25, to be completed indicating the date the appropriate salary action will commence.



**05.04 Return From Military Activation.** An employee who is a member of the state military forces or a reserve component of the armed forces and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to employment under the provision of the federal law (Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)). This is true regardless of whether the service is voluntary or involuntary; new member service or current member service; training or active duty assignment. It is true whether the employee goes on military leave or resigns employment, as long as their absence is because of military service. The employee can serve up to five years of the various types of duty (cumulative) before their reemployment rights terminate. There are numerous exceptions to the five year maximum, including such things as being unable to return within the five years because of a service related injury or having service commitments involuntarily extended by the military. Employees returning from military service are entitled, for purposes of pay and benefits, to be treated as if their time in the military had been served at the Department.

1. Those returning to work with less than 90 days of activation must be returned to the position they would have held at the time of reemployment if they had not activated to military duty **-or-** the position they held when they left **but only if** they are not able to meet the requirements of the other position despite reasonable efforts by the DPS to qualify them for the position.

2. Those returning to work after more than 90 days of activation must be returned to the position they would have held at the time of reemployment if they had not activated to military duty **-or-** a position of like seniority, status and pay, the duties of which they are qualified for, **but only if** they are not able to meet the requirements of the other described position despite reasonable efforts by the DPS to qualify them for the position.

3. Those returning to work that are not qualified because of a service related disability (after reasonable efforts to accommodate the disability) must be placed in a position of like seniority, status and pay that they are or can be qualified for after reasonable effort by the DPS or a position as close to the same seniority, status and pay as possible given the disability.

4. **Replacements.** The Department can replace an employee that is on extended military leave assignments, but the replacement employee must be a temporary employee that can be displaced when the military member asks for reemployment to that assignment.

5. **Return to work date.** The federal law gives employees a certain amount of time to report back to their employer after a military activation ends. The amount of time is dependent on the length of the activation.

a. If the period of service was less than 30 days, the employee must report to work not later than the beginning of the first regularly scheduled work day after the end of military service and the expiration of eight hours after a period allowing for safe transportation to the employees residence from the site of the military service.

b. If the period of service was more than 30 days but less than 181 days, the employee must apply for reinstatement not later than 14 days after the end of military service, or if submitting the application during that period is impossible through no fault of the employee, the next full calendar day when such application becomes possible.

c. If the period of service was more than 180 days, the employee must apply for reemployment not later than 90 days after the end of service.

Normally an employee would not return to work at the Department until after they had been released by the military. However, if written permission is given by their military commanders, the deployed employee can resume work with the Department while using terminal leave with the military.

## 05.05 MILITARY VETERANS REINTEGRATION PROGRAM

The Department has always been supportive of its personnel called to active duty service in the United States Military. This policy strives to continue this tradition and provide uniform strategies to facilitate a smooth and beneficial transition when the veteran returns to the agency to resume their role in agency operations.

The Department believes an active role in the “reintegration” of veterans is vital to both the veteran’s and agency’s success.

### 1. DEFINITIONS

a. **Veteran.** A member of the Department who separated from the agency to serve on active duty for a period of more than 180 days and was discharged/released with other than a dishonorable discharge, b) was discharged/released from active duty because of a service-connected disability, or c) as a member of a reserve component or national guard unit under an order to active duty, served on active duty for any length of time during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged/released from such duty with other than a dishonorable discharge.

b. **Reintegration.** The process of integrating and assimilating returning veterans into Department operations in a safe and comprehensive way.

c. **Department Veteran’s Assistance Program (DVAP) Representative.** This is a person appointed by the service commander to provide information and guidance to veterans concerning their benefits.

The amount of time allotted for reintegration of the veteran will depend on the amount of time the veteran is engaged in active service. Each veteran will participate in the reintegration program for a minimum of sixty (60) days. The veteran’s deployment time and the activities they participated in during their time away from the Department will greatly affect their reintegration into the agency. Therefore, the outlined reintegration period should be used as a guide after the mandated reintegration time constraints have been completed.

### 2. COMMISSIONED PERSONNEL-UNIFORMED SERVICES

The first 60 days are mandatory, with the number of subsequent weeks needed for the reintegration process based on the length of time the veteran has been separated from the Department, the comfort level of the veteran and the assessment of their performance in their position by their chain of command.

#### a. Trooper Reintegration

1) **Phase 1** The first line supervisor, with concurrence of the captain, will assign the veteran to work with a partner. Although not mandatory, it is recommended that the partner be a veteran, preferably with comparable military experience. It will be stressed to the partner that his/her job is not to act as an Field Training Officer, but as an experienced trooper working with a peer, mentoring and preparing them to resume their role following an extended absence from the agency.

i. During Phase 1 of reintegration the emphasis will consist primarily of administrative and auxiliary tasks to assimilate the veteran into Department systems and processes, and obtaining the necessary access to records, databases, and communication networks.

ii. The veteran will receive a minimum of 8 hours of firearms training and re-familiarization with Department issued firearms they are required to carry. Qualification with these firearms will be conducted before performing any enforcement activity.

iii. The veteran's supervisor will set up an appointment for the veteran with the Regional DVAP representative to learn what resources are available to them during and after the reintegration.

iv. An audit of required training needs and certification requirements will be conducted with a training plan created to ensure necessary competencies and certifications are met or updated in a reasonable and timely fashion, to include compliance with TCLEOSE mandates.

v. A 2 hour minimum review of use of force options and concepts should be conducted.

2) **Phase 2** The veteran will work referred to their assigned partner. The emphasis during Phase 2 is placed on relearning their area of operation and being introduced to local officials.

i. The veteran will work on radio procedures and use of the in-car computer.

ii. Conduct a review of law and policies with emphasis on new policies and procedures that may have been enacted during the veteran's separation from the agency.

3) **Phase 3** The veteran will continue working referred to their partner building on areas identified in Phases 1 and 2 which will provide more exposure and familiarity.

4) **Phase 4** The veteran will work with their partner but assume the lead in making contact with the public while taking enforcement action. The shifts will be daylight shifts between 6 a.m. and 6 p.m.

5) **Phase 5** The veteran will continue in the lead contact position working with their partner during evening hour shifts as in Phase 4. During phase 5 the sergeant/supervisor should do a performance observation with the veteran and partner.

6) **Phase 6** The veteran will be assigned to perform routine enforcement activities as a one man unit following the performance observation in the previous phase and discussion concerning the veteran's comfort with this next step. Shift assignments are contingent upon the needs of the area and progress of the veteran. During phase 6 the sergeant/supervisor should do a performance observation with the veteran.

**First-Line Supervisors Responsibilities.** During the initial phases, the Sergeant/Supervisors shall meet with the veteran and assigned partner on a weekly basis and document the veteran's progress with reports submitted through the chain of command up to the Division Assistant Director. The sergeant/supervisor will also conduct performance observations with the veteran after they have completed phase 5 and phase 6.

#### **b. First-Line Supervisors through Major Reintegration**

First-line supervisors up through the rank of major are required to be involved in the reintegration program. They are required to complete two phases of the reintegration program as outlined below, and have weekly meetings with a person of similar or higher rank in their area of operation and responsibility.

1) During Phase 1 of reintegration the emphasis will consist primarily of administrative and auxiliary tasks to assimilate the veteran into Department systems and processes, obtaining the necessary access to records, databases, and communication networks.

i. The veteran will receive 8 hours of firearms training and re-familiarization of Department issued firearms with a subsequent qualification on all issued firearms carried before conducting any enforcement activity.

ii. The veteran's supervisor will set up an appointment for the veteran with the Regional DVAP representative to learn what resources are available to them during and after the reintegration.

iii. An audit of required training needs and certification requirements will be conducted with a training plan created to ensure necessary competencies and certifications are met or updated in a reasonable and timely fashion, to include compliance with TCLEOSE mandates.

iv. A 2 hour minimum review of use of force options and concepts should be conducted.

2) During Phase 2 the veteran will be teamed up with a person of similar or higher rank in order to re-familiarize him/her with their duties in their area of operation. The person to assist with the re-familiarization will be assigned by the individual's supervisor.

i. The assigned mentor should conduct a review of policies and procedures that may have been enacted during the veteran's separation from the agency.

3) Weekly meetings will occur between the supervisor and veteran to discuss the veteran's progress with reintegration and operational issues.

4) The amount of time needed for the reintegration is based on the length of time the veteran has been separated from the Department, the comfort level of the veteran and the assessment of their performance in their supervisory or management role by their immediate supervisory after 60 days.

### **3. COMMISSIONED PERSONNEL-NON UNIFORMED SERVICES**

The first 60 days are mandatory, with the number of subsequent weeks needed for the reintegration process based on the comfort level of the veteran and the assessment of their performance in their position by their chain of command.

The criminal investigative and regulatory services have a different mission than the uniformed services and therefore require a different reintegration approach.

Non-Uniformed Commissioned personnel through the rank of major are required to be involved in the reintegration program. The veteran's deployment time and the activities they participated in during their time away from the Department will greatly affect their reintegration.

a. The District Captain, or immediate supervisor in the case of a captain or major, will coordinate the assignment of an equivalent or higher ranked member to assist the returning veteran with the reintegration into Department operations. The mentor will assist with questions which may arise because of policy or practice changes during the time the veteran was deployed. The returning veteran will be assisted in surveillance and other covert operations by the assigned mentor for at least the first 30 days after the veteran returns to work.

b. The returning veteran will not immediately be returned to undercover capacity (UC). The following formula will be used to determine the earliest point at which a returning veteran may be allowed to resume UC: The number of months the veteran was separated from the agency multiplied by ten. The resulting number represents the minimum number of days during which the employee will be restricted from UC. (For example, if

an Agent was gone for 9 months, the Agent could work UC after 90 days, if gone for 12 months the Agent could work UC after 120 days, etc.)

c. The Training Coordinator for each Region will coordinate the training schedule for the returning veteran. They will develop and provide the required courses as needed or arrange for the veteran to attend existing schools to obtain the portion of the training needed to comply with this policy.

i. The following is required during the first 30 days of Reintegration:

1) Firearms training-8 hours. Due to the different weapons systems and makes of weapons, there should be a familiarization course on all weapons for all personnel coming back to work.

2) Firearms qualification on all weapons. No enforcement action will be allowed until the returning member qualifies and has refresher training with all assigned firearms.

3) Supervisor will facilitate a meeting with the Regional DVAP and Employee Assistance representatives to give them information on how the Department could assist them in their transition.

4) An audit of required training needs and certification requirements will be conducted with a training plan created to ensure necessary competencies and certifications are met or updated in a reasonable and timely fashion, to include compliance with TCLEOSE mandates.

ii. The following is required to be completed during the first 60 days of Reintegration

1) CLERIS/Case Management System review-4 hours

2) Use of Force review. A review of the Use of Force options should be addressed by CID training. 2 hours.

3) Raid entry review- 4 hours.

4) Policy Change review by CID training. 2 hours.

5) One day COPS/Undercover school before resuming UC work. 8 hours.

6) TCLEOSE updates and required courses if needed. 8-24 hours.

**First-Line Supervisors Responsibilities.** The lieutenant/supervisor should conduct weekly meetings with the veteran and assigned mentor and document the veteran's progress with reports submitted through the chain of command up to the Division Assistant Director.

#### 4. NON-COMMISSIONED PERSONNEL

The first 60 days are mandatory, with the number of subsequent weeks needed for the reintegration process based on the length of time the veteran has been separated from the Department, the comfort level of the veteran and the assessment of their performance in their position by their chain of command.

Non-Commissioned personnel up through the manager level are required to be involved in the reintegration program. The veteran's deployment time and what activities they participated during their time away from the Department will greatly affect their reintegration.

a. During the first week of reintegration the emphasis will consist primarily of administrative and auxiliary tasks to assimilate the veteran into Department systems and processes, and obtaining the necessary access to records, databases, and communication networks.

i. The immediate supervisor of the returning veteran will coordinate the assignment of an equivalent or higher ranked member to assist with the reintegration into Department operations. The

mentor will assist with questions which may arise and conduct a review of policies and procedures that may have been enacted during the veteran's separation from the agency.

ii. Supervisor will facilitate a meeting with the Regional DVAP and Employee Assistance representatives to give them information on how the Department could assist them in their transition.

iii. An audit of required training needs and certification requirements will be conducted with a training plan created to ensure necessary competencies and certifications are met or updated in a reasonable and timely fashion, to include compliance with TCLEOSE or other licensing mandates.

b. Subsequent weeks will entail weekly meetings between the supervisor and veteran to discuss the veteran's reintegration and operational issues.

**First-Line Supervisors Responsibilities.** The manager/supervisor should conduct weekly meetings with the veteran and document the veteran's progress with reports submitted through the chain of command up to the Division Assistant Director.

**05.06 Veteran's Leave.** Any department member who is activated for military duty by order of the President of the United States in support of an ongoing recognized conflict, for 180 days or longer, will be allotted 120 hours of administrative leave upon return to duty with the department.

This leave may be taken at any time during the year following return to duty with the department. Those veterans who have returned to duty within one year of when this provision is enacted will be granted 120 hours of leave retroactively to be taken within one year of return to duty with the department. Veteran's administrative leave may be taken in 40 hour increments any time during the first year instead of immediately upon return. Supervisors will respond to a veteran's request for leave in 40 hour blocks as follows:

Veteran's request for 40 hours leave should be granted within 30 days of the request.

Veteran's request for 80 hours leave should be granted within 45 days of the request.

Veteran's request for 120 hours leave should be granted within 60 days of the request.

## **07.06.00 LEAVES WITH PAY**

**06.01** State statutes and Department policies provide for various types of leaves for employees. These leaves with pay are described herein.

**06.02 Sick Leave.** Members of this Department are entitled to the use of sick leave as set forth in this section; however, employees falsely claiming their entitlements will be subject to severe disciplinary action. Employees shall, without deduction in salary, be entitled to sick leave subject to the following conditions:

1. An employee will earn sick leave entitlement beginning on the first day of employment with the state and terminating on the last duty day. In this subsection, "duty day" means an employee's last physical day on the job.

2. Sick leave entitlement shall be earned at the rate of eight (8) hours for each month or fraction of a month employment and shall accumulate with the unused amount of such leave carried forward each month. Sick leave accrual shall terminate on the last day of duty.

a. Credit for each month's or fraction of a month's accrual will be entered automatically on the Employee Time Detail Listing sheet on the first day of employment and on the first of each succeeding month of employment thereafter. If an employee is not at work on the first day of the month when accruals are posted, sick leave will not be available for use until the employee actually returns to duty. Under no circumstances will employees be allowed to carry negative sick leave balances.

b. Temporary, part-time, and hourly state employees accrue sick leave on a proportionate time-worked basis to that of full-time employees.

c. If an employee is not at work on the first of the month when accruals are posted, the sick leave will not be available for use until the employee actually returns to duty.

3. Sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his or her immediate family who is actually ill. An employee who has children who are students attending grades from pre-kindergarten through 12th grade may use up to eight hours of sick leave each fiscal year to attend parent-teacher conference sessions for these children. It is the responsibility of the supervisor to maintain adequate records to ensure that no more than eight hours are taken for parent-teacher conference sessions in a fiscal year.

a. For purposes relating to regular sick leave, immediate family is defined as those individuals who reside in the same household and are related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Protective and Regulatory Services. Minor children of the employee, whether or not living in the same household, will be considered immediate family for purposes of regular sick leave.

b. An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

4. An employee who must be absent from duty because of illness, or the illness of a member of the immediate family, shall notify his/her supervisor or cause the supervisor to be notified of that fact at the earliest practicable time. The employee shall inform the supervisor if the absence is due to an FMLA-qualifying event. The employee shall also inform the supervisor if the leave is being taken to care for an immediate family member and the name, address, and relationship to the employee of the family member. Employees scheduled to work a legal state holiday and unable to work due to illness shall notify their supervisor immediately. This day will be designated their holiday and cards will not be submitted.

5. All leave taken must be entered into the automated system.

a. Upon returning to duty after a sick leave of less than one week, the employee shall, without delay, complete and submit the Time Accrued and Taken into the automated leave system. When sick leave is used to care for a member of the employee's immediate family, the employee will provide that information to the supervisor.

6. When an employee is absent more than three (3) consecutive working days due to illness or the illness of a member of his/her immediate family, an employee is required to give his/her supervisor a health care provider statement or some other written statement of the facts concerning the illness.

a. The substitution of a written statement in lieu of a statement from a health care provider will not be permitted except in cases where it is impracticable to secure a statement. Examples of these cases include but are not limited to: (1) sick leave period preceding the death of an employee; (2) religious beliefs which prohibit

the use of health care providers; (3) an employee who terminates and cannot be located, thereby making it impracticable to obtain a statement from a health care provider; (4) in other instances when it is reasonable to believe the employee did not abuse sick leave and cannot obtain a statement from a health care provider; or (5) where charges are imposed on the employee in order to secure such a statement. If the employee cannot submit a statement of a health care provider or a written statement, the supervisor will submit a written statement.

All statements concerning an employee's medical condition will be retained at the employee's work location in a special confidential medical file, NOT the regular personnel file, for three years. The information contained therein will be disseminated only on a need-to-know basis.

b. When an employee is absent three (3) or less continuous working days due to illness or the illness of a member of his/her immediate family, an employee's supervisor may require the employee to give the supervisor a healthcare provider statement or some other written statement concerning the illness, if the supervisor deems the situation appropriate. This statement may be requested by a supervisor in those situations when, at their discretion, it is reasonable to believe that:

- 1) A more clear explanation of the reason for the absence of the employee is required; and/or
- 2) It is necessary to clarify the record with regard to the employee's absence; and/or
- 3) The claim being made against sick leave entitlement is suspect, invalid, incorrect, or a misrepresentation; and/or
- 4) The past record of the employee causes the supervisor to reasonably believe that false claims against sick leave entitlements may have been made in the past; and/or
- 5) It is necessary to determine FMLA designation; and/or
- 6) It is in the best interest of DPS to secure such documentation.

c. An employee, with the approval of the employee's supervisor, may use earned compensatory/holiday time or compensatory overtime in lieu of earned sick leave time for an illness or the illness of a member of the employee's immediate family. The supervisor does not have the authority to deny the employee's use of earned compensatory/holiday time or compensatory overtime in lieu of sick leave. Supervisory approval, in this situation, only deals with the process the supervisor uses to validate that the employee has earned compensatory time to use for his/her absence. An employee may use earned compensatory/holiday time or compensatory overtime in lieu of or in combination with earned sick leave to account for an illness or the illness of a member of his/her immediate family. The requirement for a healthcare provider statement or some other written statement when compensatory/holiday time or compensatory overtime is used for an employee's absence is still in effect per a. and b. above.

Also, as clarification, the supervisor does not have the authority to alter the leave record submitted by the employee in any situation, unless approved by the employee because of extended leave. If something requires a change, the leave record must be returned to the employee for correction.

7. An employee must provide notice to his or her supervisor whenever he or she is taking sick leave for a qualifying event under the FMLA. Employees and/or supervisors should mark the appropriate information in the automated leave system.

8. Under no circumstances will an employee be allowed to use more sick leave than the employee has accrued unless the employee is eligible to use time from the Sick Leave Pool or an exception has been granted by the Director. Any excessive use of sick leave or utilization of the Sick Leave Pool which has not been approved by the Director will require that a pay dock be initiated as provided for in Chapter 10, Section 35.02, during the month the excessive leave occurred. Supervisors should comply with the provisions of Section 02.05.



9. For the purpose of interpreting what would be a legitimate claim against sick leave, the following will be used as a guideline:

a. All appointments with doctors - general physicians or other licensed medical specialists - when pregnancy or illness exists shall be considered as legitimate claims against sick leave.

b. All appointments for routine medical, dental, or eye examinations by the employee will be considered as legitimate claims against sick leave; however, such appointments for other family members shall not be considered as sick leave for the employee.

10. Employees transferring directly from another state agency shall be entitled to credit for accumulated but unused sick leave entitlement. (This does not apply to employees previously employed with independent and common school districts.)

11. An employee laid off under a formal reduction-in-force policy will have his or her sick leave balance restored if reemployed by the state within 12 months of termination. An employee separated for other reasons shall also have his or her sick leave balance restored if reemployed by the Department within 12 months of termination, provided there has been a break in service of at least one month since termination or if reemployed by an agency other than the Department within 12 months of termination.

12. Upon the death of an employee, the state shall pay the employee's estate for one-half of his or her accumulated sick leave or for 336 hours of sick leave, whichever is less. The payment for this accumulated sick leave shall be calculated at the rate of compensation being paid the employee at the time of the employee's death.

13. A terminating employee who remains on the payroll to expend accrued vacation time will not be eligible to expend accrued paid sick leave prior to final separation from the Department.

#### **14. Retirement**

a. Employees who began employment with the state before September 1, 2009 will receive one month service credit for each 160 hours of accrued unused sick leave balance on the last day the employee works and one additional month for any remaining fraction will be added to an employee's retirement benefits upon taking a service or disability retirement. This time will count toward both establishing enough service to meet retirement eligibility and toward increasing the amount of the retirement annuity.

b. Employees who began employment with the state on or after September 1, 2009 will receive one month service credit for each 160 hours of accrued unused sick leave balance on the last day the employee works and one additional month for any remaining fraction will be added to an employee's retirement benefits upon taking a service or disability retirement. This time will count only toward increasing the amount of the retirement annuity. This time will not count toward establishing enough service to meet retirement eligibility.

**06.04 Sick Leave Pool.** A program for Sick Leave Pool is established within the Department to benefit Department employees who have exhausted all accrued paid leave entitlements due to a catastrophic illness or injury. Employees of the Department may be entitled to the use of leave which has been contributed to the Sick leave Pool as set forth in this section; however, employees falsely claiming their entitlements will be subject to severe disciplinary action. The Director of Human Resources is designated as Sick Leave Pool Administrator. All requests for leave will be reviewed and acted upon by the Sick Leave Pool Administrator. The Sick Leave Pool Administrator or designee must act on all requests within ten (10) working days from the time of receipt of all required information. All requests will be handled on a first-come basis.

#### **1. Definitions**

**a. Catastrophic Injury or Illness** is defined as: A severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all sick leave earned by that employee and to lose compensation from the State. Examples of illness/injuries generally considered severe enough to be catastrophic include, but are not limited to:

- Stroke with residual paralysis or weakness
- Severe heart attack
- Major surgery (example: heart bypass surgery)
- Cancer related surgery or treatment
- Potentially fatal tumor
- Amputations

**b. Licensed practitioner** is a licensed practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license.

**c. Immediate family** is defined as those individuals related by kinship, adoption, marriage or foster children who are living in the same household, or if not in the same household, are totally dependent upon the employee for personal care or services on a continuing basis.

**2. Entitlement.** An employee is entitled to the use of the Sick Leave Pool if all of the following conditions are met:

**a.** the employee or a member of the employee's immediate family suffers a catastrophic illness or injury;

**b.** the employee has exhausted all accrued and earned leave, with the exception of employees receiving Workers' Compensation benefits due to an occupational injury or illness, in which case the employee would need to exhaust only paid sick leave entitlements;

**c.** the employee has been employed by the Department for the prior six months.

**d.** the employee has not already been granted and utilized the maximum amount of Sick Leave Pool within the previous twelve months;

**e.** the employee is subject to loss of compensation from the state;

**f.** the employee is not eligible for a modified duty or alternative duty position under the departmental Return to Work policy;

**g.** The employee must have used other paid or unpaid leave responsibly, most recent performance evaluation must reflect satisfactory attendance, and must not be on disciplinary probation and/or suspension (with or without pay) status at the time of the request.

**h.** The maximum amount of leave granted per calendar year shall not exceed 90 days (720 hours). The amount of leave granted per calendar year for catastrophic injuries or illnesses is based on the employee's DPS service and the amount of hours in the pool. Although contributions are not a requirement to receive time from the pool, previous contributions may be considered. The maximum number of eligible workdays shall be computed as indicated below:

**i.** The prolonged period of time required by the definition of catastrophic implies that a medical condition has been ongoing for a substantial length of time. Sick Leave Pool will not be granted for short

periods of absence. Sick Leave Pool will not be granted unless the total period of time away from the job for the specific illness, injury or other qualifying medical condition exceeds 22 working days. The absences can be intermittent as long as they take place during the most recent six month period of time. The 22 working day period is the total time away from the job and includes any combination of other appropriate leave types, to include leave without pay, taken during the span of the illness. Sick Leave Pool will only cover periods of absence after the initial 22 working day period.

<b>Pool Leave Months of Service</b>	<b>Allowable Hrs Per Calendar YR</b>
6-24	320
25-48	400
49-60	480
61-96	560
97+	720

If the pool falls below the level needed for distribution, the Sick Leave Pool Administrator can change the schedule of eligible hours to a lower percentage designated to ensure that the pool is not depleted. Part-time employees will be allowed pro-rated shares of the 90 day/720-hour maximum pool leave based on the above schedule.

**3. Donations of Leave.** Donations of accrued sick leave must be in eight (8) hour increments. A retiring employee may designate the number of accrued sick leave hours to be used for retirement credit and the number of accrued sick leave hours to be donated on retirement to the Sick Leave Pool.

a. All employees, especially those who are separating from the Department, are encouraged to contribute leave to the Sick Leave Pool. Contributions may be made at any time.

b. Employees may not designate a particular employee to receive their donated leave.

c. Once an employee has donated to the Sick Leave Pool the employee will only be able to request it returned if he/she is eligible to draw from the Sick Leave Pool. This includes retiring employees.

d. To contribute leave to the Sick Leave Pool, the employee will submit Donation Form **HR-36** to the Sick Leave Pool Administrator. Human Resources is responsible for taking the contributed leave from the donating employee's sick leave balance and adding it to the Sick Leave Pool balance.

**4. Requesting Leave from the Sick Leave Pool**

a. Eligible employees will submit requests on form **HR-76**, Sick Leave Pool Request Form, at least ten (10) working days prior to the exhaustion of all accrued paid entitlements, if the need for Sick Leave Pool can be foreseen. If the employee is incapacitated, the employee's supervisor will contact the employee's representative (spouse, adult child, parent) to inform them of the need to complete the required documents and the supervisor will assist the employee's representative as needed.

b. All Sick Leave Pool requests must be accompanied by: 1) a statement from a health care provider (**HR-66**) and 2) a signed authorization for release of medical information (**HR-80**) for each health care provider involved in the case. All forms must be fully and properly completed before they will be accepted for review by the Sick Leave Pool Administrator.

c. The medical information in the health care provider's statement must have sufficient detail on which the Sick Leave Pool Administrator can base a decision. At a minimum, the health care provider's statement must include:

- 1) the date the physical or mental condition commenced;
- 2) diagnosis with details of the condition, including prognosis for recovery;
- 3) dates of hospitalizations/surgeries relative to the current catastrophic illness/injury;
- 4) details concerning any other complicating health conditions which have a major impact on or relevance to the current illness/injury;
- 5) treatment plans;
- 6) mental and/or physical functional status (whichever is appropriate);
- 7) the anticipated date the employee will be able to return to work; and
- 8) the health care provider's opinion on whether the employee may be able to return to work sooner than anticipated if alternate, light, or part-time duty were an option.

d. The Sick Leave Pool Request form, the health care provider's statement, medical releases, and any other applicable attachments will be submitted by the employee to his or her supervisor. To ensure accuracy, the employee's supervisor will complete the Supervisor's Check List for a SLP Request (**HR-77**) to submit with the request. The supervisor will forward all documentation to the Sick Leave information supplied is insufficient, the Sick Leave Pool Administrator may contact the health care provider requesting further medical information.

e. Requests for the use of Sick Leave Pool and all documentation concerning the request must be treated as confidential. All transmittals must be clearly labeled "Confidential". Sick Leave Pool documentation forwarded to the administrator will be retained by the Sick Leave Pool Administrator in separate confidential files for three years.

f. The Sick Leave Pool Administrator will act on the request within ten (10) working days of receipt and will inform the employee and supervisor in writing of the decision. Requests submitted without all proper documentation will be considered incomplete and will be returned to the supervisor. The administrator shall determine the exact amount of leave that an eligible employee may draw from the pool. The employee and his or her chain of command will be notified by the Sick Leave Pool Administrator of the award.

The Sick Leave Pool Administrator will credit the approved leave to the employee. Utilization of Sick Leave Pool is to be tracked on the applicable timekeeping system. Any unused Sick Leave Pool shall be returned to the Sick Leave Pool by memorandum upon the employee's return to work.

The Director shall have discretion to authorize paid or unpaid leave for an employee with a catastrophic illness who would otherwise be eligible for leave from the Sick Leave Pool, in cases where:

- 1) the Sick Leave Pool is depleted and no hours are available for distribution, or
- 2) the employee has already been granted all the Sick Leave Pool leave allowable under the statute for which the employee would be eligible.

**5. Conditions for Use of Sick Leave Pool.** Employees awarded Sick Leave Pool will continue to accrue leave. However, the accruals will not be posted and may not be used until the employee physically returns to work. Employees

who, for any reason, terminate employment with the Department while on Sick Leave Pool leave are not entitled to have accruals.

Sick Leave Pool awarded is only to be used for the catastrophic condition for which it was originally awarded. Employees are required to submit reports on their medical status and intent to return to work every 30 days. The first status report is due 30 days after the use of pool leave begins. Status reports are also required for employees using Sick Leave Pool leave on an intermittent basis. If at any time the status report indicates that the employee will not be able to return to work in any capacity, the employee is no longer eligible to use Sick Leave Pool, unless and until the employee submits a request for reasonable accommodation under the Americans with Disabilities Act. If at any time the health care provider indicates the employee's condition is no longer catastrophic in nature, the employee is no longer eligible to use Sick Leave Pool. All unused Sick Leave Pool must be returned to the pool via memorandum to the Sick Leave Pool Administrator. Employees must submit a DPS Evaluative Medical Status Report (HR-87) before returning to work.

**6. Amendment Procedure.** If the employee's condition deteriorates, making the amount of leave awarded not adequate to meet the new circumstances, at that time a request can be made to the pool administrator to increase the amount of leave originally awarded. There is no automatic right or guarantee that an amendment request will be approved. When an amendment is approved the cumulative total leave awarded on the original request and the amendment shall not exceed the annual maximum allowed the employee for the calendar year.

An amendment request decision will be made by the same process as used in the original request. The Sick Leave Pool Administrator will respond to the amendment request within ten (10) working days of receipt of all required documentation, unless delayed by securing necessary additional medical documentation.

**7. Appeals.** If the illness/injury is determined by the Sick Leave Pool Administrator not to be a qualifying condition, the employee may appeal the decision to the appropriate Deputy Director. The appeal must be made within five (5) days of an unfavorable decision. The employee will provide the Sick Leave Pool Administrator with a written request to the appropriate Deputy Director. The Sick Leave Pool Administrator will forward the appeal to the appropriate Deputy Director. The decision made by the Deputy Director will be the final decision. Failure to meet the general eligibility criteria is not grounds for an appeal.

## 06.05 Vacation

### 1. Entitlement

a. Employees of the state shall, without deduction in salary, be entitled to a vacation in each fiscal year. Such entitlement shall be earned in accordance with the following schedule:

Length of State Service by Years	Hours Accrued by Month	Maximum Carryover
0 but less than 2 years	8	180
2 but less than 5 years	9	244
5 but less than 10 years	10	268
10 but less than 15 years	11	292
15 but less than 20 years	13	340
20 but less than 25 years	15	388
25 but less than 30 years	17	436
30 but less than 35 years	19	484
35 years and above	21	532

Temporary, part-time, and hourly state employees accrue vacation entitlement on a proportionate time-worked basis to that of full-time employees and the maximum carryover will also be proportionate. A

temporary employee is one that is subject to temporary funding or has approval for the position on a temporary basis. Contract employees are not included as they do not accrue leave. The use of vacation time is subject to the needs and approval of the Divisions/Section/Area and management approval.

b. An employee will earn vacation entitlement beginning on the first day of employment with the state and terminating on the last duty day. In this subsection, "duty day" means an employee's last physical day on the job. Vacation entitlement is accrued at the applicable rate cited above. Credit for one month's accrual will be given for each month or fraction of a month of employment with the state and will be posted to each employee's record on the first day of employment with the state and on the first of each succeeding month of employment thereafter.

c. Credit for the higher rate of accrual as shown on the chart above shall be given on the first calendar day of the month if the employee's anniversary date falls on the first calendar day of the month; otherwise, the increase will occur on the first calendar day of the following month. If an employee begins working in a position that accrues vacation leave on the first workday of the month, the employee is deemed to have begun working on the first calendar day of the month for the purpose of this subsection.

d. Immediately upon reinstatement, the reinstatee will accrue vacation time at the full rate allowable for his or her total state service. Except that for purposes of computing vacation leave for a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001 of the Government Code, that was credited to the state employee, years of total state employment includes only the length of state employment after the date the state employee retired.

e. Vacation with pay may not be granted until the employee has had continuous employment with the state for six (6) months, although credit will be accrued during that period. Once an employee has completed six (6) months or more of state employment and then resigns, that person is eligible to take annual leave as it is earned upon reemployment. A return-to-work retiree does not have to reestablish the six months of continuous service.

## **2. Computation of Vacation Time**

a. In computing vacation time taken, time during which any employee is excused from work because of holidays shall not be charged against the employee's vacation.

b. Employees may use vacation time up to the amount they have accrued prior to leaving on vacation. If an employee is not at work on the first of the month when accruals are posted, the vacation leave will not be available for use until the employee actually returns to duty. Under no circumstances will employees be allowed to carry negative vacation leave balances.

c. Vacation requests which begin on any day of the week may be granted if work schedules permit.

## **3. Unused Vacation Entitlement**

a. The net balance of unused accumulated leave not to exceed the maximum cited above will be carried forward for any employee from one fiscal year to the next. All hours of unused accumulated vacation leave which are lapsed at the end of a fiscal year may be credited to the employee's sick leave balance as of the first day of the next fiscal year. The automated time keeping system will be programmed to transfer the excess of maximum carry over to the employee's sick leave balance.

b. An employee transferring directly from another state agency shall be entitled to credit for the unused balance of this accumulated vacation entitlement, provided employment with the state is uninterrupted. This does not apply to employees previously employed with independent and common school districts.

c. Employees shall be encouraged to take their vacation annually, but it will not be mandatory.

d. A state employee who resigns, is dismissed, or separated from state employment shall be entitled to be paid in a lump sum for all vacation time duly accrued at the time of separation from state employment, provided the employee has had continuous employment with the state for six months, and is not reemployed by the state within 30 days. Accrued but unused vacation will be restored to employees who reemploy with the state within 30 days. If mutually agreeable with both the employee and the employing agency, a state employee may remain on an agency payroll to expend accrued vacation. This means that an employee who remains on an agency payroll in lieu of taking a lump sum payment will not accrue additional vacation time while expending his or her accrued vacation when such vacation time carries over into a subsequent month. When taking a lump sum for accrued vacation, an employee is not entitled for compensation of hazardous duty or longevity pay. A terminating employee who remains on the payroll expending accrued vacation will not be eligible to expend accrued paid sick leave prior to final separation from the Department.

e. Annual leave, which has not been expended on the date of retirement, is creditable in the retirement system at the rate of one month of service credit for each 20 work days, or 160 hours, of accumulated annual leave and one month for each fraction of days or hours remaining after the division of the total hours of accumulated annual leave by 160. For employees who began employment with the state before September 1, 2009, this time will count toward both establishing enough service to meet retirement eligibility and increasing the amount of the retirement annuity. For employees who began employment with the state on or after September 1, 2009, this time will count only toward increasing the amount of the retirement annuity and not count toward establishing enough service to meet retirement eligibility.

Exception: Employees taken off the payroll for the purpose of entering military service will not receive lump sum payment for unused vacation time. The unused time will remain on the employee's permanent record and upon reinstatement with this Department, the employee will be credited with that portion of unused vacation time which existed at the time of leave. This provision does not exempt the restored employee from complying with the policy which regulates the maximum amount of unused vacation entitlement carried forward from one fiscal year to another.

1) Upon the termination of an employee, all time records should be immediately forwarded to the automated time system and must be entered into the system no later than the 15th day of the following month.

f. The employee taking a leave of absence due to pregnancy, nonoccupational accident, or illness must exhaust accumulated, available vacation leave prior to going off the payroll.

g. Upon the death of an employee, the state shall pay the employee's estate for all unused vacation leave. The payment for this unused vacation leave shall be calculated at the rate of compensation being paid the employee at the time of death.

#### **4. Approval of Vacations**

a. Vacation requests of employees require the approval or disapproval of their respective immediate supervisor. Supervisors of higher rank are not required to add their approval or disapproval on vacation requests. Vacation requests must require prior approval.

b. An employee must provide notice to his or her supervisor whenever he or she is taking vacation leave for a qualifying event under the Family and Medical Leave Act. Employees and/or supervisors shall indicate all appropriate designations in the automated leave system.

c. Supervisors are authorized to approve the use of compensatory time off in conjunction with vacation time as schedules will permit. Vacation schedules shall be carefully planned to ensure the continued efficiency of the Department, but individual desires may have to give way to other considerations. Employees should be advised that vacations may be canceled in emergencies. Administrators authorized to grant vacations will ensure that employees on vacation inform their superiors of the addresses where the employee may be contacted in an emergency.

d. Vacation requests shall be submitted using whatever method is utilized in the division where the employee works.

e. An employee, with the approval of the employee's supervisor, may utilize vacation leave accruals while absent with pay for an illness of the employee or the employee's family member. However, upon the request of the supervisor, the employee must comply with the provisions of Section 07.06.02, 6c.

## **06.06 Holidays**

1. Holidays to be observed by state employees are designated by the legislature and may vary slightly from year to year. The list of approved holidays for Department employees for the current biennium can be found on the DPS intranet here: <http://dpsnet/Divisions/Administration/HR/processingguidepages/HolidaySched.htm>

2. An individual must be a state employee on the workday before and after a state or national holiday in order to be paid for that holiday, unless the holiday falls on the employee's first or last workday of the month.

In this section, "state employee":

- a. includes an individual who uses paid leave from a state agency; and
- b. does not include an individual who uses unpaid leave from a state agency.

For example: Assume Texas Independence Day falls on Monday, March 2nd. A new employee who begins work on Tuesday the 3rd would be paid for the holiday because it fell on the first workday of the month. The same would be true if a current employee were on unpaid leave on Friday, February 27th but returned to work on Tuesday, March 3rd.

3. An employee transferring from another state agency without a break in service will be paid, by the receiving entity, for any regularly paid state holiday which falls between leaving the prior state agency and beginning with the Department.

4. Optional Holidays – Optional holidays can be used if an employee meets the requirements of section (2) and agrees to give up the equivalent number of state holidays during the same fiscal year. The only recognized optional holidays are Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day. These days are only considered optional holidays if the optional holiday falls on a scheduled work day.

Optional holidays cannot be substituted for national holidays.

An employee may not agree, nor will it be approved, to give up the Friday after Thanksgiving Day, December 24, or December 26.



## **06.07 Holiday Compensatory Time**

1. Any employee, assigned to work the normal workweek (Monday - Friday), who is required to work and does work on any holiday shall be entitled to compensatory time off to be taken on such day as may be mutually agreed upon by the employee and his or her supervisor. The employee's supervisor may require the employee to give reasonable notice in advance of the time taken off, but may not require the employee to specify the reason for which the time is to be taken except in accordance with the Family and Medical Leave Act. A supervisor may refuse a request for leave if in accordance with business necessity.

2. Employees working schedules other than the normal workweek (Monday - Friday), shall receive the equivalent number of holidays each year as employees working the normal workweek (Monday - Friday).

For equivalent holiday compensatory time accounting purposes, these employees shall accrue entitlements only on those holidays observed by employees working the normal workweek (Monday - Friday) except as indicated in subsection 3 below. Employees may earn holiday compensatory time for a holiday observed on their scheduled day off. Holidays occurring on a Saturday or Sunday will not be recorded as earned or observed.

3. A peace officer, police communication operator or public security officer, or RLO who is required to work on a national or state holiday that falls on Saturday or Sunday is entitled to earn holiday compensatory time for any hours worked.

4. Holiday compensatory time must be taken during the twelve-month period following the date of the holiday worked.

a. Supervisors are authorized to grant as many holiday compensatory time days off at one time as requested by an employee and as schedules will permit. These days off may be taken at any time during any season.

b. Supervisors are authorized to approve the use of holiday compensatory time off in conjunction with vacation time as schedules will permit.

## **06.08 Fair Labor Standards Act and Equivalent Compensatory Overtime**

### **1. Department Elections Pursuant to Fair Labor Standards Act and Chapter 659 of the Texas Government Code**

#### **a. Work Period**

1.) As a public agency engaged in law enforcement activities, the department is authorized to exercise a partial exemption to the wage and hour provisions of the federal Fair Labor Standards Act (FLSA.) Specifically, the department may establish an alternative work period for commissioned officers under which officers do not earn FLSA overtime until they actually work in excess of 43 hours in a 7 day work period or the same ratio that 43 hours bears to seven days for a work period of up to 28 days (i.e. 171 hours in a 28 day work period 165 hours in a 27 day work period etc., commonly referenced as the "7k exemption"), See 29 U.S.C. § 207(k).

2.) Based upon specific legislative appropriations designated for overtime compensation of commissioned officers, the department elects to forego use of an alternative work period available under the FLSA and will calculate overtime pursuant to a standard 40 hour work week. At its discretion, based upon available funding or other relevant factors, the Department may elect to use an alternative

work period as authorized by FLSA. The Department will notify officers of its election of an alternative work period prior to work being performed.

**b. Compensatory Time in Lieu of Monetary Compensation**

1.) As a public agency of the state of Texas, the department may compensate employees with compensatory time off at the appropriate rate in lieu of monetary compensation for either FLSA overtime or state equivalent compensatory overtime. The Department specifically reserves discretion to compensate using time off rather than monetary compensation based upon available funding and other relevant factors. The Department's election to compensate monetarily for accrued overtime during a given period is not an agreement by the Department to do so in the future. Any applicant considering employment with the Department will be employed with the understanding that employees of the Department may be compensated for accrued overtime with compensatory time off. See 29 U.S.C. § 207(o)(2)(ii).

**c. Schedule C non-exempt designation**

1.) At the Department's discretion, commissioned employees classified on Schedule C of the biennial appropriation act as captain or major whose duties otherwise qualify them as exempt for FLSA purposes may be treated as non-exempt employees for overtime compensation purposes. Commissioned employees so designated by the department are subject to re-designation as exempt employees based upon funding availability or other factors relevant to the department.

**2. Definitions**

a. **Overtime.** Under the Fair Labor Standards Act (FLSA), the position in which individuals are employed determines how they are compensated for overtime. Generally, executive, administrative, or professional positions and law enforcement supervisory positions above the rank of lieutenant are exempt from the overtime provisions. The Director of Human Resources Bureau, acting for the Director's Office, will make preliminary decisions as to which positions are covered by these job categories in accordance with the rules and regulations established under the FLSA.

1) Any disputes arising between the Director of Human Resources Bureau and those affected over exempt or nonexempt status of positions will be resolved by the Deputy Director.

2) A review by the Assistant Director may be accomplished by the major division Assistant Director of the position affected submitting a memo to the Deputy Director. When so advised, the Director of Human Resources Bureau will furnish all related data on the subject to the Deputy Director for final review.

b. There are two categories of overtime.

1) State law provides for equivalent compensatory overtime which is time actually worked and paid leave that exceeds the required number of hours that must be accounted for during an employee's designated work period. Paid leave includes vacation, sick leave, emergency leave, holiday, and any other leave authorized by the Appropriations Act.

2) FLSA overtime is time actually worked that exceeds the required number of work hours during an employee's designated work period that must be compensated for by granting time off at the rate of one and one-half times the hours worked or by being paid monetary compensation at the rate of one and one-half times the employee's regular rate of earnings.

c. **Exempt-Commissioned and Exempt-Noncommissioned.** All commissioned personnel holding the rank of captain through Director and all other personnel whose duties and responsibilities qualify them for exempt status under FLSA guidelines.

d. **Nonexempt-Commissioned.** All commissioned personnel below the rank of captain and other commissioned personnel whose duties do not qualify them for exempt status.

e. **Nonexempt-Noncommissioned.** All noncommissioned personnel who are not eligible for exemption due to the nature of their duties and responsibilities under FLSA guidelines.

### 3. General Guidelines

a. State compensatory overtime and FLSA overtime must be calculated and reported separately.

b. All employees who are paid on a full-time basis are required to work 40 hours each week, including hours actually worked as well as hours of paid leave and holidays, if any, except as hereinafter provided. The standard workweek is from 6:00 a.m. Saturday through 5:59 a.m. the following Saturday, unless otherwise designated.

c. Employees who are part-time will earn and take leave entitlements on a proportionate basis. Part-time employees who work less than 40 hours per week are not subject to FLSA.

d. Earned overtime entitlements will be recorded in the leave accounting system to reflect all overtime worked.

e. Line personnel and first line supervisors will account for their duty time by completion of a weekly report showing their approved hours of work and paid leave. Supervisors of these employees will complete monthly reports accordingly. All other personnel who come under the provisions of FLSA will document their duty time on the appropriate forms for paid leave and overtime payment. Supervisors will also complete an Overtime Payment Authorization form, if applicable. Please refer to the Accounting form on the DPSnet.

f. When possible, supervisors will ensure that an employee's regular work schedule maintains a minimum of eight hours per day and five days per week. Employees engaged in performing essential services may be required to be on duty for periods longer than or less than eight hours per day and five days per week in necessary or emergency situations. The Deputy Director or major division Assistant Director may authorize variations in work schedules to maintain departmental functions that require certain services be maintained on a 24-hour basis.

Employees who are assigned a tour of duty of more than twenty-four (24) hours, and a sleeping period is scheduled, will have up to eight hours sleep time excluded from compensable hours. If the sleeping period is interrupted by a call to duty, the interruption will be counted as hours worked. If the scheduled sleeping period is interrupted to the extent it does not remain uninterrupted for at least five hours, the entire eight hour period will be counted as hours of work and will be compensable.

If an employee is assigned to a tour of duty of twenty-four (24) hours or less, and sleep time is allowed, the sleep time will be counted as hours of work and is compensable.

g. In all instances where employees earn equivalent compensatory time due to a public safety emergency response activity, payment may be made in lieu of equivalent compensatory time.

In each instance when reference is made to paying for either state equivalent compensatory time or FLSA overtime earned, the following conditions apply:

- 1) The payment is permissive and not required.
- 2) The decision with regard to the payment is solely the Department's to make.
- 3) The payment can be made only when funds are available.
- 4) Such payments, if made, can only be made for the time accrued by an employee engaging in a public safety response activity when allowing compensatory time off would be disruptive to normal teaching, research, and/or other critical functions.

h. When an employee, who wishes to use accrued compensatory time that is subject to lapsing, submits a written request for permission to use the accrued compensatory time no later than the 90th day before the date on which the accrued time will lapse; the supervisor shall:

- 1) approve in writing the employee's request; or
- 2) provide the employee with an alternate date on which the employee may use the compensatory time before the time lapses.

i. Scheduled overtime is permitted only for the performance of necessary DPS duties.

j. In the event overtime funds are not available, supervisors will schedule work patterns to eliminate, to the extent possible, the accrual of time and one-half overtime entitlements. When it is necessary, in order to accomplish the goals of the Department, for an employee to work FLSA overtime, the employee will earn FLSA compensatory overtime at a one and one-half time rate. It will be at the Department's discretion whether money payment or compensatory overtime will be granted when FLSA overtime is worked. It is anticipated that money payment will be made when funds are available rather than permitting the accumulation of FLSA overtime. The maximum accrual, by law, for nonexempt-noncommissioned employees will be 240 hours and for nonexempt-commissioned employees, 480 hours. Any amount of overtime above the maximum accruals should be paid in cash at the one and one-half time rate. Overtime accrued under this provision should be taken during the 12-month period following the end of the work period in which it was accrued. Upon separation from the Department, the employee will be compensated in full for all accrued FLSA overtime by payment of money.

k. If an employee has accrued overtime leave and desires to utilize any or all of such accumulation for the purpose of authorized leave with pay, then that employee's supervisor shall require the employee to give reasonable notice in advance of taking time off. A supervisor may refuse a request for leave if in accordance with business necessity.

l. No employee, whether or not subject to FLSA, shall accrue state compensatory time for work conducted at any location other than the employee's regular place of business or assigned duty point. In no event shall an employee's residence be deemed to be the employee's regular place of business or assigned duty point for this subsection.

#### **4. FLSA Guidelines for Nonexempt-Noncommissioned Employees**

a. **Nonexempt-noncommissioned.** DPS employees who actually work more than 40 hours during a designated workweek will be compensated for those hours in excess of 40 by the accrual of FLSA overtime at the rate of one and one-half times the hours worked. Maximum accrual is 240 hours after application of the time and one-half rate. The 240 hours maximum accrual is arrived at by multiplying 160 hours x 1.5 = 240 hours.

b. Any paid leave or holidays taken are not counted as hours worked in determining overtime hours under the preceding paragraphs. In situations in which the employee has not actually worked more than 40

hours in a workweek but the total of hours worked and hours of paid leave or paid holidays exceeds 40 hours, the employee shall be allowed equivalent compensatory time off for the excess hours or payment may be made for emergency response public safety activities. The compensatory time must be taken during the 12-month period following the end of the work period in which it was accrued. Compensatory time under this paragraph may not be carried forward past the end of the 12-month period and an employee may not be paid for the unused time.

Example: Employee works eight hours first day, takes eight hours vacation second day, works eight hours third day, works 12 hours fourth day, and 12 hours fifth day. Employee has actually worked only 40 hours so no compensable overtime under FLSA is incurred. Since hours actually worked (40) and paid leave (8) exceed 40 hours, employee is entitled to eight hours equivalent time off which must be taken within 12 months following end of the work period in which it was accrued or may be paid.

c. In situations in which the employee actually works more than 40 hours in a workweek and also takes paid leave during that week, the employee shall be allowed equivalent compensatory time off in an amount equal to the paid leave time taken or may be paid and will be compensated for those hours actually worked in excess of 40 by the accrual of FLSA overtime.

## **5. FLSA Guidelines for Nonexempt-Commissioned Employees**

a. Law enforcement commissioned employees who exceed 40 work hours during a designated 7-day period will be compensated for those hours worked in excess of 40 hours by accruing FLSA compensatory overtime hours at the rate of one and one-half times the hours worked. Maximum accrual is 480 hours after application of the time and one-half rate. The 480 hours maximum accrual is arrived at by multiplying 320 hours x 1.5 = 480 hours.

b. Any paid leave or holidays taken are not counted as hours worked in determining overtime hours under the preceding paragraph.

c. In situations in which the employee has not actually worked more than 40 hours in a designated 7-day period but the total of hours worked and hours of paid leave or paid holidays exceeds 40 hours, the employee shall be allowed equivalent compensatory time off for the hours in excess of 40 hours. This compensatory time must be taken during the 12-month period following the end of the 7-day work period in which it was accrued. Compensatory time under this paragraph may not be carried forward past the end of the 12-month period and an employee may not be paid for the unused time.

d. There may be instances where an employee actually works more than 40 hours entitling him or her to accrue FLSA at time and one-half rate and also earn some equivalent compensatory time off because of paid leave or holidays which do not count toward actual hours worked but when added to the actual hours worked would exceed 40 hours for the 7-day period. In figuring the amount of equivalent compensatory time earned, do not include the hours actually worked in excess of 40 for which FLSA one and one-half overtime would be accrued.

f. An individual who is employed by an agency may NOT volunteer to provide overtime for the same type of services for the same agency. If he provides a dissimilar service, such as a Communications operator riding with a trooper on routine patrol, the operator's time would be considered "volunteered," and exempt from the FLSA.

g. Law enforcement officers who work in a related field, but for a separate and independent employer from their primary employer, are exempt from the FLSA provision on "joint employers." DPS officers may now perform law enforcement type off-duty jobs for any employer and be exempt from FLSA liability on the second

job as long as DPS exerts no operational control over the officer while they are working the second job. There may be times when the rules governing joint employment are not clear and there may be situations where this exemption would not be applicable. For example, if an individual officer makes an arrest under the authority of his or her commission while working a second job. Situations such as this should be dealt with on an individual basis and it may be necessary to consult with the Human Resources Bureau or Legal Counsel in such instances.

## **6. Approved Projects**

The special work period rules outlined below are used to determine employee compensation for law enforcement projects approved by the Director. Examples of approved projects include, but are not limited to: the Comprehensive Selective Traffic Enforcement (STEP) Grant, Impaired Driving Mobilization (IDM) STEP, TxDOT Construction Zone projects, and border security operations.

Employees working approved projects will be compensated at an overtime rate for project hours worked according to the terms of the project and consistent with state and federal law. Unless otherwise provided by the terms of the project, the overtime rate will be used whether approved project work:

- a. takes place on the employee's regular days off,
- b. occurs on days for which the employee takes approved leave, or
- c. is additional work performed before or after the employee's regular duty shift, or during a break in the employee's regular shift.

Example 1: Employee works an eight hour shift and then works an additional four hours on the STEP program in the same work period. The employee is compensated for eight hours at the current rate of salary, and the additional four hours are compensated at an overtime rate according to the terms of the approved project.

Example 2: Employee takes eight hours of leave and actually works eight hours on the STEP program in the same work period. The employee is compensated for leave hours at the current rate of salary, and the additional eight hours are compensated at an overtime rate according to the terms of the approved project.

Note: Some projects do not allow substitution of leave hours for project hours. Project managers should ensure that the project terms are clearly articulated to employees.

## **7. Reporting Procedures**

a. An employee requesting equivalent time for overtime worked will record the time earned on the approved department reporting mechanism and submit it to his or her immediate supervisor. An employee requesting FLSA overtime worked will record the time earned on the approved department reporting mechanism and submit it to his or her immediate supervisor. The actual number of hours worked should be recorded on the approved department reporting mechanism. The conversion to time and one-half will be performed by the automated time system.

b. Once an employee is approved by their supervisor to utilize FLSA overtime leave, the leave must be taken. If extenuating circumstances arise and the approved leave cannot be taken, the employee must communicate with their supervisor to pick a suitable alternative. Accruing additional overtime is not a viable alternative. Equivalent and FLSA overtime will be recorded on the appropriate weekly report and approved department reporting mechanism when taken.

c. Claims for equivalent and FLSA overtime worked must be submitted and entered into the automated employee time record system within two weeks following the end of the applicable work week. Claims for FLSA

overtime worked which are to be compensated for by payment of money should not be entered into the automated employee time record system.

## **06.09 Emergency Leave**

1. Per Texas Govt Code 661.902 (a), the death of an employee's spouse or the employee's or spouse's parents, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, or children shall constitute adequate need for emergency leave. Such emergency leave shall be granted for a period not to exceed three (3) working days.

An employee seeking an emergency leave due to a death of those listed above shall submit the request through proper channels for approval by the employee's commanding officer.

2. The appropriate Deputy Director shall grant an emergency leave for other reasons when in his or her determination, the employee shows good cause. An illustration of good cause would be an employee who must transact urgent business related to a natural disaster such as a flood, tornado, fire, etc. Such leave when granted shall not exceed three (3) working days. Requests for this leave shall be submitted by memorandum for approval through supervisory channels to the office of the appropriate Deputy Director.

3. Department employees whose official actions result in death or in serious injury to another person are often subjected to psychological trauma. Personnel directly involved in incidents of this nature while acting within the scope of their DPS employment may be granted emergency leave for a period not to exceed three (3) working days. Employees on emergency leave as provided here will not perform law enforcement duties in any capacity unless unusual circumstances demand deviation from this requirement.

This type of emergency leave may be granted by the affected employee's immediate supervisor subject to final approval by the appropriate Deputy Director. Requests shall be submitted by memorandum through supervisory channels to the appropriate Deputy Director.

As provided by 05.62.00 of this manual, the appropriate Deputy Director may require that an employee on emergency leave submit to physical examinations prior to returning to normal duties.

4. Requests for emergency leave in excess of three (3) working days must be submitted by memorandum to the office of the appropriate Deputy Director through supervisory channels. Only in rare instances will more than three (3) working days be approved.

5. The appropriate Deputy Director may grant emergency injury leave to an employee who suffers a catastrophic injury while in the performance of a law enforcement duty of an inherently hazardous nature when in the appropriate Deputy Director's determination an actual need or emergency exists.

For purposes of this section, a catastrophic injury is defined as an extreme, incapacitating injury usually considered life-threatening or which may result in serious residual disability which affects the employee's physical health requiring immediate medical attention by a health care provider. Not included as catastrophic injury are injuries that are the result of cumulative trauma or cumulative injury. Officers with these types of injuries may be eligible for Assaultive Injury Leave if the injury was the result of an assault. See section 07.06.17.

To be eligible for emergency injury leave, an employee must suffer a catastrophic injury, be subject to loss of compensation from the state, and not be eligible for a modified duty or alternative duty position under the departmental Return to Work policy.

Requests for emergency injury leave under this section may be initiated by the employee or the employee's supervisor and submitted to the Department's Human Resources. The request must be made on the HR-173 form. The request must include the Employee's Election Regarding Utilization of Sick and Annual Leave (SORM-80) and the Supervisor's First Report of Injury (TWCC-1S). Additionally, the request must include a statement from the employee's health care provider containing sufficient detail regarding the employee's current medical status to allow the appropriate Deputy Director to make a decision regarding eligibility for Emergency Leave.

The payment for emergency leave is not a replacement for Workers' Compensation income benefits and may not exceed the amount computed by subtracting the amount of workers' compensation income benefits received for the month from the basic monthly wage of the employee. Emergency injury leave benefits will not be paid for a period longer than the six months after the date on which workers' compensation benefits begin. The initial grant of emergency leave will not exceed four weeks.

The employee may request a continuation of emergency injury leave by submitting a completed HR-173 form to the Human Resources Bureau. This request must be made prior to the exhaustion of the initial grant of emergency injury leave. In addition to the HR-173, the employee is required to submit a completed medical release and a detailed statement from their health care provider regarding their medical status so that a determination can be made regarding the continued need and eligibility for additional emergency injury leave. At a minimum, the report from the health care provider must include:

- a. the beginning date of the physical condition;
- b. diagnosis with details of the condition, probable duration of the employee's present incapacity and the prognosis for recovery;
- c. dates of hospitalization, surgeries and other treatment relative to the current catastrophic injury;
- d. details concerning any other complicating health conditions which may have a major impact on or relevance to the current injury;
- e. treatment plans; physical functional status;
- f. the anticipated date the employee will be able to return to work; and
- g. the health care provider's opinion on whether the employee may be able to return to work sooner than anticipated if alternate, light, or part-time duty were an option;

Employees may be required to submit reports on their medical status and intent to return to work every thirty (30) days following exhaustion of the initial grant of emergency injury leave. This information is necessary to determine the continued need and eligibility for emergency injury leave. This status report must be accompanied by a letter from the employee's treating health care provider, on the health care provider's letterhead. The statement from the health care provider must include the same information required in items (a) through (g) listed above. If there is insufficient medical information provided by the employee, the Human Resources Bureau may contact the health care provider requesting further documentation.

The maximum duration of the Emergency Leave benefit to which a person is entitled under this subsection for all injuries occurring from a single episodic event is six months after the date on which workers' compensation benefits began.

These provisions are not retroactive and individuals who have suffered qualifying injuries prior to the enactment of this policy provision are not eligible for grants of emergency leave.



6. Emergency leave time granted with proper approval will not be charged to the employee's sick leave, vacation entitlement, compensatory time earned, or any other time off normally due the employee.

**06.10 Emergency/Administrative Leave.** The appropriate Deputy Director shall grant emergency/administrative leave when in his determination an actual need or emergency situation exists. Illustrations of actual need or emergency situation include the granting of leave not specifically authorized by the Appropriations Act, hazardous weather or road conditions or any other hazardous condition existing in a particular geographical area. In the field offices, the regional commander should coordinate with the Deputy Director of Law Enforcement to determine if emergency/administrative leave should be granted in a given geographical area due to existing conditions or actual need. The amount of time employees will be granted leave under these conditions will be determined by the appropriate Deputy Director. Employees who are required to work for the duration of the hazardous condition, actual need, or leave not specifically authorized by the Appropriations Act in a geographical area will be granted emergency/administrative leave in an amount equal to that granted to other Department employees in the same geographical area. Emergency/administrative leave granted to employees who are required to work will be taken within 30 days, on a date mutually agreed upon by the employee and his supervisor. Any time accrued under this provision and to be taken off at a later date should be reported only to the first-line supervisor and not entered into the automated system.

**06.11 Administrative Leave and Restricted Duty.** A commissioned member of the Department may be assigned to administrative leave or specifically restricted duties with a recommendation by the Assistant Director and approval by the appropriate Deputy Director as a result of allegations of misconduct or because it is in the best interest of the Department or the individual that the individual be removed from contact with the public. Situations include, but are not limited to, the following:

1. When the member is or has been involved in civil or criminal litigation and the Department or the member could be exposed to substantial and significant liability should the member be permitted to continue on routine duty assignments during the pendency of such litigation.

2. When the member has exhibited an inability to either physically or mentally continue to perform his/her duties.

3. In situations wherein the best interests of the Department are served by such an assignment.

4. When a member is involved in the discharge or use of a weapon that results in death or serious bodily injury to a person, pending resolution of the matter internally, the member shall be removed from enforcement activities and placed in a nonpublic contact status and/or placed on administrative leave with pay.

5. When a member is involved in a fleet accident that results in serious injury or death to a person, the member shall be removed from enforcement activities and placed in a nonpublic contact status and/or placed on administrative leave with pay pending the resolution of the matter internally.

For audit purposes, supervisors shall submit this type of leave through the automated leave system, showing the leave code as ALT (Administrative Leave Taken) for the days that members are placed on administrative leave pursuant to this section.

If a member is placed on administrative leave or restricted duty, the Assistant Director, after approval by the appropriate Deputy Director, shall inform the member in writing.

Action taken under the authority of this section shall not be considered as disciplinary or as positive or negative comment upon the event(s) that resulted in the change of duty status. The change in status is not appealable under the disciplinary process. Administrative leave or restricted duty status remains in effect until modified or rescinded by the

appropriate Deputy Director. Such status will be reviewed on a periodic basis. Any change in status will be communicated in writing to the member by the Assistant Director.

A member may exercise his/her rights under the nondisciplinary chain of command review procedure with regard to a change of duty status under this section. See DPS General Manual, Chapter 7A, Section 07.52.00.

**06.12 Jury Duty.** An employee is permitted to serve on a jury without any deduction from wages. Any fee or compensation for jury service need not be accounted for by the employee to the state. The employee shall submit a copy of the jury summons to the supervisor and shall record the jury service in the automated leave system.

### **06.13 Other Types of Leave**

1. State employees who are volunteer firefighters or emergency medical services volunteers shall be granted a leave of absence with full pay to attend training schools conducted by state agencies or institutions of higher education provided such leave does not exceed five (5) working days in any one fiscal year. State employees who are volunteer firefighters or emergency medical services volunteers shall also be granted a leave of absence with full pay to respond to emergency fire or medical situations provided such leave does not exceed five (5) working days in any one fiscal year and does not cause a shortage of personnel to conduct essential Department functions in the opinion of the employee's supervisor. Such leave shall in no way be charged against the employee's vacation or sick leave privileges.

2. Any state employee who is a certified disaster service volunteer of the American Red Cross or who is in training to become such a volunteer, with the authorization of the employee's supervisor, may be granted a leave not to exceed ten (10) days each year to participate in specialized disaster relief services for the American Red Cross, upon the request of the American Red Cross and with the approval of the Governor's office, without loss of pay, vacation time, sick leave or earned overtime, and/or compensatory time.

3. A state employee who is disabled (as defined by the Human Resources Code) is entitled to a leave of absence with full pay for the purpose of receiving training with an assistance dog. The leave of absence may not exceed ten (10) working days in a fiscal year. The leave of absence provided is in addition to other leave to which an employee is entitled, and an employee continues to accrue vacation and sick leave while on this leave. For the purposes of definition, "visually impaired" means a person having not more than 20/200 visual acuity in the better eye with corrective lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

4. A state employee, who is a foster parent to a child under the conservatorship of the Department of Protective and Regulatory Services, is entitled to a leave of absence with full pay for the purpose of attending staffing meetings held by the Texas Department of Protective and Regulatory Services regarding the child under the foster care of the employee, or to attend the Admission, Review and Dismissal (ARD) meeting held by a school district regarding the child under the foster care of the employee.

5. An employee is entitled to a leave of absence without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow or organ donor. The leave of absence provided by this section may not exceed:

- a. five working days in a fiscal year to serve as a bone marrow donor; or
- b. 30 working days in a fiscal year to serve as an organ donor.

6. An employee is entitled to a leave of absence without a deduction in salary or accrued leave to donate blood. An employee may not receive time off under this section unless the employee obtains approval from the employee's supervisor before taking time off. On returning to work after taking time off under this section, an employee shall provide the employee's supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof that the employee donated blood during the time off, the Department shall deduct the period for

which the employee was granted time off from the employee's salary or accrued leave, whichever the employee chooses. An employee may receive time off under this section not more than four times in a fiscal year.

7. A state employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time if the leave is taken.

- a. with the authorization of the employee's supervisor; and
- b. with the approval of the governor.

The number of amateur radio operators who are eligible for leave under this section may not exceed 350 state employees at any one time during a state fiscal year. The Division of Emergency Management in the Governor's Office shall coordinate the establishment and maintenance of the list of eligible employees.

8. A state employee may be granted leave not to exceed five hours each month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time.

#### **9. State Compensatory Time for Emergency Services Personnel**

An exception for the use of state compensatory time exists for selected emergency services personnel who provide services during emergency situations. For purposes of the Texas Department of Public Safety, emergency services personnel includes peace officers and emergency management personnel and other individuals whose duties require them to provide services for the benefit of the general public during emergency situations.

State employees not subject to the overtime provisions of the federal Fair Labor Standards Act and who qualify as emergency services personnel may be allowed to take state compensatory time during the 18-month period following the end of the workweek in which the compensatory time was accrued.

In those situations in which an emergency personnel employee provides services during emergency situations, the employee may be paid overtime at the employee's regular hourly salary rate for all or part of the compensatory hours accrued during the disaster in the preceding 18 months. The employee's compensatory time balance shall be reduced by one hour for each hour for which the employee is paid overtime.

#### **06.14 Legislative Leave and Legislative Leave Pool.**

1. **Legislative Leave.** Employees of this Department are entitled to legislative leave in order to serve in or appear before or petition the State Legislature or Federal Congress subject to the following provisions:

- a. Only employees commissioned as peace officers with this Department are eligible to request legislative leave.

- b. Employees must request the legislative leave at least thirty (30) days prior to the beginning date of the leave. The request must indicate the length of the requested leave and state that the employee, or an association or organization designated by the employee, will reimburse the Department for any wages, pension, or other costs the Department will incur as a result of the leave. A sworn statement identifying the source of the funds used to reimburse the Department must accompany the legislative leave request. The request must also contain a brief, explicit overview of the duties the employee will be performing while on this type leave.

c. Legislative leave requested to attend a regular or special session of the Texas Legislature will not exceed the length of the regular or special session. Legislative leave to attend a session of the Federal Congress will not exceed thirty percent (30%) of the employee's total annual working days during each calendar year.

d. The request for legislative leave will be submitted by memorandum through in-line supervisors to the appropriate Deputy Director for approval or disapproval. The Assistant Director will refer the request to Human Resources before it is sent to the appropriate Deputy Director or his designee. The employee will be notified immediately of the appropriate Deputy Director's or his designee's action.

e. Anytime employees take approved legislative leave they shall, without delay, enter the leave in the automated leave system, indicating legislative leave and submit it through proper channels to the appropriate approving authority.

f. The Department may disapprove the legislative leave request of an employee during an emergency situation or if approval would result in an insufficient number of employees to carry out the normal functions of the Department.

Legislative leave will not be considered a break in service for any purpose, including the determination of seniority, promotions, sick leave, vacation, or retirement and shall be treated as any other paid leave.

## **2. Legislative Leave Pool.**

a. **Administration of the Pool.** The administrator of the legislative leave pool shall be the Human Resource Director. The pool administrator shall credit the legislative leave pool with the amount of time contributed by an employee and deduct a corresponding amount of time from the employee's earned compensatory time or annual leave as if the employee had used the time for personal purposes. The pool administrator shall process requests for time from the pool in accordance with policy. The pool administrator will notify the employee and the employee's supervisor of any grant of time from the pool.

### **b. Donations of Time.**

1) A Department employee may donate state compensatory time or annual leave to the Legislative Leave Pool up to eight hours per year. Once an employee has donated time to the Legislative Leave Pool he/she cannot get it back unless he/she is eligible to use time from the Legislative Leave Pool.

2) In order to contribute time to the Legislative Leave Pool, the employee will submit form HR-8 in duplicate to the first line supervisor, who will forward the original to the Legislative Leave Pool Administrator.

### **c. Requesting Time from the Legislative Leave Pool.**

1) Eligible employees will submit requests on form HR-8. All requests for Legislative Leave Pool time must be accompanied by a letter granting consent to use Legislative Leave Pool time on behalf of a law enforcement association of at least 1,000 active or retired members governed by a board of directors that is signed by the president or designee of the law enforcement association.

2) An eligible employee may not draw more than 80 hours of time from the pool in a 160-hours work cycle with the maximum time taken not to exceed 480 hours per fiscal year.

3) The pool administrator shall transfer time from the pool to the employee and credit the time to the employee. All requests will be handled on a first come basis and will be granted only if the pool has a positive balance.

4) Any unused pool hours will need to be returned to the pool by memo to the Pool Administrator at the end of each fiscal year.

**06.15 Parental Leave.** Those employees with less than 12 months of state service or who have worked less than 1,250 hours in the 12-month period immediately preceding the commencement of leave are eligible to take a parental leave of absence, not to exceed 12 weeks, provided that the employee utilizes all available paid vacation and authorized sick leave while taking parental leave of absence. Parental leave is limited to, and begins with the date of, the birth of a natural child or the adoption or foster care placement of a child under three years of age. This leave must be taken consecutively beginning with the birth or placement of the child. Employees who exhaust all applicable accruals while on parental leave will be placed on Leave Without Pay (LWOP) status and must remain on LWOP for the duration of the leave.

**06.16 Voting by State Employees.** A state agency shall allow each agency employee sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election.

**06.17 Assaultive Injury Leave for Peace Officers.** A commissioned employee is entitled to injury leave, without a deduction in salary, without being required to use compensatory time, and without being required to use any other type of leave, for an injury sustained due to the nature of the employee's duties and that occurs during the course of the employee's performance of duty, except an officer is not entitled to injury leave under this subsection if the employee's own gross negligence contributed to the employee's injury; or the injury was related to the performance of routine office duties.

1. To be eligible for injury leave under this section, an employee must submit to the department evidence of a medical examination and a recommendation for a specific period of leave from a physician licensed to practice in this state.

2. The maximum amount of leave available under this section for all injuries occurring at one time is one year.

3. An employee may simultaneously be on injury leave under this section and receive workers' compensation medical benefits under Title 5, Labor Code, but is not eligible for disability retirement benefits under Chapter 814 during the leave period. An employee is entitled to workers' compensation indemnity benefits which accrue pursuant to Title 5, Labor Code, after the discontinuation or exhaustion of injury leave under this section and may be eligible for supplemental Emergency Leave under section 07.06.09(5).

4. Employees who qualify for Assaultive Injury Leave are required to comply with the Department's Return to Work Policy as outlined in Chapter 8 of the General Manual.

#### **07.07.00 AUTHORIZED LEAVE WITHOUT PAY**

The appropriate Deputy Director has the authority and the responsibility by various laws to grant leave without pay to employees of this Department. Statutes identify these various leaves without pay as:

- Temporary Disability Leave
- Personal Leave
- Elective Office

Each of the individual statutes addressing the various types of leave without pay contain certain provisions unique to each class. It is the responsibility of the appropriate Deputy Director to consider and review the justification and merit of each request to determine if the granting of such leave would be in keeping with statute. Additionally, he will consider not only the needs of the employee but also what action would serve in the best interest of the Department. He may in certain instances delegate this authority to specified individuals of rank. Due to the various leaves without pay, each will be addressed separately in detail.

In order to receive consideration for leave without pay, an employee must initiate a memo identifying the type leave desired, circumstances creating the need, and attach any necessary documents which may be relevant to the request. The request must then be submitted through the chain of command to the level specified by policy where disposition will be determined. Each supervisor involved in the review process will attach recommendations and other useful information such as comments on performance of the employee where appropriate. In situations where the request must be acted upon by the appropriate Deputy Director, the Assistant Director will refer the package to Human Resources before it is sent to the appropriate Deputy Director. Human Resources will review the package utilizing such guidelines as established by the appropriate Deputy Director.

Except in the case of an employee returning to state employment from military leave without pay, any full calendar month (i.e., from the first day of a month through the last day of a month, inclusive) in which an employee is on leave without pay shall not be counted in the calculation of total state service for purposes of longevity pay or vacation leave entitlements. Further, any such full calendar month of leave without pay shall not constitute a break in continuity of employment but shall not be included in the calculation of the six continuous months of employment required for eligibility to take vacation leave time, or the one continuous year of employment required for eligibility to receive merit salary increases. Any employee on leave without pay for an entire month shall not accrue vacation or sick leave for such month.

Example: An employee who works 3 calendar months, is off on leave without pay for 1 full calendar month, then returns to work for 2 calendar months has not worked for six continuous months. However, an employee who works for 3 calendar months, is off on leave without pay for 1 full calendar month, returns to work for 3 calendar months has worked six continuous months and is eligible for vacation leave.

#### **07.01 Temporary Disability Leave Without Pay**

1. Requests for Temporary Disability Leave Without Pay for non-occupational injury or illness will only be available under this section after the employee has exhausted the annual 12-week entitlement under the Family and Medical Leave Act, or if the employee is not eligible for FMLA leave. (Occupational injuries and illnesses are covered under the Workers' Compensation policies).

2. Requests for Temporary Disability Leave Without Pay for non-occupational injury or illness will be evaluated on an individual basis after a review of the merits of each particular case and subject to the requirement that all paid leave entitlements have been exhausted. All such requests must be on form HR-72 (Annex #14), which includes a health care provider's statement (form HR-72a) clearly explaining the medical necessity. Licensed physician is a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.), as licensed by the State Board of Medical Examiners. The medical certification from the employee's treating physician must state the beginning date of the physical or mental condition, a description of the illness or injury, and the anticipated date the employee will be able to return to work. All requests must be accompanied by a signed authorization for release of medical information on form HR-80 (Annex #12) for the physician responsible for treating the condition causing the request for leave.

3. The supervisor will complete form HR-73 (Annex #14) and include it in the request packet submitted through the chain of command.

4. The decision to approve or disapprove the request for Temporary Disability Leave Without Pay will be made by the division head, special section head, or commanding officer with the approval of the appropriate Assistant Director if the total period of leave without pay does not exceed a period of eight (8) workweeks. Instances of a greater amount of time must receive the final review of the appropriate Deputy Director.

5. Factors to be considered before approving the request will include length of service with the Department, staffing needs, job performance, and prior use of leave. Employees whose requests are disapproved and who remain off the payroll will be considered on unauthorized leave without pay status until a determination is made on their continued employment with the Department. These procedures do not limit the employee's right to make a request for reasonable accommodation under the Americans with Disabilities Act pursuant to Chapter 18 of the General Manual.

6. Employees on Temporary Disability Leave Without Pay status under this section are not entitled to the protections afforded by the Family and Medical Leave Act, Parental Leave provisions, or the Workers' Compensation laws with regard to job protection or insurance benefits.

7. Employees must submit an Evaluative Medical Status Report (Annex #22, Chapter 8) or other similar certification before returning to work.

8. All medical documentation will be retained at the employee's work location in a special confidential medical file NOT the regular personnel file, for three years. Information contained therein will be disseminated only on a need-to-know basis.

## **07.02 Personal Leave Without Pay**

1. **Long-Term Personal Leave.** Leaves of absence without pay, not otherwise covered in this chapter, may not exceed twelve (12) months. Requests for personal leave without pay may be made to the appropriate Deputy Director when the time requested exceeds 20 continuous workdays. Such leaves may be granted in instances when, because of unusual circumstances, the appropriate Deputy Director is of the opinion the Department will benefit to an exceptional degree.

a. All accumulated paid leave entitlements, except sick leave, must be exhausted before the leave without pay begins. Sick leave balance will be restored upon return to the Department.

b. The appropriate Deputy Director may grant exceptions to these limitations for such reasons as interagency agreements or educational purposes.

c. Subject to fiscal constraints, approval of such leave constitutes a guarantee of employment for the approved length of the leave.

d. Employees' performance evaluation reports must reflect that they meet or exceed all performance standards.

e. A statement of intent to return to duty upon completion of the leave will be included in the request.

f. Each in-line supervisor will recommend approval or disapproval of the request and a statement of how retention of the vacancy would affect the unit. The first-line supervisor will initiate and attach a Performance Evaluation Report (HR-24), which will be reviewed by in-line supervisors. The major division chief will forward the package to the Human Resources Bureau for review.

g. The final approval or disapproval will be determined by the appropriate Deputy Director. If the request is approved, the appropriate Deputy Director shall notify the employee of any special conditions.

h. Leave time granted under this provision will not be counted as continuous employment or experience for promotional, retirement, hazardous duty, or longevity purposes.

i. Employees whose personal leave is disapproved and who remain off work will be considered on unauthorized leave without pay status pending a determination on their continued employment with the Department.

**2. Short-Term Personal Leave.** Leaves of absence without pay, not otherwise covered in this chapter, which are required for 20 continuous workdays or less, may be made to the major division chief through the employee's chain of command. Such leaves may be granted in instances when, because of unusual circumstances, the major division chief is of the opinion the Department will benefit to an exceptional degree.

a. All accumulated paid leave entitlements, except sick leave, must be exhausted before the leave without pay begins.

b. Subject to fiscal constraints, approval of such leave constitutes a guarantee of employment for the approved length of the leave.

c. Employees' performance evaluation reports must reflect that they meet or exceed all performance standards.

d. A statement of intent to return to duty upon completion of the leave will be included in the request. An employee who returns to work for at least 30 calendar days is considered to have returned to duty.

e. Each in-line supervisor will recommend approval or disapproval of the request and a statement of how retention of the vacancy would affect the unit. The first-line supervisor will initiate and attach a Performance Evaluation Report (HR-24 or HR-23), which will be reviewed by in-line supervisors.

f. The final approval or disapproval will be determined by the major division chief. If the leave requested is for 40 hours or less, the major division chief may delegate approval authority. The employee will be notified of the approval or disapproval of the request, as well as of any special conditions.

g. Employees whose leave requests are disapproved and who remain off work will be considered on unauthorized leave without pay status pending a determination of their continued employment with the Department.

**07.03 Leave Accounting and Record Keeping for Leave Without Pay.** Whenever an employee is on Leave Without Pay (LWOP), an HR-25 will be initiated showing that the employee will be off the payroll as of a specified date and time. When the employee returns to duty from any LWOP leave of absence, an HR-25 shall be initiated reflecting the return from such leave.

**07.04 Continuation of Insurance While On Leave Without Pay Other Than FMLA Leave**

1. An employee certified to be in a leave without pay status may continue to participate in the group insurance program if they submit a personal check for their total premium for any month they do not receive a paycheck. Such person is ineligible for the state contribution for any month they do not receive a salary check. Checks should be made payable to Employees Group Insurance Fund and forwarded to the DPS Group Insurance Office by the 10th of the month.



2. Should an employee on leave without pay decline to pay the group insurance premium, their insurance coverage is cancelled. When they return to work they can apply for group insurance coverage through the Evidence of Insurability process. The application for coverage can be approved or denied. The requested coverage would not become effective until the first of the month after the application is approved by the carrier, and preexisting conditions would apply. This employee would not be eligible for HMO coverage until the next annual open enrollment for HMO's.

3. Employees who are on LWOP status under the Family and Medical Leave Act (FMLA) should refer to the Department's FMLA policy regarding insurance entitlements under that law.

**07.05 Employee Political Activity. Limits on Political Participation.** The Department encourages employees to be informed citizens involved in government at the city, county, state, and national levels. However, employee involvement in partisan political activity may be limited to the extent necessary to comply with applicable laws and to prevent any appearance of favoritism in the Department's execution of its assigned duties. Each employee is held strictly and solely responsible for knowing and adhering to all applicable federal and state laws regarding participation in the political process.

### **1. Participation in Partisan Elections**

a. The Hatch Act (5 U.S.C.A. §1501, et seq.) prohibits covered state employees from:

1) being candidates for public office in a partisan election;

2) using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination; or

3) directly or indirectly coercing, attempting to coerce, commanding or advising another employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

b. An election is partisan if any candidate(s) in the election is running as a representative of a political party whose presidential candidate received votes in the most recent preceding election at which presidential electors were selected.

c. A covered employee is "an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency...." Due to the substantial number of grants and other Federal funds received by the Department and the difficulty of predicting when Federal funding might be allocated to any particular Department activity, all Department personnel are deemed to be covered employees for purposes of the Hatch Act.

d. An employee wishing to seek public office in a partisan election must resign from the Department prior to becoming a candidate. An employee who resigns under such circumstances may subsequently reapply for a position with the Department but return to employment will not be guaranteed.

e. An employee may hold a position in a political party (e.g., precinct chair, convention delegate) and/or support the partisan campaigns of others. An employee may not use state time, state property, or other state resources for such activities.

### **2. Participation in Non-Partisan Elections**

a. An employee may hold a non-partisan elective office (e.g., local school board) if:

1) there will be no actual or apparent conflict of interest between the public office and the employee's position with the Department; and

2) the employee receives no compensation for serving in the public office.

b. An employee may not utilize his position with the Department in connection with a campaign for or service in a non-partisan elective public office.

c. Before becoming a candidate, an employee shall give the Department written notice by a letter to the Director setting forth the office the employee will be seeking, the date the employee's candidacy will be announced, and whether the office is a civil office or emolument. A civil office of emolument is a public position in which one is paid a salary or receives other compensation. The Director will notify the employee in writing if the office the employee intends to seek presents a high potential for conflict with the employee's official duties in the Department.

d. An employee of the Department who becomes a candidate for any civil office of emolument that would create a potential conflict of interest with the employee's discharge of official Department duties, as determined by the Director, must take leave from the Department during such candidacy.

e. Prior to beginning administrative leave to seek elective office, an employee shall:

1) Surrender all property belonging to the Department, including badge, identification card, and commission.

2) Terminate any secondary employment that requires the use of the employee's DPS commission.

f. Before being placed on administrative leave without pay for this purpose, an employee shall exhaust all accrued compensatory and annual leave time.

g. While on administrative leave to seek elective office, an employee shall not represent the Department in any way.

h. An employee elected to a public office that presents a high potential for conflict with the employee's official duties in the Department must resign from his employment with the Department prior to assuming the duties of the elective office.

i. An employee elected to a public office that does not present a high potential for conflict with the employee's official duties in the Department may serve in that public office but may not accept a salary or other compensation for doing so.

j. An employee who returns to the Department directly from administrative leave to seek elective office will be returned to a position like the one held prior to the administrative leave and assigned to a service and location as determined by the Director.

### **3. Participation in Legislative Activity**

a. Employees shall not, while on duty, attend legislative sessions or loiter in legislative meeting rooms, reception rooms or offices unless authorized or required to be present on official business.

b. Employees shall not, while on duty, attempt to influence any member of the Legislature with respect to any pending or proposed legislation. This section shall not, however, prohibit employees from responding fully and completely when specifically invited or requested to provide information or recommendations regarding legislation affecting the Department.

## **07.20.00 POSITION CLASSIFICATION, SALARY ADMINISTRATION, HIRING PROCEDURES & PROMOTIONAL PROCESS**

For purposes of this section, “hiring official” means the division Assistant Director/Special Office Chief, or their designee.

**20.01** Funds appropriated for salaries of classified positions may be expended to employ personnel in only classified position titles or in such other positions established and approved by the State Classification Office or in positions exempted from the classification plan by the Governor for use by the Department. DPS Division budget constraints for all salary actions must be considered and will impact final salary determinations

**20.02 Salary Rates for Classified Positions.** The State of Texas has three salary schedules that cover all classified positions. Each job classification in the State's Position Classification Plan corresponds to a salary schedule and salary group that provides the minimum and maximum salary rate. These salary schedules are established by the Legislature during the biennial budget process. Department salaries shall be in accordance with classification salary schedules A, B, or C. A higher salary group is one with a higher minimum salary and a lower group is one with a lower minimum salary.

**20.03 Adjustments to Salary Rates on Salary Schedule A or B.** Changes in rates in Schedule A and Schedule B will be referred to in percentages (%) or a set dollar amount. The State Auditor’s Office has defined the following adjustments and parameters, except where otherwise noted, e.g. Merit Adjustments.

**Equity Adjustments** – An increase to the salary of a classified employee to any rate within the employee’s salary group as necessary to maintain desirable salary relationships between and among employees of the agency or between employees of the agency and employees who hold similar positions in relevant labor markets.

A classified employee may receive an equity adjustment if the employee has worked in the current position for at least six months while maintaining a satisfactory level of job performance. An employee may not receive more than one equity adjustment during a fiscal year. In providing an equity adjustment, the salary must increase but still remain within the same salary group without a change to the job classification or salary group.

**Lateral Transfers** - A lateral transfer is a change-in-duty assignment of an employee that moves the employee to another job classification title in the same salary group.

When a lateral transfer occurs, the salary can be increased, remain the same, or decrease within the salary group. If an increase is provided, it can be no more than 3.4% above the employee’s salary prior to the transfer. If the salary decreases, it may not decrease below the minimum of the salary group. A state employee’s annual salary rate immediately after a transfer may not exceed the maximum rate for the salary group. An increase in salary is not authorized for employees moving to a different position in the same job classification.

**Reallocations** - This occurs when the General Appropriations Act assigns specific classified positions to a salary group that differs from the previously designated salary group.

A classified employee whose position is reallocated to a higher salary group will receive the minimum rate in the higher salary group or the salary s/he would have received without the reallocation, whichever is higher. Salaries of employees may not be increased more than 6.8% for the purpose of maintaining desirable salary relationships among employees in the affected positions. Employees whose position is reallocated to lower salary group will receive the salary they would

have received had their positions not been reallocated. However, the employees' salaries should not exceed the maximum rates for the lower salary groups.

**Reclassifications** - A change in the classification of a position to another classification title as a result of a classification review or agency reorganization. The purpose of a reclassification is to properly classify a position based on the actual duties currently performed by an employee. It does not refer to a change in an employee's duty assignment.

A classified employee whose position is reclassified to a higher salary group will receive the minimum rate in the higher salary group or the salary s/he would have received without the reclassification, whichever is higher. Salaries of employees may not be increased more than 6.8% for the purpose of maintaining desirable salary relationships among employees in the affected positions.

Employees whose position is reclassified to a lower salary group will receive the salary they would have received had the position not been reclassified. However, the salary shall not exceed the maximum rate for the lower salary group. If the employee's salary prior to the reclassification is above the maximum salary of the lower salary group, the employee will receive the maximum salary of his or her salary group.

**Promotions** - A change in classification title that provides a higher minimum salary; a promotion requires higher qualifications, and involves a higher level of responsibility.

An employee promoted to a position in Salary Schedule A will receive at least a \$30 per month increase to the base salary for a full-time employee or the minimum salary rate of the new salary group, whichever is higher. An employee promoted to a position in Salary Schedule B will receive at least a 3.4% increase or the minimum salary rate of the new salary group, whichever is higher. In addition, agency administrators have the discretion to grant a promoted employee a salary amount up to and including the maximum rate of the new salary group.

**Merit Increases** – A merit increase may be awarded to an employee whose job performance and productivity is consistently above that normally expected and/or required; refer to Department parameters outlined in 07.20.05 and Performance Evaluations Policy 07.62.00. Specific SAO parameters include:

The employee has been employed by the agency for six months of continuous employment by the agency in that classified position before the effective date of the increase.

The effective date of the increase is at least six months after the last promotion, enhanced compensation award, merit salary increase for performance in that position, or a one-time merit increase (including a one-time merit given for an employee's performance during a natural disaster or other extraordinary circumstance).

#### **Traditional Merit Process**

Salary Schedule A employees shall receive, at minimum, an increase of \$30 per month and the new salary may not exceed the maximum for the salary group.

Salary Schedule B employees merit adjustments may not exceed the maximum for the salary group and Department parameters restrict the merit adjustment to a maximum of 10% in a 6-month period.

**One-time Merit Increase (Payment)** – The same parameters defined under Merit Adjustments apply with One-time Merit Increases. The six-month limitations do not apply when in relation to a natural disaster or other extraordinary circumstance. Refer to Policy 07.20.05.

**Temporary Assignments** – To facilitate the work of state agencies during emergencies or special circumstances, an employee may be temporarily assigned to other duties for a period not to exceed six months.

During that time, the employee will receive at least the same amount of pay s/he received prior to the reassignment. An employee may not be temporarily assigned to a position with a lower minimum salary rate.

Temporary assignments will not exceed 6 months in a 12-month period.

An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by the General Appropriations Act for the administrative head of the agency. During the temporary assignment, an agency cannot award a merit increase to or promote or demote the employee.

**Salary Reduction for Disciplinary Reasons** – The reduced salary cannot be lower than the minimum rate of the employee’s current salary group. Pay may be restored to any rate within the same salary group, up to and including the employee’s prior rate, as performance improves without accounting for the increase as a merit increase.

**Demotions** – A change from one classification title to another classification title in a salary group with a lower minimum salary rate. The salary of a demoted employee in Schedule A will be reduced at least \$30 a month from the base salary for full-time employee. The salary of a demoted employee in Schedule B will be reduced by at least 3.4%.

An agency is not required to reduce a demoted employee’s salary if (a) the demotion was accepted in lieu of a layoff that resulted from a reduction in force. An employee demoted under these circumstances may not receive a salary rate that exceeds the employee’s salary rate before the demotion; or (b) the employee was selected for another position in a lower salary group as a result of applying for the position. Under these circumstances the employee may not receive a salary that exceeds the maximum of the lower salary group.

**20.04 Classification and Compensation Procedure for Schedule A or B.** To ensure proper classification and compensation of departmental jobs, Human Resources will analyze and evaluate jobs and make recommendations as to the proper classification (title and pay group) of departmental classified positions and/or compensation level within the pay group. These analyses will be conducted on a request basis, although, in certain cases, audits of related jobs may be required in order to complete a request analysis. The objective is to classify all positions in the most appropriate classification and pay group.

In determining desirable salary relationships for equity adjustments, the Department shall consider one or more of the following: prevailing market conditions and related attraction/retention problems; internal equity in the organizational structure; and the education, skills, related work experience, length of service, and job performance of Department employees and similar employees in the relevant labor market.

**1. Evaluation of a Position.** When a new position or reclassification of an existing position is proposed, the hiring official, Deputy Assistant Director or Assistant Director for the division will request an evaluation on Job Analysis and Evaluation Request form [HR-79](#) found in DPS’ Forms Repository. The [HR-79](#) should be marked “initial evaluation” if it is for a new position and “reevaluation” for existing positions. If approved for evaluation, the request form and any supplemental documentation will be forwarded to Human Resources for analysis and evaluation.

At the request of a division Assistant Director, a job analysis and evaluation can also be done on an emergency basis when management is trying to fill a vacancy, if the posting is not attracting sufficient qualified applicants or if repetitive turnover has been experienced in a position. Recommendation for reclassification or posting at a higher minimum salary made by Human Resources as a result of such an emergency and must be approved by the appropriate division Assistant Director or designee before implementation. If a higher minimum entry salary is warranted, then it may also be necessary to review the salaries and qualifications of the current incumbents in the position for the appropriateness of an equity adjustment.

**2. Appeal of Human Resources Recommendations.** If the Assistant Director does not agree with or has questions relating to the recommendation, Human Resources may be called upon to provide rationale for such recommendation. If the division Assistant Director still is not satisfied, the entire package should be returned through the chain of command to the originator with the option of appealing the recommendation from Human Resources. This appeal process can be terminated at any point in the chain of command. The decision from the Deputy Director for the division is final in appeal cases. The final ruling will be forwarded, by means of the [HR-79](#) request form, to the division Assistant Director and Human Resources and will serve as official notification.

### **3. Execution of Compensation/Classification Action and Recordkeeping**

a. Human Resources will maintain the official records on the approved classification for all departmental positions.

b. When the [HR-25](#) is prepared, it should be marked appropriately as a “Reclassification”, “Career Progression Merit”, “Career Progression Promotion”, or “Equity Adjustment” as approved by the division Assistant Director or designee. If the funds are not available to implement the approved classification, the appropriate division Assistant Director may defer authorization until funds are available.

**4. Assignment of Working Titles and Working Title Numbers.** All departmental positions are assigned a Working Title Number (WTN) by Human Resources; this WTN will begin with the SAO classification number and then will also indicate the division, service, bureau or section, and a unique number for the working title. Multiple employees performing the same job in a particular section may have the same assigned Working Title and WTN.

Human Resources will provide all managerial personnel with a listing of working title numbers and working titles applicable to their own areas of responsibility. Managerial personnel will report any changes necessary in working titles to Human Resources, who will originate and maintain the master listing of working title numbers and working titles.

In order to facilitate the updates to these working titles and numbers, Human Resources must receive a copy of any revised organizational charts. Organizational charts should list positions by working titles, state classification titles and pay group, and number of incumbents.

**5. Recruitment Bonuses.** To aid in the recruitment of personnel for certain positions, the Department may approve a recruitment bonus, payable at the time of hiring, in the form of a one-time payment not to exceed \$5,000. Any recruitment bonus provided under this section must comply with Texas Government Code Section 659.262.

If an employee receiving a recruitment bonus under this section discontinues employment with the Department for any reason within twelve months of employment, the employee shall refund the Department an amount to be determined by Human Resources using the formula provided in Texas Government Code Section 659.262(b).

Before a hiring official provides or enters into a contract to provide additional compensation to an employee under this section, the contract must be approved by the appropriate Deputy Director or designee. Additionally, the Department Director or designee must certify in writing to the Comptroller of Public Accounts the reasons the additional compensation is necessary.

**20.05 Merit Salary Increases.** A merit increase is a salary action used to compensate an employee whose overall job performance consistently exceeds the basic expectations or requirement of their position. Merit increases are subject to budgetary constraints and final approval of funding is left up to the Assistant Directors and Deputy Directors. Other guidelines and procedures governing merit salary awards are as follows:

1. Schedule C salaries are set at fixed rates. Employees in this category are not eligible for a merit salary increase.

2. The employee must be employed by the Department in their current position for at least six (6) continuous months before the effective date of the increase. This includes promotions that result from career progressions or career ladders.

3. The effective date of the increase is at least six (6) months after the effective date of the employee's last: 1) promotion or 2) merit salary increase for performance in the employee's current position.

4. The employee's overall job performance, in the current position, must consistently exceed expectations or requirements as defined in Department Performance Evaluation Policy, 07.62.00. If the last performance evaluation on file is one (1) year old, a memo of justification documenting the sustained level of performance must be attached to the [HR-25](#).

5. The employee must not have received any disciplinary action involving time off, salary deduction, disciplinary counseling, or disciplinary probation during the twelve (12) months preceding the recommendation.

6. Merit salary increase recommendations are limited to a maximum of 10% in a six month period. A recommendation above the 10% maximum requires a letter of justification from the appropriate Assistant Director to the HR Director.

Human Resources may request additional information, if justification for the increase is not attached or requires clarification.

#### **7. One-Time Merit Payments Non-Commissioned Employees**

The Department may make a one-time merit payment to a classified employee in relation to the employee's performance in the current classified position held by the employee under the following conditions:

a. The employee must be employed by the Department in their current position for at least six (6) continuous months before the effective date of the payment.

b. The employee's job performance in the current position must be consistently exceeding expectations.

c. The memorandum of justification for the one-time merit must clearly identify the performance that warrants the one-time merit.

d. The effective date of the payment is at least six (6) months after the effective date of the employee's last:

- 1) promotion, or
- 2) merit salary increase in the current position, or
- 3) one-time merit payment for performance in the current position.

The Department Director or his designee has the discretion to award a one-time merit that is in relation to an employee's performance during a natural disaster or other extraordinary circumstances that he believes warrants a one-time merit award.

#### **20.06 Hiring Policies - Noncommissioned Positions**

Generally, starting salaries are at the minimum rate of the position's SAO-designated salary group, and in no case may they exceed the SAO-designated maximum for the salary group. However, in order to remain competitive and effective

in recruitment and retention efforts, hiring officials are able to exercise some latitude in their salary recommendations and options:

1. **Anticipated performance.** For a candidate meeting all qualifications, the hiring official may recommend 25% above the base salary or alternately, may choose to hire at the minimum for the salary group and wait six months for demonstrated performance, at which time the salary would be increased the recommended 25%.

2. **Exceptional qualifications, e.g. knowledge, skills, and abilities; work experience; training; and education.** A candidate with exceptional and verifiable qualifications may be offered a salary commensurate with those qualifications; an appropriate recommendation would be 30-35% above the minimum for the salary group.

3. **Hard-to-fill positions and positions with retention issues.** An appropriate recommendation would be 25-30% above minimum for the salary group, provided the candidate is a verifiably solid, viable candidate meeting all requirements. In extreme situations, the division Assistant Director may use up to the SAO-designated maximum for the salary group in order to ensure appropriate staffing; such action will be taken with the advice and consent of Human Resources in order to ensure appropriate salary parity within the agency. If the division and Human Resources are unable to agree on an appropriate range, the Deputy Director over that division will make the final decision.

Division budget constraints, salary posted on job announcement, and state government compensation statute must be considered and will impact final salary determinations.

A. New employees will be hired at a salary determined by the divisional chain of command to include the Assistant Director and approved by Human Resources.

B. An employee who leaves the Department and wishes to be re-employed by the Department shall be hired subject to the policy followed for newly hired employees. If the returning employee is hired into the same working title previously held by the employee, and the position is a career progression or career ladder position, the employee shall be allowed to demonstrate that he/she has the knowledge, skills, and abilities to continue the progression process. The employee must serve in the current position for a minimum of six months before an assessment can be considered valid and the employee can be given credit for prior service in that position. All new employees are subject to a one year probationary period when hired by the Department.

### C. **Non-Commissioned hiring Process and Procedures:**

1. **Position vacated.** Position vacancies occur as a result of employee death, retirement, resignation, termination, promotion, demotion, transfer, or through creation of new positions.

2. **Position approved for fill.** Management must approve a position for funding and fill before any Human Resources staffing action occurs. A Position Control No. (PCN) authorized by Finance must exist before the position is valid for hiring.

3. **Job Description validated.** For a new position, Human Resources will partner with the Hiring Manager to develop a new job description. For an existing position, Human Resources partners with the Hiring Manager to determine if any job description modifications are necessary based on the position's current scope. Once finalized, Human Resources enters the job description into the applicant tracking system.

4. **Job announcement created.** All job vacancies must be posted, except for positions filled through direct appointment, promotion, and job assignments made for the good of the Department or to provide reasonable accommodations under the Americans with Disabilities Act. Human Resources will partner with the Hiring Manager to create the position's job announcement using the applicant tracking system.



There are three types of job announcements: Standard, Promotional and Transfer. Standard job announcements are those that are posted both to external job seekers and internal DPS job seekers. Job announcements of this type will be posted both on external job boards, as well as on the DPSnet job opportunities page. Promotional job announcements are posted internally on the DPS job opportunities page only. These types of job announcements are only available to internal DPS employees. Transfer job announcements are those that are posted by a specific division or region and are only open to DPS employees currently working in that division or region and in the same position. Transfer job announcements may also be restricted by position type within a specific DPS division or region. An employee is not eligible for transfer to another position or location while on disciplinary probation.

For all job announcement types, applications will only be accepted through the online application process using the applicant tracking system.

5. **Applicant testing determined.** The Hiring Manager, in consultation with Human Resources, will determine whether applicants will be required to take any job-related test(s) for applicant screening purposes.

6. **Job posted online.** Announcements for positions, regardless of announcement type must be posted. All job announcements will be posted online by Human Resources using the applicant tracking system. Human Resources will maintain job announcements in the applicant tracking system for documentation purposes and as a reference source for future postings. All external job announcements must be posted online in the applicant tracking system and with the Texas Workforce Commission's WorkinTexas.com system for a minimum of 10 working days. Promotional or transfer announcements must be posted for a minimum of three (3) full working days. All announcements will close at 11:59 p.m., Monday through Friday. Federal, state, substitute holidays, or bad weather days do not constitute a working day.

7. **Applicant screening.** All applicants will be screened by Human Resources, regardless of job announcement type, to include doing a criminal history check and determining rehire status (if an applicant was a former DPS employee). Screening will be based on the job description and job announcement content to determine the most qualified candidates. If no applicant testing is required, these candidates will be forwarded electronically by Human Resources (via the applicant tracking system) to the Hiring Manager for review.

8. **Applicant testing.** If testing is required, only the most qualified candidates (Hiring Manager determines the number of candidates) for a position will be tested. All candidates that pass the test(s) will be forwarded electronically by Human Resources (via the applicant tracking system) to the Hiring Manager for review.

9. **Best qualified applicants selected for interview.** The Hiring Manager will determine the best qualified applicants (from the applicant pool provided by Human Resources) based on objective, job-related factors and schedule them for an oral interview board. During this step, the Hiring Manager will also submit the oral interview board questions to Human Resources for approval at least 4 days prior to the first scheduled candidate interview.

10. **Oral interview board.**

a) **Composition.** Oral interview boards will consist of at least a chair and two (2) to four (4) members when possible. At least one member should be a racial/ethnic minority and one member a female. No employee may serve on a selection board that interviews the employee's close relative (see 15.10.02). Board composition for executive level positions (Deputy Assistant Director/Major and above) may be modified based on appropriateness, need and availability.

It is permissible that a board member be in the same pay group level as the vacancy being filled. Under normal circumstances, a board member should not be more than two pay groups below the pay group level of the vacancy without approval of the appropriate Assistant Director. Although the board chair is normally the highest ranking member of a board, it is permissible to appoint a board member who is at a higher pay group level than the chair, if approved by the appropriate Assistant Director.

b) **Conduct.** Interview boards will:

- Be conducted in a highly professional manner.
- Develop interview questions that focus on the position's job description to determine how each job candidates' knowledge/skills/abilities and attitudes meet the specific needs of the job position and the organizational needs of the Department.
- Ask all candidates the same set of appropriate interview questions to ensure a fair, consistent interview process. Candidates may be asked additional questions for follow-up purposes to clarify candidates' responses, obtain information related to the original interview question or ask questions about information disclosed in applicants' application; however, one or more candidates may not be asked and scored on a question that not all candidates had an opportunity to answer.

c) **Scoring.** Discussion by board members about individual candidates' answers, interview behaviors, organizational fit, etc. is encouraged to help board members in their individual assessments of candidates. After discussion has completed, each board member will independently and confidentially determine individual candidate ratings and submit the score sheet [HR-40a](#) to the board chair. All board member scores will be averaged to determine a candidate's final score. In case of a tie, the board chair will review each tied candidate for the following:

1. Veteran's status
2. Foster child status
3. Current DPS employee status

The first two categories are now required as preferences by statute. Any tied candidate possessing either status will get 10 points added to his/her score for each applicable status. If a tie exists after this review, the tied candidates will return for another review board to break the tie. The Department will comply with the statutory requirements as provided in the Texas Government Code, Section 657.003 (a).

An interview board may, if desired, conduct a second interview process for selected top candidates. The board is given the discretion as to the number of top candidates to interview.

**11. Best qualified applicant selected.** The scoring results of the oral interview board process determine the best qualified applicant for selection. The Hiring Manager will record candidates' scores using the standard commenting process within the applicant tracking system. The Hiring Manager (or designee) will ensure that all referred candidates are processed through the system according to instructions provided. All candidate score sheets are to be sent to Human Resources electronically for records retention. The hiring approval process will also be completed through the automated applicant tracking system. The Hiring Manager will identify the individual to be hired by placing them into "Hired" status and completing the hiring approval process through their chain of command. Once all divisional/regional approvals are obtained, the candidate will be sent automatically to Human Resources for final hiring authorization. Human Resources will review the selected applicant's status and either complete the hiring authorization or contact the Hiring Manager if there are any issues or questions regarding the final candidate.

If the Hiring Manager wants to designate one or more candidates for future consideration (eligibility list), the candidate(s) should be designated as such by adding comments to the candidate(s) record(s) in the applicant tracking system. This is done by adding comments to the “Comments” field upon rejection of the candidate. The candidate(s) should also be sent an email notification using the rejection notice with eligibility language. These candidates can be considered for future vacancies for a maximum of 90 days from the date of designation, unless an exception is requested and granted by the HR Director. With approval of the Assistant Director or designee, the hiring official may also elect to post the vacant position via DPS lateral transfers.

**12. Conditional job offer.** Due to various eligibility requirements for external and internal hires, divisions should wait to extend conditional job offers and background paperwork until HR has emailed and authorized the release of the pre-hire forms to the applicant. The job offer is contingent upon the selected applicant successfully clearing any background checks conducted. The salary range associated with the offer will be determined by Human Resources, in coordination with the Hiring Manager, prior to the offer being made to the selected applicant. The salary range will be based upon the salary posted on the job announcement, applicant’s knowledge/skills/abilities, pertinent work experience, and the salary levels of similar DPS positions. The Hiring Manager may not offer the selected applicant a salary outside of the approved salary range without the prior approval of the Human Resources Director.

No employee may be employed at a rate higher than the maximum salary rate of a salary group. Also, some career progression positions allow for entry at a salary group *above* the lowest *level* (open progression) depending on previous employment experience and skill levels: The specific requirements of career progression positions are listed in the job description of the position.

**13. Background investigation.** All applicants who apply for a position at DPS are subject to a full background investigation. Modified background investigations can be approved if the selected candidate is a current DPS employee. In such cases, the prior background investigation will be reviewed and an updated criminal history check conducted. Once the candidate has cleared the background and criminal history checks, the hiring official will be notified by Human Resources. Human Resources will authorize the final job offer, notify the hiring official to schedule the applicant’s reporting date to begin employment.

**14. New hire [HR-25](#) completed.** A new hire [HR-25](#) is completed by the Hiring Manager and sent to Human Resources for processing.

**15. New employee orientation.** The new employee will begin new employee orientation on the first day of employment.

D. Persons selected or promoted may be subject to background investigations and/or record checks under the provisions outlined in Chapter 15. If significant negative information concerning personal or employment history is discovered between placement on an eligibility list and actual promotion or employment, an Assistant Director may remove a person from an eligibility list.

1. Current Department employees who submit applications for posted positions shall notify their immediate supervisor.

**20.10 Transfers.** Transfers are defined as movement from one position to another position within the same or an equivalent salary group. The new position may involve different duties or may have the same duties at a different location. It includes both transfers between state agencies and within DPS. No decrease or increase in salary may be granted by virtue of a transfer.

An employee hired through Interagency Transfer may also be hired for a position in a lower designated salary group, in which case the employee shall be paid at a rate determined by the section relating to “Demotions,” or in a higher salary group, in which case the employee shall be paid at a rate determined by the section relating to “Promotions.”

**20.11 Part-Time and Hourly Employees.** Regular full-time positions paid out of funds appropriated may also be filled by part-time and/or hourly employees. In computing the salaries of these employees, the rates of pay shall be proportional to the rates authorized for full-time classified employment. It is further provided that part-time and hourly employees as described in this subsection shall be subject to all of the provisions of this section.

**20.12 Other Vacancies.** All other positions will be selected with the use of either an oral interview board or written examination or both, as set out in this manual and the DPS Law Enforcement Selection Recruit Manual. Vacancies may be filled by internal transfer (or transfer/demotion) prior to the posting as a promotion/new hire.

Human Resource Management is responsible for monitoring the selection and promotional processes. Any noted irregularities will be reported through proper channels to the Director’s Office.

## **07.26.00 PROMOTION AND SELECTION POLICIES AND PROCEDURES**

### **26.01 Statement of Purpose (TAC Rule §1.37)**

1. The purpose of the promotion and selection policies and procedures of the Department is to assure that initial employment and career advancement within the Department are based upon (1) sound personnel practices based on merit that reflect the needs of the Department, job position requirements, and the qualifications of each individual considered, (2) nondiscriminatory procedures as required by law and (3) a comprehensive program aimed at increasing the Department’s overall professionalism, proficiency, and morale through an effective career program.

2. Written test procedures will use only objective, job-related criteria that are consistently applied and quantifiably measured. Oral interview board procedures will be based on objective job-related criteria to the fullest extent possible. Employees of the Department who fail to obtain certification after receiving instruction in a required certification course of their current service shall not be eligible to participate in any promotional process.

3. The Department’s selection procedures for entry level law enforcement positions are set into motion as dates for recruit schools are scheduled. The recruiting efforts for these positions are an ongoing process. Recruiting efforts and selection procedures for other positions are set into motion as needed, or as vacancies occur.

### **26.02 General Policy Statements - All Department Positions**

#### **1. Promotions.**

a. **Definition.** A promotion is a change in classification title that provides a higher minimum salary rate, requires higher qualifications, and involves a higher level of responsibility. A promotion is not an entitlement and may be subject to budgetary constraints.

Salary actions that do not fall within these guidelines must be approved by Senior Management (Director or Deputy Director).

b. **Types.** There are three types of departmental promotional processes:

1) **Job Vacancy.** An employee may apply for and be competitively selected to fill a job vacancy. Commissioned employees may accomplish this through the Commissioned Officer Promotional Process

(see 07.26.07). Noncommissioned employees may accomplish this by following the Standard Job Announcement Procedures (see 07.26.03).

When an employee is competitively selected to fill a job vacancy, the salary increase is effective when the employee assumes the new position, regardless of the size of the pay increase or elapsed time since the last salary action.

It should be noted that in certain instances, the selection process may result in an employee receiving a lateral transfer or demotion, depending on the relationship of the classification of the position occupied by the employee to the classification of the position the employee is selected to fill. This is not considered a promotion.

Employees are encouraged to seek promotional opportunities within the Department.

**2) Career Progression.** A noncommissioned employee may receive a career progression when the employee successfully meets all career progression qualifications specified in the position job description. A career progression requires qualifying work experience, increased knowledge/skills/abilities to be more productive, and a performance evaluation with ratings of at least competent in every performance area in the employee's present job. Refer to 07.26.09 for the commissioned officer career progression promotions process.

### **3) Qualified Promotion.**

a) **Process.** This noncommissioned promotion process provides Management with the tool to promote a fully qualified employee within the Department into a different position in a higher salary group without the requirement of competing through the job vacancy process. If there are two or more employees in the Division/Section with equivalent qualifications (job experience, knowledge/skills/abilities), the position must be filled by competitive selection using the job vacancy process mentioned above. Management may recommend an employee for a qualified promotion if it can demonstrate that:

i. The employee is the only qualified employee for the new position. There are no other employees in the Division/Section with equivalent qualifications (job experience, knowledge/skills abilities).

ii. The promotion results in a permanent duty change with new responsibilities for the employee.

iii. A job description exists for the position for which the employee is being recommended and a copy is on file in Human Resources.

iv. A current, performance evaluation with ratings of at least competent in every performance area is on file for the employee being recommended for promotion.

v. The recommended employee does not have any pending or sustained formal complaints on file within the 36-month period prior to the anticipated promotion date.

#### **b) Documentation.**

i. This action is coded as a standard promotion on the [HR-25](#) form. The Qualified Promotion Eligibility Form [HR-34](#) will be completed and signed by the

Immediate Supervisor of the promotion position and routed through the chain-of-command for approval. The request requires the approval of the Deputy Director or Director, as appropriate. When completed, the Qualified Promotion Eligibility Form [HR-34](#) is attached to the [HR-25](#) form and submitted to Human Resources.

ii. Human Resources will review the documentation to ensure it is complete and ready for processing. *The Immediate Supervisor is not to inform the employee of the promotion action until notified by Human Resources that the [HR-25](#) and Qualified Promotion Eligibility Form [HR-34](#) have been reviewed, confirmed complete, and approved for processing by Human Resources.* Once processed, the [HR-25](#) and [HR-34](#) will be retained in the employee's official personnel file.

c) **Timing.** Promotions may be given at anytime. There are no time constraints.

d. **Promotional Ceremonies.** Promotional ceremonies for positions designated by the Director will be scheduled at 9:00 a.m. on the first Tuesday of each month at a designated location at headquarters in Austin. If a holiday occurs on that day, the ceremonies will be rescheduled for a time and day at the Director's discretion. Human Resource Management will make the necessary notifications of any changes to this schedule.

## 2. Direct Appointments.

a. Management Team positions which include: Deputy Directors; Assistant Directors; Deputy Assistant Directors; Regional Commanders; the General Counsel and the Deputy General Counsel; and other positions as determined by the Director will be selected by direct appointment by the Director, with the approval of the Public Safety Commission.

b. **Chief Auditor's Office.** The position of the Chief Auditor is appointed by the Public Safety Commission pursuant to Section 2102.006 of the Government Code.

c. **Office of Inspector General.** The position of Inspector General is appointed by the Public Safety Commission pursuant to Section 411.244 of the Government Code.

3. **Special Assignments.** Positions of State Coordinator of Emergency Management, Major, Commander, Assistant Commander, Laboratory Services Director, Recruiting Coordinator, and other positions deemed necessary and appropriate by the Director will be selected by the appropriate Assistant Director or special section head with the vacancy, subject to the approval of the Director. All qualified applicants will be considered. Selection will be based on merit, including but not limited to past performance as recorded on Departmental performance evaluations. The results will be documented and will indicate the applicant(s) selected and any alternates. An oral interview board may be used.

## 4. Policy on Rehiring Retirees for Non-Commissioned Positions

For the purposes of this policy, a retiree is an individual who has retired from state employment under the Employees Retirement System of Texas (ERS) and is otherwise eligible to apply for vacant positions because they have complied with the requirements set forth under ERS retire-rehire rules.

Because employees retiring after September 1, 2009, do not pay into ERS, the Legislature has discouraged the rehiring of retirees through the requirement that state agencies pay a surcharge to ERS when rehiring retirees. In addition, it is the department's philosophy that rehiring retirees discourages opportunity and diversity in the workforce.

For these reasons, the department's policy is to rehire retirees for full time, non-commissioned positions only under the following circumstances. A hiring official wishing to hire a retiree must submit documentation of one or more of the following through his or her chain of command to the director:

a. The retiree is the only candidate qualified to occupy the position, or the retiree's qualifications significantly exceed those of all other candidates (providing specific examples);

b. If the retiree was employed by the department prior to retirement, the retiree's work history was exemplary, as evidenced by performance evaluations;

c. If the retiree was employed by the department prior to retirement, the available position is non-supervisory/non-managerial; or

d. The program area in which the retiree would be hired will significantly improve in quality, efficiency, and/or effectiveness if the retiree is hired (providing specific examples).

Once the hiring official meets one or more of the criteria above, the salary offered must be at least ten percent (10%) less than what would be paid to a non-retiree to compensate for the surcharge. If the salary offered was to be within ten percent (10%) of the base for the salary range for that position, the salary offered will be the base of the range.

Job postings for non-commissioned positions will include a description, as described above, of the conditions upon which a retiree will be considered for employment. All retire-rehired employees are required to notify ERS of their rehired status.

5. **Other Vacancies.** All other positions will be selected with the use of either an oral interview board or written examination or both, as set out in this manual and the DPS Law Enforcement Selection Recruit Manual. Vacancies may be filled by internal transfer (or transfer/demotion) prior to the posting as a promotion/new hire.

6. Human Resource Management is responsible for monitoring the selection and promotional process. Any noted irregularities will be reported through proper channels to the Director's Office.

7. Probation - The probation period (first one year of service) set out in Article 411.007, Section (f) of the Government Code. The statutory probation period deals with the authority of the Director to remove unsuitable employees without an appeal to the Public Safety Commission within the first one year of service.

8. **Rehiring Retirees - Policy.** An individual who has retired from the State must notify Human Resource Management and ERS of their rehire.

## **26.03 Promotion Test Construction and Administration for Commissioned Officers (above the rank of Trooper through the rank of Captain) and LESD Communications Supervisors (CS).**

### **1. Test Construction**

a. HRM/Law Enforcement Promotional System (LEPS) will assume primary responsibility for developing or securing all written examinations and skills tests. If appropriate (primarily in law enforcement and highly technical areas), Human Resource Management may enlist the aid of other Department personnel to develop meaningful but equitable tests and testing procedures.

b. Where appropriate, HRM/LEPS will verify that test questions are taken from published study material lists and are, in fact, job related.

c. HRM/LEPS will prepare specific instructions for test administration and will review both the test and the instructions for clarity.

d. HRM/LEPS will assume responsibility for test security and integrity.

e. Where appropriate, a test to determine specific knowledge in the field of criminal investigation and current events will be administered. The test will be developed to determine the knowledge of the applicant in the field of criminal investigation and may cover such subjects as the Texas Penal Code, the Code of Criminal Procedure, Laws of Search and Seizure, Laws of Arrest, Laws of Evidence, Techniques of Criminal Investigation, and world affairs.

## 2. Promotion Test Administration

a. For commissioned and LESD Communications Supervisor (CS) positions, HRM/LEPS will develop and administer written promotional examinations which are appropriate to the vacancies (i.e., a Texas Ranger written exam for Texas Ranger candidates).

1) These examinations will be administered in the HRM/LEPS Testing Lab in Austin or at authorized testing centers in various locations throughout Texas.

2) The examinations at the HRM/LEPS Testing Lab in Austin will be administered Monday through Friday (holidays excluded) at the time(s) specified by HRM/LEPS; testing dates and hours at the authorized testing centers will vary.

- For testing at the HRM/LEPS Testing Lab in Austin, candidates will submit the [HR-106](#) as instructed and should request three (3) possible dates and times for written testing
  - Dates should be no earlier than (5) days from the date of request
  - Requested examination appointments can be made between the hours of 8:30am and 1:00pm (to allow four (4) hours for completion of exam)
- For testing at the authorized testing centers, candidates will submit the [HR-106](#) as instructed, marking the box for “Regional” testing center. HRM/LEPS will then verify the candidates’ eligibility to test and then notify both the candidate and the regional testing center. After receiving approval to test, the candidate will then have thirty (30) days to schedule and take the exam.

3) Examinations may be administered at additional times and/or places as specified by HRM/LEPS.

c. HRM/LEPS will either administer or supervise the administration of all written tests to assure that fair and proper procedures are followed and that tests are conducted in an acceptable environment. Candidates should make arrangements through their supervisor to be present to participate in the promotional examination. If the test administrator is notified of a candidate who will be late and he or she has a valid reason, such as court duty, auto trouble, being busy with accident investigation, weather, etc., the late arriving participant will be allotted the same amount of time to complete the examination as all other candidates. If a candidate for promotion happens to be hospitalized at the time of the scheduled examination and still desires to compete, ample notice should be furnished to HRM/LEPS.



Test administrators will give specific, precise, and uniform instructions to the candidates as to time allowed for the test, rules regarding conduct during the test, and any other information beneficial to the candidates.

### **3. Promotion Test Scoring and Notification**

- a. Test scoring will be performed by or under the direction of HRM/LEPS.
- b. HRM/LEPS will be responsible for notifying candidates of their scores. Written notification should be provided as soon as practicable after scoring is completed.
- c. Candidates are not able to review their written examinations after the examinations have been scored. Candidates are not able to take written examinations “for practice.”

### **4. General Requirements for Promotion:**

- a. Employees who are on disciplinary or corrective probation, a Performance Improvement Plan (PIP) or non-compliant with the Health and Physical Fitness Program as prescribed in Section 08.14.05-4 of this Manual are not eligible for promotion.
- b. A current performance evaluation with ratings of at least competent in every performance area is on file for the employee applying to participate in an announced promotional process
- c. Commissioned officers must have a minimum of one year continuous employment immediately prior to the date of examination to be eligible to participate in the applicable competitive examination. LESD Communications Supervisor (CS) candidates must have been a PCO II for two (2) years with a minimum of six months continuous employment immediately prior to the date of examination to be eligible to participate in the applicable competitive examination.
- d. Employees on military leave are eligible to compete in the examination process and military leave time will be credited as uninterrupted department service as it would apply towards eligibility for time in grade and experience.
- e. Officers who are assigned to the Executive Protection Bureau or to any of the Department’s other special sections, but who have not been assigned to these units by virtue of the law enforcement promotional process, are eligible to compete in promotional examinations based on:

Eligibility to compete in a specific promotional examination will be determined by the position(s) held prior to their current assignment. (As examples: An Inspector General Lieutenant, who previously served as a Criminal Investigations Division Agent, is eligible to compete in the same manner as a current Criminal Investigations Division Lieutenant. A sergeant in the Education, Research and Training Division, who previously served as a Highway Patrol Trooper II is eligible to compete in the same manner as a current Highway Patrol Sergeant.)

In order to be eligible to compete in a promotional examination under this provision, an employee must also have met the basic requirements for the rank currently held. For example, a Trooper I assigned as an Agent on the Executive Protection Bureau is not eligible to compete for a Sergeant/Agent position in the promotional process without first advancing to Trooper II. An employee may not take a qualification examination for a position they currently occupy or one they are directly above in rank if in the same division/service.

Eligibility to compete in the promotional process under this provision does not entitle an employee to transfer laterally to another service or division based solely on the rank currently held.

f. Employees who have been demoted will be eligible for promotion only to the next higher rank from the current position held.

g. Commissioned employees who are rehired after resignation or retirement and meet the eligibility requirements to compete in the promotional process must also serve a period of 12 months in the preceding rank before becoming eligible to compete in the process.

For all promotional opportunities facilitated through HRM/LEPS, candidates must make a minimum score of sixty percent (60% or 300) on the written examination in order to qualify to appear before the oral interview board per projected vacancy. No written examination is administered for the position of Communications Area Manager.

#### **26.04 DPS Commissioned Officer and LESD Communications Supervisor (CS) Promotional Process**

1. To ensure the purposes stated in Section 07.26.01(1) of this chapter are fulfilled, the following promotional process will be used for the promotion of all commissioned officers above the rank of Trooper through the rank of Captain in all divisions, services, and special sections [except as provided by Section 07.26.02(4) of this chapter]. The promotion/selection of commissioned officer positions above the rank of Captain and above LESD Communications Supervisor will be by direct appointment or by other process as determined by the Director, Deputy Directors, and/or Assistant Directors as indicated elsewhere in this chapter.

2. See Section 07.26.03(4) of this chapter for the general requirements for promotion. See Sections 07.26.05 and 07.26.15 for additional division-specific requirements.

3. All vacancies will be posted by location.

a. The Assistant Director will determine the need to fill a vacancy. The Assistant Director should confer with the Regional Commander in each region to determine the need to fill vacancies for that region.

b. Vacancies shall be announced and opened for transfers prior to the promotional process. The failure to select from the pool of transfer applicants is a potential option and will be made only after the determination and authority of the appropriate Assistant Director. This section does not apply to positions in the Office of the Inspector General.

c. To apply for a posted vacancy, candidates shall submit an Internal Application for Promotion form [HR-112](#) to their chain of command prior to the deadline indicated in the job posting. Each member of the candidate's chain of command, through the Major, will review the candidate's Internal Application as it progresses through the chain of command to HRM/LEPS. These members must indicate on the application whether the candidate is "Recommended" or "Not Recommended."

1) The chain of command review must be completed and returned to HRM/LEPS within 10 calendar days of the closing date of the job posting. HRM/LEPS will contact the appropriate chain of command if this deadline is not met.

2) If a member of the chain of command indicates the candidate is "Not Recommended," that supervisor must attach written justification which contains sufficient specific factual information to substantiate the "Not Recommended."

a) This justification must be reviewed by the chain of command, through the Major, who shall ensure that the “Not Recommended” is both warranted and substantiated by sufficient specific factual information in the justification documentation.

i. If the chain of command does not concur that the “Not Recommended” is warranted or substantiated, the chain of command will indicate the candidate is “Recommended” and no justification shall be submitted to HRM/LEPS.

ii. If the chain of command concurs that the “Not Recommended” is both warranted and substantiated, the chain of command will indicate the candidate is “Not Recommended” and the justification will be forwarded to HRM/LEPS.

3) HRM/LEPS will notify any candidate receiving a “Not Recommended” on an Internal Application for Promotion, provide the affected candidate with an opportunity to review the justification for the “Not Recommended” and grant the candidate an opportunity to write a response or rebuttal to the Career Board.

a) The candidate will receive five days to submit the response or rebuttal to HRM/LEPS, who will forward it to the Career Board Chair.

b) In all cases where a candidate is “Not Recommended” the candidate shall be given an opportunity to review the justification, provide a response, a rebuttal, or to waive their response or rebuttal and they must sign the response, rebuttal, or waiver page to affirm that they were given notification.

d. HRM/LEPS will screen all candidates to ensure they have met the basic requirements for the position and have submitted all required forms prior to the deadline in the job posting.

1) If a candidate does not meet the requirements of a promotional process or fails to submit any required items prior to the deadline, HRM/LEPS will disqualify the candidate and notify the candidate of such. HRM/LEPS will attempt to contact candidates and allow them to submit necessary corrections and/or missing items when the errors are detected prior to the deadline.

4. To qualify for a promotional process, all candidates must have a minimum written examination score of 60% for the appropriate written promotional examination prior to the commencement of the screening process. These written examination scores will be valid for 24 months. A candidate may retake any examination after 180 days. A candidate will be given credit for his/her highest written examination score in the past 24 months.

a. Each candidate who has served on active duty with the military for a period of at least 90 days continuous service will be credited with 10 additional veteran’s points to their test score provided their test score meets the minimum cut off score of sixty percent (60% or 300). Candidates scoring below a sixty percent (60% or 300) will not be eligible to receive veteran or disabled veteran’s points. Candidates desiring credit for the 10 additional points must have a record of the military discharge in their personnel file which establishes the period of active duty. Veterans desiring to receive credit for five additional points for a service-connected disability must have a record in their personnel file from the Veterans Administration with proof of disability.

5. Career Boards shall evaluate and make promotion recommendations concerning the candidates who apply for promotion under Section 07.26.04.

a. There will be two types of Career Boards:

- 1) Field Career Boards will be utilized to fill all field promotional vacancies above the rank of Trooper through the rank of Lieutenant; and
- 2) Headquarters Career Boards will be utilized to fill all Field Captain promotional vacancies plus all Headquarters promotional vacancies above the rank of Trooper through the rank of Captain.

6. All Career Boards will consist of three voting members and may also have an additional non-voting member. The composition of Career Boards will be as follows:

**a. Chairperson (Chair)**

- 1) Every Career Board will have a Chair
- 2) The Chair will be a voting member of the Career Board
- 3) The Chair must be at least one promotion grade higher than the position being selected
- 4) The Chair will be appointed by the Assistant Director (or designee) with the vacancy
- 5) The identity of the Chair will not be disclosed prior to the Career Board deliberations or interviews except as necessary to make selections, any necessary travel arrangements, and/or to provide the required notifications to the Chair, to the other Career Board members, to HRM/LEPS, to the EEO Officer, and to appropriate members of the chain of command

**b. Other Members**

- 1) In addition to the Chair, every Career Board must also have two other voting members.
  - a) These two voting members must be of equal or higher rank of the vacancy being filled
  - b) No voting member will be of a higher rank than the Chair
  - c) For the Texas Highway Patrol, Criminal Investigations, Law Enforcement Support and Rangers Divisions, the two voting members will be from the same division as the vacancy
  - d) For other divisions, the Assistant Director or Major with the vacancy will determine the division, service or unit of the two voting members.
- 2) The two voting members of the Career Board will be selected by HRM/LEPS via a random lottery pool process
  - a) HRM/LEPS will be responsible for maintaining a lottery pool of eligible employees and assigning them to serve on Career Boards via the random lottery pool process. HRM/LEPS will exclude the following employees from this lottery pool:
    - i. Employees who have less than one year service in their current rank/grade as that of the position being filled;
    - ii. Employees who have had a sustained Section 18.25 or C-1 complaint in the last 24 months;

- iii. Employees who are on disciplinary probation, a performance improvement plan (PIP), or are non-compliant with the Department's physical readiness policy (GM Chapter 8.14.04).

b) A current performance evaluation with ratings of at least competent in every performance area is on file for any employee chosen to participate as a Career Board member in an announced promotional process.

3) If there are no minority voting members selected to serve on the Career Board, HRM/LEPS shall coordinate through the Department's Equal Employment Opportunity (EEO) Officer to have a minority non-voting member/monitor appointed to monitor all of the Career Board's meetings, deliberations, and interviews.

a) The EEO Officer will select and assign a minority commissioned officer to serve as a non-voting member/monitor of the Career Board via a random lottery process. This non-voting member shall be present at all Career Board meetings, deliberations, and interviews.

b) The non-voting member/monitor will immediately bring any substantive issues to the Chair. If they issues remain unresolved, the non-voting member/monitor will bring them to the EEO Officer. The EEO Officer will immediately consult with the appropriate Regional Commander, Assistant Director and/or Texas Ranger Major to address or correct any Career Board issue brought to his/her attention.

4) The identity of all voting and non-voting Career Board members will not be disclosed prior to the Career Board deliberations or interviews except as necessary to make selections, any necessary travel arrangements, and/or to provide the required notifications to the Chair, to the other Career Board members, to HRM/LEPS, to the EEO Officer, and to the appropriate members of the chain of command.

7. The Promotion Competencies are the competencies and any specialized skills which a candidate must possess in order to apply for promotion under this process. These Promotion Competencies consist of: (1) the experience; (2) the character; and (3) the skills which are essential for promotion into a particular position.

a. Candidates will be required to document how they possess and have demonstrated the Promotion Competencies required for that position. All candidates competing for promotion under this process will be required to complete the Candidate Promotion Qualification form [HR-113](#), in which they must document two examples for each required Promotion Competency in order to demonstrate they have met each of the required Promotion Competencies.

1) LESD Communication Supervisor (CS) candidates will NOT complete the "Investigations" competency on the [HR-113](#).

b. Career Boards will evaluate each candidate's examples using the standard guidelines and rating criteria contained in the appropriate matrix which has been developed for each required competency or specialized skill. The corresponding definitions and matrices have been developed for each of these Nine Core Promotion Competencies, and are contained in [HR-110](#).

1) In addition to the Nine Core Promotion Competencies in the Candidate Promotion Qualification form Assistant Directors in may establish additional Promotion Competencies. These additional Promotion Competencies will consist of: (1) the experience; (2) the character; and (3) the skills which are essential for promotion into that position. Additional competencies will be announced in the job posting.

2) Assistant Directors may also require candidates to submit additional items to the Chair such as work product examples or other items. Candidates shall also submit these required items to HRM/LEPS.

3) All assessments (situational exercises) must be approved by the Assistant Director with the vacancy and HRM/LEPS. Assessments will be announced in the job posting.

c. The HRM/LEPS Captain and/or designee will verify and compile all of the items received from the candidates and from the chain of command and provide it to each member of the Career Board.

1) Any employee who verifies items for a job posting may not also serve as a member of the Career Board for that same job posting.

2) After verification of all examples has been attempted per the above, the verifier will complete and submit the Verification Results form HR-115 (Annex 27) to the Chair.

8. HRM/LEPS will announce all Career Boards and ensure the job posting is listed on Outlook or equivalent in a standard location approved by the Director. When a Career Board is announced, qualified candidates shall submit their applications and all other required documentation to HRM/LEPS. HRM/LEPS will determine the written examination score ranking of the interested candidates during the screening process and, for each announced vacancy, the top 10 candidates with the highest written scores (plus ties) will be selected to appear before the Career Board for further consideration.

a. Selection will be made by the Career Board irrespective of the written test score, and no preference points will be awarded for education, or seniority, etc.;

b. No one should provide informal, undocumented input to the Career Board;

c. Any discussion or use of undocumented informal communication between Career Board members or between the Career Board members and other individuals regarding a candidate will be prohibited;

d. A Career Board may recommend candidates for multiple vacancies and locations;

e. All portions of Career Board's meetings, deliberations, and interviews will be audibly recorded in their entirety. The original recording will be submitted to HRM/LEPS for retention according to the approved record retention schedule. Other recordings of the interview board, consensus process or copies of the original recording are not permitted.

f. The promotional process records are not available to the public and are protected under Government Code Section 411.00755. Promotional candidates may upon request be provided a copy of their HR-113 competency ratings. Other promotional process records are confidential and are only available to Executive Management and investigators assigned by the EEO and OIG offices as needed and are subject to Government Code Section 411.00755 and the Public Information Act and will only be released as provided by those laws.

g. At the conclusion of the promotional process, Career Board members shall refrain from discussion of the proceedings with anyone other than affected chain of commands or candidates who appeared before the board.

9. The Career Board will recommend candidates up to the number of vacancies identified by the Assistant Director of the division.

a. If additional qualified applicants exist, beyond the number of vacancies identified by the Assistant Director, the Career Board may establish a rank order list of these additional recommended candidates, up to 2 per

announced vacancy. These additional recommended candidates will be eligible to fill the duty station(s) for which they interviewed if that duty station becomes vacant within 180 days of the convening of the Career Board.

- 1) Those candidates placed on the 180 day eligibility list will be notified of their status and advised of the following conditions:
  - a) If the duty station becomes vacant, candidates placed on the 180 day eligibility list will be offered the promotional opportunity after the transfer process has concluded without an accepted transfer. Should the candidate(s) on the eligibility list decline the promotional offer, the position will be reposted and filled by a new Career Board.
  - b) Candidates who accept a commissioned promotion will forfeit their position on any other promotional list within the same division.
  - c) Candidates who accepts a commissioned position will remain on any eligibility lists for other divisions (i.e., accepts promotion to THP Sergeant and on eligibility list for CID Agent).
- 2) Should the accepted position have a one year commitment, ALL eligibility list positions will be forfeited and the employee may not compete in any other promotional process or request an in-grade transfer until the lapse of the one year commitment has passed.

b. The Chair will complete and forward the Commissioned Promotion Selection Process and Recommendation memo [HR-114](#) along with all required promotions forms and recordings to HRM/LEPS for certification. The Chair will complete a separate memo for each duty station. HRM/LEPS, after consultation with OIG and EEO, will route the memo through channels to the appropriate Deputy Director for approval.

- 1) The Commissioned Promotion Selection Process and Recommendation memo [HR-114](#) will indicate the candidate(s) recommended for the vacancy followed by a rank order listing of any additional recommended candidates.
- 2) If any candidate declines a position, the Assistant Director (or designee) may offer that position to an additional recommended candidate in the order they were ranked by the Career Board.
- 3) If no recommended candidate accepts the position or if no candidate was recommended by the Career Board, the position will not be filled and the vacancy must be filled by transfer or a new Career Board.
- 4) Candidates who are selected and who accept a promotion will be allowed an in grade transfer, but remain detached to the original position until replaced or until 12 months has elapsed from the date promoted.

10. In addition to ensuring compliance with the DPS Commissioned Officer Promotional Process, HRM/LEPS will be responsible for:

- a. Authorizing the appropriate Assistant Director or Regional Commander to notify selected candidate(s) and any candidate(s) placed on the 180 day eligibility list and to generate a promotional announcement email after HRM/LEPS verifies the career board documents, secures the required signatures, and ensures through OIG and EEO that there are no internal investigations being conducted;

- b. Sending notifications and making arrangements as necessary in order to schedule candidate(s) selected/promoted to attend the Department's promotional ceremonies;
- c. Storing and archiving the selection process documentation and recommendations, and related correspondence in accordance with the appropriate record retention period and department policy;
- d. Responding to any open records requests related to the promotional process, and coordinating with General Counsel as necessary in order to handle these requests appropriately.
- e. Sending notifications and making arrangements as necessary in order to schedule candidate(s) selected/promoted to attend the Department's promotional ceremonies;
- f. Storing and archiving the selection process documentation and recommendations, and related correspondence in accordance with the appropriate record retention period and department policy;
- g. Responding to any open records requests related to the promotional process, and coordinating with General Counsel as necessary in order to handle these requests appropriately.

## **26.05 Administration Division**

### **1. Captain, HRM/Law Enforcement Promotional System**

#### **Requirements:**

- a. 1 year at rank of Lieutenant in any Division, with 1 year of continuous service.
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## **26.06 Aircraft Operations Division**

### **1. Pilot Agent**

#### **Requirements:**

- a. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II with 1 year of continuous service
- b. Valid Private Pilot license for airplane or helicopter, current FAA medical certificate or 2 years as TFO with a passing score on the FAA private pilot examination



- c. Qualifying promotional examination score on file (60% or 300)
- d. Compliant with PRT policy
- e. Not on probation or PIP
- f. Competent or above ratings on all performance areas on most current performance evaluation

## **2. Lieutenant**

### **Requirements:**

- a. 2 years at rank of Pilot Agent in AOD with 1 year of continuous service
- b. At least 1,000 hours of certified flight time
- c. Current FAA Pilot certificate with at least commercial privileges and Airplane Single Engine or Multi-Engine Land or Rotorcraft Helicopter, Instrument Airplane or Helicopter
- d. Advanced or Master TCOLE certificate
- e. Second class medical certificate
- f. Qualifying promotional examination score on file (60% or 300)
- g. Compliant with PRT policy
- h. Not on probation or PIP
- i. Competent or above ratings on all performance areas on most current performance evaluation

## **3. Training Lieutenant (Staff Position)**

### **Requirements:**

- a. Certified Flight Instructor for airplane and/or helicopter
- b. Current FAA Pilot certificate with at least commercial privileges and Airplane Single Engine or Multi-Engine Land or Rotorcraft Helicopter, Instrument Airplane or Helicopter
- c. At least 1,000 hours of certified flight time
- d. Advanced or Master TCOLE certificate
- e. Second class medical certificate
- f. Compliant with PRT policy
- g. Not on probation or PIP
- h. Competent or above ratings on all performance areas on most current performance evaluation

#### **4. Captain**

##### **Requirements:**

- a. 1 year at rank of Lieutenant in AOD with 1 year of continuous service
- b. At least 1,000 hours of certified flight time
- c. Current FAA Pilot certificate with at least commercial privileges and Airplane Single Engine or Multi-Engine Land or Rotorcraft Helicopter, Instrument Airplane or Helicopter
- d. Advanced or Master TCOLE certificate
- e. Second class medical certificate
- f. Qualifying promotional examination score on file (60% or 300)
- g. Compliant with PRT policy
- h. Not on probation or PIP
- i. Competent or above ratings on all performance areas on most current performance evaluation

#### **5. Training Captain (Staff Position)**

##### **Requirements:**

- a. Certified Flight Instructor for airplane and/or helicopter
- b. Current FAA Pilot certificate with at least commercial privileges and Airplane Single Engine or Multi-Engine Land or Rotorcraft Helicopter, Instrument Airplane or Helicopter
- c. At least 1,000 hours of certified flight time
- d. Advanced or Master TCOLE certificate
- e. Second class medical certificate
- f. Compliant with PRT policy
- g. Not on probation or PIP
- h. Competent or above ratings on all performance areas on most current performance evaluation

#### **26.07 Criminal Investigations Division**

The positions of Criminal Investigations Division Special Agent are open to qualified employees of this Department. Supervisory personnel desiring to transfer from one Division to another must compete in the appropriate application process. Normally there will be no deviation from this section; however, when in the opinion of the Director the good of the Department would be better served, the Director may make exceptions.

## **1. Special Agent**

### **Requirements:**

- a. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II, with 1 year of continuous service
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## **2. Lieutenant**

### **Requirements:**

- a. 2 years at rank of Special Agent or equivalent rank with at least 1 year as Special Agent
  - 1) Staff positions do not qualify
- b. 1 year of continuous service
- c. Qualifying promotional examination score on file (60% or 300)
- d. Compliant with PRT policy
- e. Not on probation or PIP
- f. Competent or above ratings on all performance areas on most current performance evaluation

## **3. Captain**

### **Requirements:**

- a. 2 years at rank of Lieutenant in Criminal Investigations Division
  - 1) Staff positions do not qualify
- b. 1 year of continuous service
- c. Qualifying promotional examination score on file (60% or 300)
- d. Compliant with PRT policy
- e. Not on probation or PIP
- f. Competent or above ratings on all performance areas on most current performance evaluation

#### **4. Special Requirements for Promotion to Assistant Director, Deputy Assistant Director and Major, Criminal Investigations Division**

- a. Appointment to the positions of Assistant Director of the Criminal Investigations Division, Deputy Assistant Director of the Criminal Investigations Division, and Criminal Investigations Division Majors will be made by the Director or designee.

#### **26.08 Education, Training, and Research Division**

##### **1. Sergeant**

###### **Requirements:**

- a. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II, with 1 year of continuous service
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation
- f. 2 year commitment required

##### **2. Lieutenant**

###### **Requirements:**

- a. 2 years at rank of Sergeant or Special Agent in THP, ETR, DDSS-LE, EPB, CID, ICT, or RSD
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation
- f. 2 year commitment required

##### **3. Captain**

###### **Requirements:**

- a. 1 year at rank of Lieutenant in THP, ETR, DDSS-LE, EPB, OIG, CID, ICT, or RSD
  - 1) Staff positions do not qualify

- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation
- f. 2 year commitment required

## **26.09 Intelligence and Counter Terrorism Division**

The positions of Intelligence and Counter Terrorism Division Special Agent are open to qualified employees of this Department. Supervisory personnel desiring to transfer from one Division to another must compete in the appropriate application process. Normally there will be no deviation from this section; however, when in the opinion of the Director the good of the Department would be better served, the Director may make exceptions.

### **1. Special Agent**

#### **Requirements:**

- a. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II, with 1 year of continuous service
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

### **2. Lieutenant**

#### **Requirements:**

- a. 2 years at rank of Special Agent in CID, ICT, or RSD; or 1 year at rank of Special Agent in CID, ICT, or RSD and 1 year as Sergeant in ETR or EPB with 1 year of continuous service
  - a. Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

### **3. Captain**

**Requirements:**

- a. 1 year at rank of Lieutenant in CID, ICT, RSD, ETR, OIG or EPB, with 1 year of continuous service
  - 1) Staff positions do not qualify
- b. Must have previously held rank of Special Agent in CID, ICT, or RSD
- c. Must not have had 2 promotions in another division prior to the competitive process for Captain
- d. Qualifying promotional examination score on file (60% or 300)
- e. Compliant with PRT policy
- f. Not on probation or PIP
- g. Competent or above ratings on all performance areas on most current performance evaluation

**4. Special Requirements for Promotion to Assistant Director, Deputy Assistant Director and Major, Intelligence and Counter Terrorism Division**

- a. Appointment to the positions of Assistant Director of the Intelligence and Counter Terrorism Division, Deputy Assistant Director of the Intelligence and Counter Terrorism Division, and Intelligence and Counter Terrorism Majors will be made by the Director or designee

**26.10 Law Enforcement Support Division**

**1. Communications Supervisor**

**Requirements:**

- a. 2 years at rank of PCO II, with 6 months of continuous service
- b. Qualifying promotional examination score (60% or 300)
- c. Not on probation or PIP
- d. Competent or above ratings on all performance areas on most current performance evaluation

**26.11 Office of the Inspector General**

**1. Lieutenant**

**Requirements:**

- a. 2 years at rank of Sergeant, Special Agent, or Texas Ranger in THP, ETR, DDSS-LE, EPB, CID, ICT, RSD, or Texas Rangers
  - 1) Staff positions do not qualify

- b. Qualifying promotional examination score (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## 2. Captain

### Requirements:

- a. 1 year at rank of Lieutenant in OIG, THP, ETR, DDSS-LE, EPB, CID, ICT, RSD, or Texas Rangers
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## 26.12 Regulatory Services Division

The positions of Regulatory Services Division Special Agent are open to qualified employees of this Department. Supervisory personnel desiring to transfer from one Division to another must compete in the appropriate application process. Normally there will be no deviation from this section; however, when in the opinion of the Director the good of the Department would be better served, the Director may make exceptions.

### 1. Special Agent

#### Requirements:

- a. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II, with 1 year of continuous service
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

### 2. Lieutenant

#### Requirements:

- a. 2 years at rank of Special Agent in CID, ICT, or RSD; or 1 year at rank of Special Agent in CID, ICT, or RSD and 1 year as Sergeant in ETR or EPB with 1 year of continuous service
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

### **3. Captain**

#### **Requirements:**

- a. 1 year at rank of Lieutenant in CID, ICT, RSD, ETR, OIG or EPB, with 1 year of continuous service
  - 2) Staff positions do not qualify
- b. Must have previously held rank of Special Agent in CID, ICT, or RSD
- c. Must not have had 2 promotions in another division prior to the competitive process for Captain
- d. Qualifying promotional examination score on file (60% or 300)
- e. Compliant with PRT policy
- f. Not on probation or PIP
- g. Competent or above ratings on all performance areas on most current performance evaluation

### **4. Special Requirements for Promotion to Assistant Director, Deputy Assistant Director and Major, Regulatory Services Division**

- a. Appointment to the positions of Assistant Director of the Regulatory Services Division, Deputy Assistant Director of the Regulatory Services Division, and Regulatory Service Division Majors will be made by the Director or designee.

## **26.13 Texas Highway Patrol Division**

### **1. Sergeant**

#### **Requirements:**

- a. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II, with 1 year of continuous service
- b. Qualifying promotional examination score on file (60% or 300)



- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## **2. Lieutenant**

### **Requirements:**

- a. 2 years at rank of Sergeant in THP, ETR, DDSS-LE or EPB uniform
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## **3. Captain**

### **Requirements:**

- a. 1 year at rank of Lieutenant in THP, ETR, OIG, DDSS-LE, or EPB uniform
  - 1) Staff positions do not qualify
- b. Must not have had 2 promotions in another uniformed division prior to the competitive process for Captain
- c. Qualifying promotional examination score on file (60% or 300)
- d. Compliant with PRT policy
- e. Not on probation or PIP  
Competent or above ratings on all performance areas on most current performance evaluation

## **26.14 Texas Ranger Division**

The position of Texas Ranger is open to qualified employees of this Department. Supervisory personnel desiring to transfer from one Division to another must compete in the appropriate application process (requirements of the Texas Government Code, Texas Ranger, subchapter B Sections 411.0222 and 411.0223).

### **1. Texas Ranger**

#### **Requirements:**

- a. 96 months (8 years) of commissioned peace officer

- b. 48 months (4 years) as a DPS commissioned officer and earned the rank of Trooper II, with 1 year of continuous service
- c. Qualifying promotional examination score on file (60% or 300)
- d. Compliant with PRT policy
- e. Not on probation or PIP
- f. Competent or above ratings on all performance areas on most current performance evaluation

## **2. Texas Ranger Lieutenant**

### **Requirements:**

- a. 2 years at rank of Texas Ranger
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## **3. Texas Ranger Captain**

### **Requirements:**

- a. 2 years at rank of Texas Ranger Lieutenant
  - 1) Staff positions do not qualify
- b. Qualifying promotional examination score on file (60% or 300)
- c. Compliant with PRT policy
- d. Not on probation or PIP
- e. Competent or above ratings on all performance areas on most current performance evaluation

## **4. Special Requirements for Promotion to Major, Texas Rangers**

- a. An officer is eligible for appointment by the Director to the rank of Major of the Texas Rangers only if the officer has at least one year of supervisory experience as a Captain of the Texas Rangers.
- b. If there are less than two qualified Captains for appointment to the rank of Major of the Texas Rangers, the Director may appoint a Lieutenant to the position of Major of the Texas Rangers only if the officer has at least two years of supervisory experience as a commissioned member of the Texas Rangers.

## 5. Special Requirements for Promotion to Assistant Director and Deputy Assistant Director, Texas Rangers

- a. An officer is eligible for appointment by the Director to the highest rank of the Texas Rangers only if the officer has at least five years of supervisory experience as a commissioned member of the Texas Rangers
- b. An officer is eligible for appointment by the Director to the second highest rank of the Texas Rangers only if the officer has at least four years of supervisory experience as a commissioned member of the Texas Rangers
- c. If there are less than two qualified officers for appointment to the highest rank or the second highest rank of the Texas Rangers, the Director may appoint an officer to the highest rank or the second highest rank only if the officer has at least two years of supervisory experience as a commissioned member of the Texas Rangers

### 26.15 Texas Highway Patrol Division Positions

1. The position of trooper is usually considered an entry level law enforcement position for the Texas Highway Patrol Division. However, in some instances employees of this Department in positions of a lower job classification do apply for this position and if they are successful in receiving an appointment to receive training for this position the effect of the appointment is that of a promotion.

2. Competitive examinations administered by HRM/LEPS will be conducted to fill the following supervisory positions: Sergeant, Lieutenant, and Captain.

3. Career progression promotions are defined as positions that allow promotion to a higher salary group based on length of service in the position without a change in job duties or responsibilities.

4. **Special Requirements - THP Commissioned Positions.** All troopers will be required to meet the minimum training certification requirements of their service. Troopers shall meet these minimum requirements within twenty-four (24) months of completing Recruit School or transferring from one service to another after the effective date of the transfer. This twenty-four (24) month requirement may be waived at the discretion of the service commander for cause. Troopers who fail to obtain certification after receiving instruction in a required certification course shall not be eligible for the next progression in Trooper title or allowed to transfer (either service or location) unless such transfer is determined to be for "the good of the service" by the Regional Commander or THP Division Assistant Director.

Troopers not eligible, not qualified, or unsuccessful in achieving the next rank of Trooper should be placed on a Performance Improvement Plan. Troopers are required to achieve the goals and rank of progression for their tenure.

Troopers not eligible or not qualified to apply for the next rank of Trooper will not be prohibited from attaining a salary designation change within the Schedule C Salary Group C3 as a result of their tenure in commissioned service.

#### a. Trooper II Progression

##### 1) Qualifications:

a) Forty-eight (48) calendar months service as a commissioned DPS officer excluding service in DPS Recruit School.

b) The term "commissioned DPS officer" shall include a probationary trooper who has graduated from the Academy, but has not yet been given a permanent assignment.

c) Must serve one (1) year after a break in service before credit can be given for prior service. Exception: Employees who have been on military leave will receive credit for Department service as though no break in service occurred.

d) Not on suspension, disciplinary probation or on a Performance Improvement Plan at the time of career progression.

e) Has not demoted involuntarily or been removed from the rank of corporal in the past twelve (12) months.

f) Has a passing physical readiness test (PRT) on file for the most recent testing period.

## **2) Progression Process**

a) The Trooper I must request progression to Trooper II no more than sixty (60) and no less than forty-five (45) days prior to the projected progression date through the chain of command to the service commander.

b) The first-line supervisor will screen applicants for the basic qualifications as described above. If a Trooper I has one or more areas marked "Marginal" or "Ineffective" on the last Performance Evaluation and is being recommended for progression by the first-line supervisor, the supervisor will attach a memorandum outlining the reasons why it is believed the Trooper should be progressed. Approval or disapproval is added by each in-line supervisor. Disagreement with the first-line supervisor will be justified by a memorandum.

c) Upon receiving the request for progression, the service commander will set a time and place for the written and oral examinations and will appoint a progression board of three (3) members. The board must include one (1) member of the rank sought and two (2) supervisors. Oral board scoring will be based on a consensus of the board members. The service commander will notify the candidates to be scheduled for the written and oral examinations as well as those selected to participate in the procedure as a member of the oral interview board or other capacity. The service commander should make arrangements for the oral board to have access to the field personnel files of all candidates to come before the board including Performance Evaluation reports.

d) At such time the service commander determines an applicant for the progression to Trooper II is eligible, arrangements will be made for the written test to be administered. The written test will be prepared by human resources, consist of 50 questions, and shall be administered by a person designated by the service commander. The candidate must make a minimum score of seventy-five (75) in order to qualify to appear before the oral interview board. The administrator of the written test will score the candidate.

e) When the service commander determines the need for a progression process, an examination will be requested from Human Resources. Human Resources will provide an examination to the service commander upon request. A separate examination will be used for each process.

f) At the conclusion of the interview, the board chair will certify the board's recommendation to the service commander in each case by signing the request for progression at the appropriate place, attaching any documentation required, and the scored written

examination. If the applicant is not recommended, the board chairman will attach a memorandum of explanation.

g) The service commander will review the progression packet and make a recommendation for progression to the field major. If an applicant is recommended for progression, the field major will notify the applicant in writing of the progression date. If an applicant is not recommended for progression, the application packet and recommendations will be forwarded to the division assistant director for approval. The assistant director or his designee will notify the applicant and appropriate chain of command the results of his review. All progressions will be made effective on the appropriate DPS commission anniversary date (adjusted for breaks in service, if applicable) or upon approval, if the request for progression is submitted after the appropriate anniversary date has passed.

h) A Trooper I who is unsuccessful in the progression process for Trooper II due to a failed Trooper II exam will be given an opportunity to retake the exam within thirty (30) days. A trooper who fails the exam a second time will be given one (1) additional opportunity to retake the exam within an additional thirty (30) days. A trooper who fails the Trooper II exam on the third attempt or is not recommended by the oral interview board is ineligible for progression until six (6) additional months have elapsed from the date the progression was to have been effective. A Trooper who fails the Trooper II exam on the third attempt or is not recommended by the oral interview board will be placed on a Performance Improvement Plan during the six (6) months that he / she is ineligible.

## **b. Trooper III Progression**

### **1) Qualifications:**

a) Ninety-six (96) calendar months service as a commissioned DPS officer (excluding service in DPS Recruit School) and must have held the rank of Trooper II for a minimum of one (1) year.

b) The term "commissioned DPS officer" shall include a probationary trooper who has graduated from the Academy, but has not yet been given a permanent assignment.

c) Must serve one (1) year after a break in service before credit can be given for prior service. Exception - Employees who have been on military leave will receive credit for Department service as though no break in service occurred.

d) Not on suspension, disciplinary probation or on a Performance Improvement Plan at the time of career progression.

e) Has not involuntarily demoted or been removed from the rank of corporal in the past twelve (12) months.

f) Has a passing physical readiness test (PRT) on file for the most recent testing period.

### **2) Progression Process**

a) The Trooper II must request progression to Trooper III no more than sixty (60) and no less than forty-five (45) days prior to the projected progression date to the service commander through the chain of command.

b) The first-line supervisor will screen applicants for the basic qualifications as described. If a Trooper II has one or more areas marked "Marginal" or "Ineffective" on the last Performance Evaluation and is being recommended for progression by the first-line supervisor, the supervisor will attach a memorandum outlining the reasons why it is believed the Trooper should be progressed. Approval or disapproval is added by each in-line supervisor. Disagreement with the first-line supervisor will be justified by a memorandum.

c) Upon receiving the request for progression, the service commander will set a time and place for the oral examination and will appoint a progression board of three (3) members. The board must include one (1) member of the rank sought and two (2) supervisors. Oral board scoring will be based on a consensus of the board members. The service commander will notify the candidates to be scheduled for the oral board as well as those selected to participate in the procedure as a member of the oral interview board or other capacity. The service commander should make arrangements for the oral board to have access to the field personnel files of all candidates to come before the board including Performance Evaluation reports.

d) At the conclusion of the interview, the board chair will certify the board's recommendation to the service commander in each case by signing the request for progression at the appropriate place and attaching any documentation required. If the applicant is not recommended, the board chairman will attach a memorandum of explanation.

e) The service commander will review the progression packet and make a recommendation for progression to the field major. If an applicant is recommended for progression, the field major will notify the applicant in writing of the progression date. If an applicant is not recommended for progression, the application packet and recommendations will be forwarded to the division assistant director for approval. The assistant director or his designee will notify the applicant and appropriate chain of command the results of his review. All progressions will be made effective on the appropriate DPS commission anniversary date (adjusted for breaks in service, if applicable) or upon approval, if the request for progression is submitted after the appropriate anniversary date has passed.

f) A Trooper II who is unsuccessful in the progression process for Trooper III is ineligible for progression until six (6) additional months have elapsed from the date the progression was to have been effective. A Trooper II who is unsuccessful will be placed on a Performance Improvement Plan during this six (6) month period.

### **c. Trooper IV Progression**

#### **1) Qualifications**

a) One hundred forty-four (144) calendar months service as a commissioned DPS officer (excluding service in DPS Recruit School) and must have held the rank of Trooper III for a minimum of one (1) year.

b) The term "commissioned DPS officer" shall include a probationary trooper who has graduated from the Academy, but has not yet been given a permanent assignment.

c) Must serve one (1) year after a break in service before credit can be given for prior service. Exception - Employees who have been on military leave will receive credit for Department service as though no break in service occurred.

d) Not on suspension, disciplinary probation or on a Performance Improvement Plan at the time of career progression.

e) Has not involuntarily demoted or been removed from the rank of Corporal in the past twelve (12) months.

f) Has a passing physical readiness test (PRT) on file for the most recent testing period.

## **2) Progression Process**

a) The Trooper III must request progression to Trooper IV no more than sixty (60) and no less than forty-five (45) days prior to the projected progression date to the service commander through the chain of command.

b) First-line supervisor will screen applicants for the basic qualifications as described above. If a Trooper III has one or more areas marked "Marginal" or "Ineffective" on the last Performance Evaluation and is being recommended for progression by the first-line supervisor, the supervisor will attach a memorandum outlining the reasons why it is believed the Trooper should be progressed. Approval or disapproval is added by each in-line supervisor. Disagreement with the first-line supervisor will be justified by a memorandum.

c) The service commander will review the progression packet and make a recommendation for progression to the field major. If an applicant is recommended for progression, the field major will notify the applicant in writing of the progression date. If an applicant is not recommended for progression, the application packet and recommendations will be forwarded to the division assistant director for approval. The assistant director or his designee will notify the applicant and appropriate chain of command the results of his review. All progressions will be made effective on the appropriate DPS commission anniversary date (adjusted for breaks in service, if applicable) or upon approval, if the request for progression is submitted after the appropriate anniversary date has passed.

d) A Trooper III who is unsuccessful in the progression process for Trooper IV is ineligible for progression until six (6) additional months have elapsed from the date the progression was to have been effective. A Trooper III who is unsuccessful will be placed on a Performance Improvement Plan during this six (6) month period.

## **d. Trooper V Progression**

### **1) Qualifications**

a) One hundred ninety-two (192) calendar months service as a commissioned DPS officer (excluding service in DPS Recruit School) and must have held the rank of Trooper IV for a minimum of one (1) year.

b) The term "commissioned DPS officer" shall include a probationary trooper who has graduated from the Academy, but has not yet been given a permanent assignment.

c) Must serve one (1) year after a break in service before credit can be given for prior service. Exception: Employees who have been on military leave will receive credit for Department service as though no break in service occurred.

d) Not on suspension, disciplinary probation or on a Performance Improvement Plan at the time of career progression.

e) Has not involuntarily demoted or been removed from the rank of Corporal in the past twelve (12) months.

f) Has a passing physical readiness test (PRT) on file for the most recent testing period.

## **2) Progression Process**

a) The Trooper IV must request progression to Trooper V no more than sixty (60) and no less than forty-five (45) days prior to the projected progression date to the service commander through the chain of command.

b) First-line supervisor will screen applicants for the basic qualifications as described above. If a Trooper IV has one or more areas marked "Marginal" or "Ineffective" on the last Performance Evaluation and is being recommended for progression by the first-line supervisor, the supervisor will attach a memorandum outlining the reasons why it is believed the Trooper should be progressed. Approval or disapproval is added by each in-line supervisor. Disagreement with the first-line supervisor will be justified by a memorandum.

c) The service commander will review the progression packet and make a recommendation for progression to the field major. If an applicant is recommended for progression, the field major will notify the applicant in writing of the progression date. If an applicant is not recommended for progression, the application packet and recommendations will be forwarded to the division assistant director for approval. The assistant director or his designee will notify the applicant and appropriate chain of command the results of his review. All progressions will be made effective on the appropriate DPS commission anniversary date (adjusted for breaks in service, if applicable) or upon approval, if the request for progression is submitted after the appropriate anniversary date has passed.

d) A Trooper IV who is unsuccessful in the progression process for Trooper V is ineligible for progression until six (6) additional months have elapsed from the date the progression was to have been effective. A Trooper IV who is unsuccessful will be placed on a Performance Improvement Plan during this six (6) month period.

## **e. Senior Trooper Progression**

### **1) Qualifications**

a) Two hundred-forty (240) calendar months service as a commissioned DPS officer (excluding service in DPS Recruit School) and must have held the rank of Trooper V for a minimum of one (1) year.

b) The term "commissioned DPS officer" shall include a probationary trooper who has graduated from the Academy, but has not yet been given a permanent assignment.

c) Must serve one (1) year after a break in service before credit can be given for prior service. Exception: Employees who have been on military leave will receive credit for Department service as though no break in service occurred.



d) Not on suspension, disciplinary probation or on a Performance Improvement Plan at the time of career progression.

e) Has not involuntarily demoted or been removed from the rank of Corporal in the past twelve (12) months.

f) Has a passing physical readiness test (PRT) on file for the most recent testing period.

## **2) Progression Process**

a) The Trooper V must request progression to Senior Trooper no more than sixty (60) and no less than forty-five (45) days prior to the projected progression date to the service commander through the chain of command.

b) First-line supervisor will screen applicants for the basic qualifications as described above. If a Trooper V has one or more areas marked "Marginal" or "Ineffective" on the last Performance Evaluation and is being recommended for progression by the first-line supervisor, the supervisor will attach a memorandum outlining the reasons why it is believed the Trooper should be progressed. Approval or disapproval is added by each in-line supervisor. Disagreement with the first-line supervisor will be justified by a memorandum.

c) The service commander will review the progression packet and make a recommendation for progression to the field major. If an applicant is recommended for progression, the field major will notify the applicant in writing of the progression date. If an applicant is not recommended for progression, the application packet and recommendations will be forwarded to the division assistant director for approval. The assistant director or his designee will notify the applicant and appropriate chain of command the results of his review. All progressions will be made effective on the appropriate DPS commission anniversary date (adjusted for breaks in service, if applicable) or upon approval, if the request for progression is submitted after the appropriate anniversary date has passed.

d) A Trooper V who is unsuccessful in the progression process for Senior Trooper is ineligible for progression until six (6) additional months have elapsed from the date the progression was to have been effective. A Trooper V who is unsuccessful will be placed on a Performance Improvement Plan during this six (6) month period.

## **f. Corporal Qualifications**

1) Forty-eight (48) calendar months service as a commissioned DPS officer (excluding service in DPS Recruit School) and at least hold the rank of Trooper II. The term "commissioned DPS officer" shall include a probationary trooper who has graduated from the Academy, but has not yet been given a permanent assignment.

a) In the event there is not a qualified and/or interested Trooper II, III, IV, V or Senior Trooper for a particular location to fill the rank of Corporal, service commanders will have the option of opening the position to qualified persons in the rank of Trooper I.

2) Must serve one (1) year after a break in service before credit can be given for prior service. Exception - Employees who have been on military leave will receive credit for Department service as though no break in service occurred.

3) Willing and able to perform duties to be assigned to the individual at the time of assignment to the position of corporal.

4) Not on disciplinary probation or a Performance Improvement Plan at the time of assignment.

5) Has demonstrated ability, devotion to duty, and a strong desire to further the goals of the Department.

6) Not demoted from or denied the rank of Trooper II, Trooper III, Trooper IV, Trooper V, Senior Trooper or removed from status of rank of Corporal in the past twelve (12) months.

Exceptions would be voluntary change of status from or denial to the rank of Corporal, due to other applicants being selected.

7) Must be currently assigned to the service and sergeant area in which the vacancy exists.

a) If in the opinion of the service commander the field of qualified applicants is inadequate for proper selection, the service commander will have the option to open the position to qualified troopers within the service and district and/or region.

b) Recruiters will be selected from applicants from any service and location in the state.

8) Has a passing physical readiness test (PRT) on file for the most recent testing period.

NOTE: The assignment of an individual to the position of corporal is temporary. Those individuals assigned to the position will automatically revert back to their permanent trooper position upon transfer out of or removal from the corporal assignment.

#### **g. Selection of Corporals, Texas Highway Patrol Division**

1) The THP/CVE service commander with the Corporal vacancy will make all eligible personnel within the sergeant area aware of the vacancy through the chain of command. If in the opinion of the service commander the field of qualified applicants is inadequate for proper selection, the service commander will have the option to open the position to qualified troopers within the service and district and/or region.

2) Troopers interested in a Corporal vacancy will apply through their chain of command, to the THP/CVE service commander prior to the deadline established by the service commander.

a) Chain-of-command supervisors will review and make written comments to the THP/CVE service commander as to the qualifications and/or past performance of the applicant for the Corporal position.

b) Troopers interested in a Corporal position will apply for the position as prescribed by the THP/CVE service commander.

3) Corporals will be selected by a local oral interview board. The oral interview board must be approved by the THP Major and will be comprised of three (3) members as follows:

a) Chaired by the service commander or ranking officer of the region, district, or service in which the vacancy exists;

b) At least one other supervisor holding the rank of Lieutenant or Sergeant;

c) One Corporal;

d) At least one (1) of the board members should be a minority.

4) Oral board scoring will be based on a consensus of the board members. The THP/CVE service commander will notify the candidates to be scheduled for the oral examinations as well as those selected to participate in the procedure as a member of the oral interview board. The THP/CVE service commander will make arrangements for the oral board to have access to the field personnel files, including Performance Evaluation reports, of all candidates to come before the board.

5) The board chair will make recommendations to the THP Major as to the top candidate for appointment. The THP Major will advise the Assistant Director of THP of the scores of all candidates and will recommend the appointment of the appropriate applicant. The Assistant Director of THP will review the file and advise the candidates of the decision on who will be appointed. All appointments to the rank of corporal will be made on the first day of the month.

h. Appointment to positions of Major will be made by the appropriate Assistant Director. Appointment to positions of Deputy Assistant Director and Assistant Director will be made by the Director.

i. Other positions of the Texas Highway Patrol Division will be filled through the process described in 07.26.03 and 07.26.04, with appropriate substitutes for proper chain of command titles.

#### **07.27.00 DEMOTIONS – COMMISSIONED POSITIONS**

**27.01** (A lower group is one with a lower minimum salary.) Demotion means a change in the duty assignment of an employee from a position in one salary group to a position in a lower salary group. Employees demoting between positions on Schedule C will demote to the appropriate salary rate for the new position.

**27.02** The Deputy Director may at his discretion cause the demotion of a commissioned employee when such action is in the best interest of the Department.

**27.03** A commissioned employee may be demoted at his or her own request. A request for demotion will be subject to approval of in-line supervisors and does not supersede other selection and transfer policies.

**27.04** Department action causing a commissioned vacancy to be filled through a demotion process will supersede all other selection and transfer policies. In situations when it becomes necessary to fill a posted vacancy through a demotion and the best interest of the Department would be served, the Deputy Director may in writing order the cancellation of a posted announcement. In such instances all applicants will be notified in writing, providing them with a justification for the cancellation. Copies of all correspondence will become a part of the selection file.

**27.05** Voluntary changes of status from the rank of Corporal position will be to the highest trooper rank previously achieved. Departmental changes of status from the rank of Corporal may be to any position authorized by the Deputy Director.

**07.30.00 TRANSFER POLICIES AND PROCEDURES - COMMISSIONED OFFICERS AND LESD PUBLIC SAFETY COMMUNICATIONS SERVICE**

The request of an employee for a position in a higher or lower group will be evaluated according to the State Position Classification Act as a promotion or demotion and not a transfer. A transfer shall not in itself be used as a basis for an increase or decrease in salary. Employees may be transferred by personal request or when so ordered by proper authority. The transfer and reassignment of employees is a recognized right of management to assign personnel to best suit the needs of the agency. Assistant Directors may cause the transfer of employees of their respective commands.

**30.01 Transfer of Commissioned Texas Highway Patrol (THP) and LESD Public Safety Communications Service (PSCS) personnel.** Location and/or service transfer of an employee may be made on the recommendation of the THP Field Major or LESD PSCS Communications Area Manager, with the approval of the Assistant Director of Texas Highway Patrol or Assistant Director of Law Enforcement Support or their designee.

1. **Transfer Assessment:** Transfers and assignment of Department personnel are based on the following criteria in order of priority):

a. Needs of the Department including, but not limited to, statutory requirements, budgetary considerations, and manpower needs.

b. Hardship based on health or welfare of the employee or the employee's immediate family as defined in General Manual 07.06.02-(3)(a).

c. Past work history as reflected by the past two Performance Evaluations

d. Seniority for non-supervisory commissioned positions is determined by total Department commissioned time. Seniority for supervisory positions is determined first by time in grade, then by total Department commissioned time. Seniority for PSCS supervisory positions is determined first by time in grade, then by total employment time with the Department.

e. When multiple requests for one position are received and more than one applicant appears to be equal in relation to the above criteria, selection will be made in a manner prescribed by the Assistant Director for the division.

2. Lateral transfer of supervisors from one field service to another is not provided for by policy; however, except as noted in 07.26.07-15, location transfers may be requested without regard to promotion date.

3. Other than location transfers for Corporals assigned as recruiters, transfers of Corporals are not provided for by policy.

4. New recruits shall become eligible to request transfer for personal reasons after one year of service from date of commission.

5. Troopers who desire to transfer to a position that performs safety education functions must be a Trooper II or above and will be selected by the THP service commander.

6. Except as noted in 07.26.07-15, individuals who have previously made a service or location transfer are eligible to transfer without regard to their previous transfer date.

7. Each THP Field Major will provide a list of all trooper vacancies in his or her region to the THP office by the last working day of the month preceding the month in which the vacancy will be effective. The THP office will fax or e-mail a

compiled list of trooper vacancies to all regional offices on or about the first working day of the month. THP Field Majors will ensure that the list is posted in a place accessible to employees. Any exception to this transfer notification procedure must be approved by the Assistant Director for the division.

Troopers interested in a listed vacancy must fax an [HR-68](#), Transfer Request, to the Assistant Director of the Texas Highway Patrol Division to his or her THP Field Major, and to the other THP field Major if another region is involved, by the deadline indicated on the vacancy list, which will be no earlier than the 5th working day of the month. The original of the [HR-68](#) with in-line approval or disapproval, along with any relevant documentation, will then be submitted through the requesting trooper's chain of command to the THP Field Major by the 15th of the month. When the THP Field Major receives the original [HR-68](#), he or she will either approve or disapprove the request and forward it to the Assistant Director of THP in time for it to be received by the 20th of the month. If the transfer involves two regions, the Field Major of the requesting employee will, after approval or disapproval, fax, email or otherwise submit the [HR-68](#) to the THP Field Major with the vacancy. The THP Field Major with the vacancy will either approve or disapprove the request and fax, email, or otherwise submit it to the THP office in time for it to be received by the 20th of the month.

9. THP commissioned supervisory positions and all LESD PSCS positions will be announced by teletype as vacancies occur. The closing date and time for transfers to these positions must be at least three (3) working days from the date the position announcement was made. Those interested in transferring must fax, email, or otherwise submit an [HR-68](#), Transfer Request, to the appropriate Assistant Director, THP Field Major, and/or LESD Public Safety Communications Service Deputy Administrator so that it will be received prior to the closing. The original [HR-68](#) with in-line approval or disapproval will then be forwarded through the respective chains of command to the THP, or LESD PSCS office for final approval.

10. If at any level a transfer request is disapproved for reasons other than seniority or ineligibility, a memo stating the reasons will be included in the transfer packet with a copy to the employee making the request.

11. THP Field Majors and PSCS Area Managers with the existing vacancy will maintain a historical file of each vacancy transaction including both the approved and disapproved transfer requests for that position, for 36 months.

12. When a THP Field Major or PSCS Area Manager desires to transfer an employee from one service to another or from one location to another, the recommendation will be made in writing to the appropriate Assistant Director for final approval. The THP Field Major or PSCS Area Manager is authorized to detach or make temporary assignment of personnel to another service or another location within the region under emergency or unusual conditions.

13. After review by the Assistant Director of Texas Highway Patrol Division, Assistant Director of Law Enforcement Support, or a designee, the THP or LESD office will notify the applicants, the applicable chains of command, and Human Resource Management by letter of the status of their request.

14. The THP Field Major or PSCS Area Manager receiving the transferee will prepare and submit [form HR-25](#) prior to the effective date of the transfer.

**30.02 Transfer of Noncommissioned Texas Highway Patrol, Vehicle Services Bureau and Driver License Division Personnel.** Request for transfer by noncommissioned, non-supervisory THP, VSB, and DLD employees will be processed as all other noncommissioned transfers in accordance with General Manual 07.26.03.

**30.03 Transfer of Criminal Investigations Division (CID) Commissioned Personnel.**

1. Transfers and assignment of commissioned employees assigned to CID are based on the following criteria:
  - a. Needs of the Department, including, but not limited to, statutory requirements, budgetary

considerations, and staffing needs.

b. Seniority. The following elements, in the order listed, will determine seniority for transfer purposes: time-in-grade in CID, commissioned time in CID, total commissioned time in the Department, and overall time in the Department. Department time with no break in service may be considered.

c. Past work history as reflected by the most current performance evaluation (HR-23/HR-24); any documented administrative inquiries or personnel complaints subsequent to the last evaluation, if applicable; and all other pertinent documentation, including, but not limited to, awards, letters of recognition, documented counseling sessions, and special training.

d. When multiple requests for a position are received and more than one applicant appears to be equal in relation to the above criteria, selection will be made in a manner prescribed by the CID Assistant Director (AD) or his/her designee.

2. Hardship based on health or welfare of the employee or the employee's immediate family as defined in General Manual 07.06.02-3a will be evaluated on a case-by-case basis.

3. CID positions will be posted based on staffing needs as identified by the CID AD's Office and will be announced by teletype and/or e-mail. The closing date and time for transfers to these positions must be at least three working days from the date the position announcement was made.

4. Those interested in transferring must fax, e-mail, or otherwise submit a copy of the Transfer Request Memorandum (form [HR-68](#)) to the CID AD's Office so that it will be received prior to the closing date. The original copy of the Form [HR-68](#) should then be forwarded through the respective chains of command for approval before being submitted to the CID AD's Office for final approval.

a. The immediate supervisor who first receives the form [HR-68](#) from an employee will attach a current copy of the performance evaluation before forwarding the [HR-68](#) through the chain of command for approval.

5. For field captains and below, transfer requests must be approved by the employee's chain of command up to and including his or her regional commander, as well as the approval of the CID major and regional commander over the region to which the employee is seeking to transfer.

a. When requesting a transfer within a single region, the employee needs only the approval of his or her current chain of command up to and including the regional commander.

b. When requesting a transfer from the field to Headquarters, the employee needs the approval of his or her current chain of command, up to and including the regional commander, as well as the approval of the Headquarters major with jurisdiction over the position to which the employee is seeking to transfer.

6. For Headquarters captains and below, transfer requests must be approved by the employee's chain of command up to and including the CID AD's Office, as well as the approval of the CID major and regional commander over the region to which the employee is seeking to transfer.

7. NOTE: A change in program or unit within the same region and the same city, or within Headquarters, whether by request or as directed by the employee's chain of command, is not a transfer but is considered a reassignment.

8. The CID AD's Office will have the final approval on all transfer requests and will be responsible for preparing and submitting the form [HR-25](#) prior to the effective date of transfer. The CID AD's Office will make changes on the

effective date of transfer when the necessity arises.

9. Upon their promotion, newly-promoted captains and below may request an in-grade transfer to a vacancy which is posted for transfer; however, if the transfer is approved, the employee will remain detached to his or her original position until replaced or until 12 months has elapsed from the date promoted.

10. Once any transfer is authorized, the employee will not be eligible to submit form [HR-68](#) for a period of 24 months.

**30.04 Transfer of CID Noncommissioned Personnel.** Requests for transfer by noncommissioned CID employees will be processed as noncommissioned position transfers in accordance with General Manual 07.26.03.

**30.07 Transfer of Ranger Personnel.** The company Majors will submit recommendations for transfer of personnel within their respective commands to the Assistant Director of the Texas Ranger Division for final determination.

1. The employee will fax, email, or otherwise submit form [HR-68](#) through their chain of command to the Assistant Director.

2. The immediate supervisor who first receives the request, [HR-68](#), will attach a letter of evaluation and a current copy of the performance evaluation to the original copy of the request. The letter of evaluation should contain comments on the employee's performance and other information which would be pertinent to the transfer request. The complete file will be forwarded to the company major.

### **3. Major Review**

a. If the transfer request involves Majors from two different Companies, the employee's present Major should forward the transfer request, the letter of evaluation, and the Major's recommendations including information for station assignment and effective date to the other Major.

b. Where a second Company is not a part of the transaction, the Major will retain the information supplied by the other supervisors of the Company as confidential information. The Major will then forward to the Assistant Director the original request, the Major's recommendations including information for station assignment, and effective date, and the immediate supervisor's evaluation.

c. Where a second Company is part of the transaction, the Major will retain a copy of the transfer request. The information supplied by other supervisors of the company will be kept as confidential information. The Major will then forward the original request, the captain's recommendations including information for station assignment and effective date, the immediate supervisor's evaluation, and a copy of the request to the Major of the other Company.

### **4. Review of the Major of the Company to Which Transfer is Requested**

a. The Major will review and prepare a memorandum making a recommendation including information for station assignment and effective date.

b. A copy will be retained and the file will be forwarded with memorandum to the Assistant Director in Austin.

5. When the transfer is received by the Assistant Director, it will be forwarded to Human Resource Management.

a. Human Resource Management will review the transfer request for conformance with policy.

b. Human Resource Management will furnish the chief with information from the personnel records which would be of assistance in the final determination of the transfer request.

c. Human Resource Management will prepare correspondence for the Assistant Director to the employee requesting the transfer advising:

1) Of the approval or disapproval of the request for transfer.

2) If the transfer is approved, the effective date of transfer, the Company and station to which he or she is being transferred, and transfer instructions.

3) The Majors and in-line supervisors concerned by the transfer are advised by copies of this correspondence.

6. Human Resource Management will forward the complete file to the chief for approval or disapproval.

7. The Major of the Company to which the employee will transfer will prepare and submit form [HR-25](#) prior to the effective date of transfer.

Upon transfer of an employee to another Company, the Major will forward the Employee Record Card, [HR-21a](#), along with other pertinent items.

8. The Assistant Director will make changes on the effective date of transfer when the necessity arises.

#### **07.31.00 INTERAGENCY TRANSFER**

**31.01 Policy.** An employee of another Texas state agency may be employed by the Texas Department of Public Safety through an interagency transfer if such transfer is agreeable with the employee and both agency heads provided the employment with the state is uninterrupted. State employees desiring an interagency transfer to this Department must be processed and meet the position requirements as set forth in this policy. Exceptions to the basic requirements or written procedure will be extremely rare and must be approved by the Director.

1. Approval of interagency transfer from other agency head.

2. Date of employment and date of separation.

3. Classification title, number, and salary at time of transfer.

4. If position(s) held was in a commissioned position with the other state agency and the position transferring into is commissioned, give title(s) and beginning and ending date(s).

5. Total amount of gross salary paid for the current year.

6. Total amount of Social Security contribution for the current year.

7. Total amount of withholding tax for the current year.

8. Balance of sick leave and vacation time as of date of transfer.

9. State Employees Retirement System Number and the amount deducted last month for retirement.



10. Insurance Multipurpose Form - ERS G1-1.180.

**31.06** When a person is employed through interagency transfer, an [HR-25](#) shall be initiated by the supervisor with the vacancy reflecting INTERAGENCY TRANSFER.

**31.07** Salary rates for interagency transfers will be determined as set forth in Section 20.10 of this chapter.

**07.36.00 OTHER EMPLOYMENT**

**36.02 Other Governmental Employment**

1. Any state employee can accept another nonelective office or position with the city, county, state, or federal agency provided the Director (1) approves such appointment, (2) finds that the holding of the other position or office will benefit the state of Texas, and (3) finds that there is no conflict between the offices or positions. Requests for this employment should be submitted through proper supervisory channels to the office of the Director.

2. State law also permits an employee to receive compensation for service in the Armed Forces Reserves and jury duty.

3. Dual Employment with the State. If the Director approves the appointment of an employee to another state office or position, the following provisions will apply:

- a. Completely separate leave records will be maintained for each employment;
- b. Time worked in one position may not be used as additional tenure credit for purposes of longevity or annual leave accrual for the other position;
- c. Upon termination of one position, the leave balances may not be transferred to any other position;
- d. The state contribution toward the employee's portion of the social security tax liability is subject to the overall individual limit (the liability for both jobs is combined and treated as one wage liability);
- e. The total state contribution towards the employee's group insurance is limited to the amount specified for a full-time, active employee;
- f. The employee will be entitled to receive longevity or hazardous duty payment for only one position;
- g. Overtime compensation will accrue and be maintained separately and totally independent for each position held except that when an employee works in a dual employment capacity where the employee is subject to the overtime provisions of the Fair Labor Standards Act (FLSA) in either employment, the employing agency or agencies must consider all combined time worked in excess of 40 hours per week as overtime and compensate the employee in accordance with the FLSA provisions applicable to joint employment relationships. In cases where the dual employment is with two separate agencies, the two agencies shall coordinate in order to determine which agency shall have the responsibility to assure that the employee is properly compensated in accordance with such provisions; and
- h. All state employees applying for dual state employment are obligated and are individually responsible to inform both the initial and second employers of their intent to accept dual state employment.

Upon receipt of request for dual state employment, it is the responsibility of the original employing agency to inform the employee of the above-listed provisions.

**36.03 Secondary Employment (Commissioned Personnel).** Secondary employment is not encouraged but is permitted under the following conditions:

1. Pursuant to the provisions of [Section 411.0077, Texas Government Code](#), the Department has adopted reasonable guidelines, as set out below, relating to acceptable secondary employment. Except where inapplicable, the provisions of this section apply to all commissioned DPS employees.

2. These guidelines are adopted pursuant to the provisions of that statute which directed the Department to determine that all its employees are reasonably accessible and that reasonable guidelines regarding secondary employment were adopted. All notifications and requests required by the section shall be made in writing.

a. Employees who desire to engage in secondary employment which does not require the use of the employee's police officer commission, or which does not involve the carrying of a firearm, and that does not create a conflict of interest are not subject to prior notice; however, employees are directed to notify their immediate supervisor of the fact that they have decided to engage in secondary employment by submission of form [HQ-43](#) as the means of notification within three (3) days. The employment must be legal, honorable, and not reflect negatively upon the Department.

b. Employees contemplating secondary employment that requires use of the employee's police officer commission, involves the carrying of a firearm, or that could create a conflict of interest, such as employment as an expert witness or employment involving motor vehicle traffic accident reconstruction (or who own, operate, and/or manage a business dependent upon issuance of a license from the Private Security Bureau of the Department, where the employee still holds such a license under the grandfathering provision approved by the Director) must give notice of each potential client with whom they contract by form [HQ-43](#) to the Regional Commander or designee. This notice is mandatory before engaging in any secondary employment of this kind, except where prior verbal approval has been granted by the appropriate first-line supervisor. Verbal approval must be followed by submission of form [HQ-43](#) by the employee within three (3) days of the date verbal approval was granted.

[HQ-43](#) forms submitted for approval will be reviewed for purposes of determining if there is a detrimental impact on the operational efficiency of the Department or on the performance of the employee's duties. This review would include such matters as pending and potential litigation involving the Department and its employees, conflict with pending or potential criminal investigations, and conflict with pending or potential administrative investigations. Employees will be notified in writing by use of form [HQ-43](#) if the secondary employment is not approved. Specific reasons for the rejection will be noted on form [HQ-43](#).

3. Secondary employment shall not create a conflict of interest between the DPS job and the secondary employment. It is the responsibility of the employee to prevent a conflict of interest from occurring. For the purpose of this section, a conflict of interest exists if:

a) the employer or the work to be done could in any way compromise the independent judgment or integrity of the employee and/or the Department;

b) the work to be done during the secondary employment requires that the employee obtain a license from any agency that governs an industry regulated by the Department of Public Safety; or

c) the Department is significantly involved in the enforcement of the laws in regard thereto. (Does not include the issuance or use of a Texas DL.) If there is the potential for a conflict of interest or if an employee or his supervisor is uncertain whether a conflict of interest exists, the employee shall submit a request through channels to the appropriate Regional Commander for determination.

4. In order for approval to be granted for secondary employment by a commissioned member, the following requirements must be met:

a. Supervisors will not work in any secondary employment requiring the use of their commission where they report directly to or are scheduled to work by a subordinate in their chain of command.

b. CID commissioned personnel will not work in any secondary employment which requires the wearing of a DPS or generic police officer uniform.

c. The employment must not interfere in any way with the employee's DPS job responsibilities and the employee must be performing satisfactorily.

d. Employees who work secondary employment, when assigned to "on-call" status for the Department, must have suitable arrangements that allow them to be contacted and enable them to immediately return to duty.

e. The employment must be legal, honorable, and not reflect negatively upon the Department. The following types of secondary employment are specifically prohibited:

1) Any type of business which derives its primary source of income from the sale or on-premise consumption of alcoholic beverages.

2) Companies or individuals engaged in any type of criminal defense investigation.

3) Employment with bail bonding companies.

4) Employment with wrecker companies.

5) Employment at a facility engaged in bingo, pari-mutuel wagering, or other forms of gambling or games of chance.

6) Employment with a debt collection agency or employment involving the repossession of property.

7) Employment at sexually oriented businesses, night clubs, dance halls, bars, or any other business of this nature.

8) Employment requiring the use of DPS commission which requires the enforcement of company policies or rules that do not constitute a violation of law (House Rules).

9) Employment which may be construed as an endorsement or condemnation of a controversial activity (i.e., employment at an abortion clinic or methadone clinic).

10) Escorting oversized vehicles.

11) Employment with a company or ownership in an enterprise where the primary source of income is in the transportation industry.

12) A business that has experienced numerous and frequent violations of federal, state, or local laws.

13) The owner or manager of the business is of questionable character.

14) Any location where secondary employment may pose an unreasonable risk to the safety of the employee.

15) The individual or business for whom the employee works, refuses or has refused, to cooperate with any departmental investigation.

16) Any employment with a business or enterprise that solicits funds for organizations.

17) Any restriction placed on employment at a business also applies to the parking areas for such business.

18) Employment as a law enforcement officer for any law enforcement agency other than the Texas Department of Public Safety. A DPS commissioned officer shall not hold a peace officer commission from any other governmental entity.

f. Other Conditions:

1) No secondary employment during the six-month period following completion of the DPS Recruit School and/or until the successful completion of the Field Training Officer Program.

2) No secondary employment during disciplinary suspension or while on a Performance Improvement Plan where employment requires the use of DPS commission.

3) No secondary employment requiring the use of DPS commission during disciplinary days off without pay, or when placed on administrative leave or restricted duty as a result of allegations of misconduct or the need for the officer to be removed from public contact. When appropriate, the appropriate Regional Commander may restrict secondary employment during periods of disciplinary probation. An exception may be made for resident apartment courtesy officer jobs.

4) No secondary employment activities while on DPS time. (Scheduling secondary jobs, responding to apartment security calls, drive-by security checks, etc.)

5) No secondary employment requiring the use of DPS commission while an employee is on active duty with the military.

6) No secondary employment allowed when the employee is non-compliant with the Department's Physical Readiness Testing (PRT) policy.

7) Secondary employment for commissioned officers of the rank of Major and above must have approval through the chain-of-command to the level of the Director.

g. Commissioned law enforcement members of the Department who accept secondary employment may perform the secondary employment while in DPS uniform under the following conditions:

1) The respective Regional Commander may disapprove wearing a DPS law enforcement uniform for certain employees based on the nature of their DPS job assignment.

2) Officers wearing a DPS uniform on secondary employment must be providing law enforcement services or instructing a law enforcement curriculum.

3) When approved to wear the DPS uniform on secondary employment, officers shall adhere to all standards of conduct, performance, and appearance established by any Department order, rule, policy, or regulation. Only Class A, B, and C uniforms are approved for secondary employment. Wearing ball caps, use of nonuniform coats, etc., will not be tolerated.

4) Only active duty law enforcement members commissioned by the Department may wear a DPS law enforcement uniform.

5) Nonuniformed commissioned personnel approved to work secondary employment and desiring to wear a uniform will be guided by the Assistant Director of their division on the manner of procurement of the uniform and related items.

6) The display of rank insignia on the uniform worn for secondary employment is optional but may not exceed the employee's actual rank. Nonuniformed commissioned personnel shall not wear rank insignia unless their regular duties include supervision of commissioned personnel. Uniformed commissioned personnel who wear rank insignia in the course of their regular duties shall be allowed to wear that same insignia on secondary employment.

7) Nameplates will be worn.

8) Commissioned law enforcement personnel performing secondary employment in a DPS uniform will carry the issued service weapons they are qualified to use (semi-automatic pistol, batons, handcuffs, OC spray, and/or other issued hand-carried weapons) on the issued Sam Browne belt.

9) Safety-related and foul-weather equipment may also be used in secondary employment (i.e., bulletproof vests, flashlights, portable radios, traffic wands, traffic vests, rain gear, jackets, and parka coats). Commissioned law enforcement personnel performing off duty enforcement-type jobs may not use Department-issued portable radios for non-emergency inquiries of a driver's license, vehicle registration, or criminal history.

10) Other DPS equipment will not be used while performing secondary employment. DPS raid jackets/vests will not be worn in combination with a uniform on secondary employment. Department vehicles shall not be driven to secondary employment.

11) An officer who purchased a uniform for secondary employment prior to **March 6, 2014**, at the time of an honorable separation from the Department may be reimbursed at fair market value for that purchase, which will be 25% of the cost of a new uniform at that time, provided the officer presents a receipt of the initial purchase and the uniforms are clean and suitable for reissue.

h. Security-type jobs may be performed while wearing the uniform of a nongovernmental private business concern; however, if another uniform is worn, it shall bear no badge or insignia that identifies or may lead any person to believe the wearer of the uniform to be a commissioned member of this Department.

i. The employment must not require the use of privileged information obtained through the DPS job. The use of privileged information in conjunction with secondary employment will be cause for dismissal.

j. A potential conflict of interest arises when a DPS commissioned officer is employed by a company or individual involved either directly or indirectly in a labor strike or similar dispute, particularly where the officer is employed in a security capacity. Ordinarily, approval of such employment will be denied and if previously approved, will be rescinded. Accordingly, such situations should be fully and promptly reported for early resolution. Likewise, potential conflict in this regard by noncommissioned employees should be reported for resolution.

k. Out-of-state employment in DPS uniform, or employment that requires the use of the DPS commission, must be approved by the Director. The employment will generally be limited to college football games or teaching a law enforcement curriculum. Duties must be in compliance with the laws of the other state.

l. Commissioned officers are required to respond to serious infractions of the law that occur in their presence, when life-threatening situations develop, or when other public needs are discovered.

m. When enforcement action is taken in the furtherance of the secondary employment, DPS reports will not be used and such arrest activity will not be reported through the DPS reporting system.

n. On-duty Department personnel will not be utilized to transport prisoners or respond to activities in the furtherance of secondary employment except in life-threatening situations or when other public needs are discovered. Local law enforcement with proper jurisdiction should be notified when assistance is needed unless the activity is the responsibility of the Department (i.e., traffic accident investigation or DWI enforcement outside city limits).

o. DPS personnel working secondary employment will immediately notify their supervisor of the following incidents: death of a person, firearms discharged, use of chemical agent spray, enforcement action resulting in a personal injury or property damage to another, DPS personnel injured during enforcement action, and any other incident that by policy requires an immediate report be made to a supervisor. The supervisor will ensure that a teletype is sent as soon as practicable, notifying the Director and the chain of command of the incident.

p. The Department is the primary employer of a commissioned member. Excessive hours worked on secondary employment could cause an employee to become fatigued while working for the Department. It is the responsibility of the first-line supervisor to monitor the number of hours worked on secondary employment to ensure compliance with this policy. The number of hours worked on secondary employment, requiring use of the DPS commission, will comply with the following provisions:

1) The maximum number of work hours on secondary employment shall not exceed 24 hours in a work week. Utilization of paid leave, other than sick leave, will add to the maximum number of hours, on an hour-for-hour basis. Example: an employee working less than 40 hours for the Department by utilizing 8 hours of vacation, in a work week, would be permitted to work 32 hours of secondary employment. (A work week is defined in 01.07.06.08 The standard workweek is from 6:00 a.m. Saturday through 5:59 a.m. the following Saturday.)

2) The maximum number of work hours on secondary employment shall not exceed 8 hours in any 24-hour period. Working secondary employment on a scheduled day off or utilization of paid leave, other than sick leave, will add to the maximum number of hours, on an hour-for-hour basis. Example: an employee scheduled off can work up to 16 hours in any 24 hour period; or an employee working less than 8 hours for the Department by utilizing 2 hours of vacation would be permitted to work up to 10

hours of secondary employment in a 24 hour period. (Example of a 24-hr. period: 1pm-12:59pm; 3:15am-3:14am; not necessarily midnight to midnight).

3) Secondary employment that exceeds a cumulative total of four hours between any two DPS shifts (or work periods) shall be followed by a six hour rest period before returning to on-duty status with the Department.

4) An exception to item 3 above will be made for DPS duty hours involving emergencies, necessary law enforcement functions, or other law enforcement needs requiring an immediate response that prohibits the mandatory 6 hour rest period (i.e., manhunts, disaster duty, extended surveillance, or other major critical incidents).

5) All hours worked on secondary employment requiring commission must be reported to the Department on approved forms. Appropriate forms for reporting secondary employment hours will be determined by the respective Regional Commander.

5. All requests for approval of secondary employment must be made on form [HQ-43](#). If the employment is to be in the DPS uniform, the [HQ-43](#) will so indicate.

a. The original and one copy of form [HQ-43](#) will be forwarded through channels to the appropriate Regional Commander.

b. Each level of command will endorse the application as approved or disapproved and submit the application to the Regional Commander for final review. If the wearing of the DPS uniform is requested, the commanding officer, by his signature, certifies that the uniform purchase receipt has been filed with him. If disapproved at any level of command, the supervisor disapproving the request will indicate the reason on the reverse side of form [HQ-43](#) and provide a copy to the employee. If disapproved at any level, the employee will be notified verbally and the secondary employment will be discontinued pending final review.

c. The appropriate Regional Commander or designee will approve or disapprove the application and return a copy to the applicant through channels.

6. First-line supervisors may approve temporary, one-time employment of not more than a thirty (30) day duration without prior approval from higher echelons, if the employment opportunity would be lost due to the delay caused by the normal approval procedure, and if the employment is consistent with all of the foregoing criteria. The temporary secondary employment request on form [HQ-43](#) will be routed through channels for review. If disapproved at any level of command, the supervisor disapproving the request will write an interoffice memorandum within ten (10) working days to the appropriate Regional Commander stating the reasons for rejection. This memorandum will be attached to the [HQ-43](#) form with a copy sent to the affected employee. If disapproved at any level, the employee will be notified verbally and the secondary employment will be discontinued pending final review.

7. An employee who utilizes sick leave benefits as a result of his/her own personal illness or injury on an assigned workday shall not have approval to work secondary employment during the assigned duty shift or during the eight (8) hours following the shift. An exception to this provision may be granted by the employee's immediate supervisor.

#### **36.04 Application Completion Commissioned Secondary Employment**

1. Employee Name: Name of person making request.

2. Rank: Rank/Title of employee making request.

3. Division/Service/Bureau: Assigned location of the requester.
4. Duty Station: Assigned city of the employee making the request.
5. I.D.#: DPS identification number.
6. Employee Signature: Signature of Employee making the request and certifying that the employment requested will comply with the provisions of this section.
7. Date Notification Submitted: Enter the date the form is submitted.
8. DPS Uniform Purchased: Indicate the appropriate response and date purchased if applicable.
9. Business Name, Address, Phone #: Document the name, address, and phone #'s for the business including the phone # for the job site if different. List all secondary employment jobs engaged at the time of submission. Each [HQ-43](#) submitted will include all previous and current secondary employment notifications with the newest request at the bottom. Add additional pages if necessary.
10. Detailed Description of Duties: Give COMPLETE DETAILS OF DUTIES you will be performing.
11. Nature of Business: Describe the nature of business in which the employer is engaged.
12. Law Enforcement Related: Check the appropriate response if the employment requires the use of TCLEOSE commission.
13. Uniform Worn: Check the appropriate response if the employment requires the use of the Department uniform.
14. Date Started: Actual date employment is expected to begin.
15. Date Ended: Date employment is expected to terminate, if known. If unknown, leave blank. A cancellation [HQ-43](#) is required when employment in a secondary job is concluded. If employment is cancelled, submit a copy of the form with the cancellation date in this section. After an [HQ-43](#) has been submitted cancelling employment, that job is no longer required to be listed on future [HQ-43s](#) submitted.

### **36.05 Application Review, Routing, and Storage Commissioned Secondary Employment**

#### **1. Application Review, Routing, and Storage**

a. Each level of command will review the form [HQ-43](#) for completeness and compliance with policy, approve or disapprove the [HQ-43](#), and sign the form. If the notice is disapproved, check the appropriate box, indicate which item # is not approved, and indicate the reason on the reverse side of the [HQ-43](#). An explanation memorandum must accompany any [HQ-43](#) with requests not approved.

b. The original of the completed [HQ-43](#) will be sent to the appropriate Regional Commander for review and final approval or disapproval.

c. The appropriate Regional Commander or designee will approve or disapprove the [HQ-43](#), sign, and return the copy to the employee through channels.



d. The original of the [HQ-43](#) will be kept in the employee's headquarters personnel file for three (3) years plus the current year.

**36.06 Commissioned Secondary Employment Required Update - Changes in Employment Status.** Major changes in either the secondary employment status or the DPS employment status of the employee will require the submission of an updated request on form [HQ-43](#). Examples of other employment major status changes are: change of employers, change of job title, job description, or hours worked per week. DPS employment status changes include: major changes in duties such as trooper to sergeant, transfer from one service to another, or transfer from one location to another.

**36.07 Cancellation Commissioned Secondary Employment.** Approved requests will be canceled by the employee when the employment ends by entering the date and signing their name and title in the space provided and forwarding the form through channels to the appropriate Regional Commander. An original signature on a photocopy of an approved request is sufficient.

Any supervisor in the employee's chain of command may recommend cancellation of an approved secondary employment request by entering the date and signing their name in the space provided, attaching a memo of explanation, and forwarding two copies through channels to the Regional Commander.

One copy of the notice of cancellation shall be returned to the employee through the chain of command and one copy placed in the employee's headquarters personnel file for three (3) years plus the current year.

**36.08 Headquarters, Texas Ranger Division Staff, Director's Special Staff and Commission's Staff.** Requests for secondary employment from personnel below the rank of Major assigned to Headquarters' sections, Texas Ranger Division, Director's Special Staff or Commission's Staff will be routed through channels to the Assistant Director, the Chief of Staff, the Inspector General or Audit Director, as appropriate. Sections reporting directly to the Deputy Director of Law Enforcement will require the Deputy Director's approval.

**36.09 Secondary Employment of Non-commissioned Employees.** Non-commissioned employees may engage in non-governmental employment in addition to their employment with the Department when the employment is permissible under state law and to the extent such employment does not create a conflict of interest. Conflicts of interests under this policy will be defined as in General Manual, Chapter 7, Section 07.36.03(3). It is the responsibility of the employee to prevent a conflict of interest from occurring. Specific policies related to other governmental employment are set out in General Manual, Chapter 7, Section 07.36.02. Non-commissioned employees are not required to submit form [HQ-43](#) for secondary employment unless specifically required by their Regional Commander or Assistant Director or Special Office Director.

#### **07.37.00 AGENCY NEED-BASED DISMISSAL POLICY**

1. **Purpose.** The purpose of this policy is to provide guidelines and procedures when agency needs require dismissal of employees of the Texas Department of Public Safety due to a financial exigency, a reorganization or a change in the job skills required by the agency.
2. **Policy and Procedures.** It is the policy of the Texas Department of Public Safety to dismiss employees when necessary due to a financial exigency, a reorganization, or a change in the job skills required by the agency. The Deputy Director, with the approval of the Director, shall decide when it is necessary to dismiss employees under this policy. The decision shall be based on a need-based dismissal report that will be completed by the head of the affected unit.

##### **A. Planning Requirements**

- 1.) Before a need-based dismissal is proposed, alternatives that may eliminate its need or limit its scope shall be considered. Such alternatives may include, but are not limited to: job sharing, temporary leaves of absence without pay, attrition, pay freezes, pay cuts, or demotions. The Department will not provide training for employees who do not have the job skills needed by the agency, but may consider providing time for an employee to obtain training on his or her own prior to dismissing the employee when appropriate.
- 2.) The goal shall be to identify those functions and positions that can be altered or eliminated with the least effect on the workforce and necessary services of the unit.
- 3.) The head of the affected unit shall decide which functions or positions should be combined or eliminated. In making that decision, existing business conditions, as well as future needs of the affected unit or the Department, may be considered.

**B. Need-based Dismissal Report.** The contents of a report requesting a need-based dismissal shall include supporting documentation and contain the following:

- 1.) Factual information that shows the existence of a financial exigency, a reorganization, or a change in the job skills required by the unit;
- 2.) A description of the functions or services supplied by the unit that will be affected by the proposed dismissal;
- 3.) How those functions or services will be combined, altered or eliminated, and the rationale for the combination, alteration, or elimination;
- 4.) Identification of those jobs or positions that will be affected;
- 5.) Consideration of statutory hiring and reduction in force preferences provided under Government Code Chapter 657 (veteran status) and any other relevant statutory requirements; and
- 6.) Use of the criteria in Section 3 to identify those employees who are to be dismissed and an explanation of how and why each person was selected for dismissal.

The Division head must send the proposed report to Human Resources to review the report for adverse impact. Human Resources shall consult with the Office of General Counsel to determine legal sufficiency.

**C. Dismissals.** Where a financial exigency, reorganization, or change in the job skills required by the agency results in the need to dismiss employees, the head of the unit seeking the dismissal shall be responsible for deciding which employees will be dismissed. A dismissal under this policy shall be treated in the same manner as a special circumstances termination under General Manual Section 07.43.03. The criteria to be used for selecting which of the affected employees will be dismissed shall include, but not be limited to:

- 1.) Employee qualifications for any jobs that have been created in the case of a reorganization or change in job skills required by the agency;
- 2.) Employee qualifications for any jobs remaining in the case of a financial exigency;
- 3.) Employee work performance, as evidenced by written performance evaluations or associated documentation (seniority will be the determining criteria in those cases where employees are equally

qualified); and

- 4.) Status as a regular, full-time employee will be given preference, unless it is in the best interest of the Department to employ part-time, temporary, or hourly employees for the available positions.

**D. Notice**

- 1.) Employees who are to be dismissed shall be provided with as much advance written notice as possible in order to lessen personal hardship.
- 2.) The written notice of dismissal shall include an explanation of the reasons for the action and an explanation of why an employee's position is to be eliminated or why a particular employee has been selected for dismissal.

**E. Grievance Procedures.** The appeal process stated in General Manual Section 07.43.06 for special circumstances terminations shall apply to dismissals under this policy.

**F. Reemployment.** Reemployment procedures for employees dismissed pursuant to this policy shall include the following:

- 1.) A reemployment list containing the names of employees dismissed under this policy shall be retained in Human Resources. A former employee shall remain on the list for a period of six months after the date of dismissal, unless deleted pursuant to Section 6.c.
- 2.) It shall be the responsibility of the former employee to apply for any vacant position for which he or she feels qualified. A former employee on the reemployment list shall be given preference for selection to any vacant position for which Human Resources determines he or she is qualified.
- 3.) Former employees who are notified and fail to respond within ten (10) working days or who reject a reemployment opportunity offered under 6. b. will be removed from the reemployment list. The ten (10) working day period may be extended for good cause.
- 4.) Any former employee will have his or her sick leave balance restored if reemployed by the Department within twelve (12) months of the reduction in force.

**G. Nondiscrimination in Dismissal and Reemployment.** All dismissal and reemployment decisions pursuant to this policy shall be made consistently with this policy and without regard to race, color, national origin, religion, sex, age, veteran status, or disability of the employee.

**Responsibility of the Department.** This policy shall be reviewed by the Director of Human Resources every five years or as changes occur to state or federal law affecting the policy.

## **07.38.00 SEPARATION**

### **38.01 Exit Interview**

1. When employees provide notice of their intention to separate from employment, the immediate supervisor will cause the employee to complete form [HR-171](#) (EXIT INTERVIEW).

The form shall be made part of the employee's personnel record. The form shall indicate the principal and contributory reason for separation. After the employee has filled out the applicable portion of the form, the supervisor shall meet with the employee to complete the form. The supervisor will secure all DPS issued items and assure that all required paperwork has been completed. The supervisor may make comments as needed on the space provided on the form. If additional room is needed for comments, attachments may be added. The Exit Interview and any attachments must be submitted to Human Resources along with the Personnel Action Form (HR-25) within 48 hours of completion or as soon as possible.

2. Applicable portions of this form will be completed by the supervisor in instances when an employee terminates employment with the agency without notice or is terminated.

3. The MSA Access Request form ([HR-88](#)) or the USPS Access Request form ([HR-89](#)) should be completed and forwarded to the HR System Administrator to terminate an employee's access to the HRIS (MSA) and USPS. This form should be completed and forwarded to Human Resources within 48 hours of the employee's separation, retirement, or involuntary termination. These forms are available on DPSnet.

**38.02 Separation of Commissioned Peace Officers and Licensed Communication Operators.** In the case of commissioned peace officers and licensed communication operators (telecommunicators), the major division chief/section head or their designee must submit to Human Resources a completed Report of Separation of Licensee (TCLEOSE Form F-5) along with the Personnel Action form (HR-25). A copy of the form will be forwarded to the Licensee by Human Resources.

**38.03 Exit Survey - Voluntary Separations.** In addition, in each case where an employee is voluntarily separating from employment, the supervisor will explain the availability of a confidential online exit survey for terminating state employees that is administered by the State Auditor's Office (SAO). The supervisor will encourage a separating employee to complete the SAO survey and assure the employee of the confidential nature of the survey. Completion of the survey is voluntary. The supervisor will make every effort to make Internet access available to the employee for the purpose of completing the survey. This may include transporting the employee to a nearby office, other agency or institution (library or college with public access terminals) or allowing the employee to complete the survey at home. The employee will be given privacy to complete the survey. If the employee chooses to complete the survey, the supervisor will contact Human Resources to receive the password that will allow the employee to access the system. The supervisor will assure the employee that, once the employee logs on, the employee assigns a personal password known only to them that will keep anyone else at DPS from accessing their survey. In all cases of voluntary separation, the supervisor will cause the employee to complete form [HR-172](#) (Exit Survey Employee Acknowledgement). The form will be forwarded to Human Resources for inclusion in the personnel file and a copy will be given to the employee. The website address (<https://www.sao.state.tx.us/apps/exit>) to access the survey is on the acknowledgement form.

A voluntary separation includes retirement, but does not include retirement or resignation that is in lieu or because of a pending termination or in lieu or because of an internal/criminal investigation into wrongdoing.

**Involuntary Separations.**

A retirement or resignation that is in lieu or because of a pending termination or in lieu or because of an internal/criminal investigation into wrongdoing is considered an involuntary separation. The separating employee is not provided the exit survey documents in these situations.

**38.04 Discharged Employees.** An employee who is discharged will be officially notified in writing by the Director stating the reason or reasons for dismissal. The discharged employee who has completed the initial probationary period should be advised of the right to appeal to the Public Safety Commission. A non-commissioned employee is on probation for the first year of service. The probationary period begins on the date of employment. A commissioned officer is on probation from the date the person is inducted into the service of the Department until the first anniversary of the date

the person is commissioned. All notices of appeal by discharged employees to the Commission must be filed with the Director within fifteen (15) days of the time the discharge notice is received.

A permanent employee is one who has satisfactorily completed their initial probationary period.

**38.05 Address Notification.** Employees who separate from the Department must furnish their current home address and home telephone number on form [HR-30](#) so that it can become a part of the employee's personnel record. These employees may authorize the Department not to release their home address and home telephone number. Those employees who desire to withhold this information must complete the applicable portion of form [HR-30](#). (Refer to General Manual, Section 07.64.03.)

## **07.39.00 RETIREMENT**

**39.01 Policy.** Only those employees who, at the time of separation, are qualified and eligible to receive retirement benefits from the Employees Retirement System and who qualify for retirement recognition as outlined in paragraph 39.07 will be considered retired Department of Public Safety employees. Employees who resign before retirement eligibility may choose to keep their retirement contribution in the ERS fund and become eligible to draw an annuity at some later date, but these persons will not be considered retired from the Department. See State Employees Retirement System booklet for detailed information on retirement eligibility and benefits at <http://www.ers.state.tx.us/retirement>.

**39.02 Procedure.** Employees desiring to apply for retirement should call or write the Employees Retirement System (ERS) to request an application. ERS makes all determinations regarding eligibility for retirement benefits and all such questions should be directed to them. In addition, employees desiring to apply for retirement should address an interoffice memorandum to this effect through proper channels to the appropriate Deputy Director's Office.

The interoffice memorandum must be submitted not more than ninety (90) days prior to the effective date of retirement. If the employee wishes to attend the official retirement ceremony or a sanctioned retirement function, the retirement memorandum must be submitted not less than thirty (30) days before the retirement date to ensure that Human Resources will have time to prepare the retirement recognition packet as referred to in Section 39.08 below. The appropriate division should prepare and submit through proper channels an HR-25 and complete the other exit paperwork as with any Department voluntary separation. Please refer to section 38.01 in this chapter for further information required on the exit documents.

1. Employees who began employment with the state before September 1, 2009 will be given credit for one month of creditable service for unused sick leave and annual leave as additional time in service with each 160 hours being equal to one month and any remaining fraction counting as one additional month for the purposes of both establishing enough service to meet retirement eligibility and towards increasing the amount of the retirement annuity. (Refer to General Manual, Section 07.06.02, paragraph 14 & Section 07.06.05, paragraph 3e.)

2. Employees who began employment with the state on or after September 1, 2009 will be given credit for one month of creditable service for unused sick leave and annual leave as additional time in service with each 160 hours being equal to one month and any remaining fraction counting as one additional month only for the purposes of establishing the amount of the retirement annuity and not for establishing enough service to meet retirement eligibility. (Refer to General Manual, Section 07.06.02, paragraph 14 & Section 07.06.05, paragraph 3e.)

3. All time records must be entered into the automated time system no later than the last working day of the month in which the employee retires in order that retirement information may be verified to ERS no later than the 10th of the month following the month of retirement. All time records must then be forwarded to the Human Resources Bureau at the earliest possible time.

**39.03** If you have 10 or more years of creditable service, you should file a Death Benefit Plan (DBP) so that if you die before you retire, your beneficiary can have an annuity plan. If you had 10 years of service and filed a DBP by August 31, 2005, your beneficiary will be paid according to your DBP even if you leave state employment, as long as you don't take a refund. If you had 10 or more years of creditable service by August 31, 2005 but didn't file a DBP, a lump sum refund of your retirement account will go to your beneficiary if you leave state employment and do not take a refund. If you didn't have 10 years of ERS service credit by August 31, 2005, you can still select a DBP at the 10-year mark, but it will be paid only if you are still employed by the State when you die (before retirement). If you leave state employment and do not take a refund, the only payout option for your beneficiary is a lump sum refund of the retirement account. The plan selected applies only to the named beneficiary in case of death before retirement, and is not the same as the selection of any option under which the member planned to retire. See State Employees Retirement System booklet for detailed information.

**39.06** The Retirement Act permits retirement for its members who have received a nonoccupational or an occupational disability. It will be incumbent on all those who file for this type of retirement to prove the disability and whether it was received in the course of the member's employment. Additionally, there are certain statements which the Director will need to make in conjunction with these claims. See State Employees Retirement System booklet for information on disability retirement.

### **39.07 Recognition**

1. Retiring employees that retire in good standing will be issued a retirement certificate at the time of separation.

a. Retiring commissioned officers that retire in good standing may keep one of their issued badges. They will also be issued a retirement badge and a retirement identification card.

b. Non-commissioned retiring employees may also be issued a small token of appreciation for their service at the time of retirement.

Human Resources should be contacted as early as possible prior to the date of the retirement in order to make arrangements for these retirement gifts.

2. Employees listed below will normally not receive any type of official retirement recognition from the Department:

a. Employees who are discharged.

b. Employees who resign in lieu of disciplinary action or while under investigation for a crime or serious violation of departmental policy or who, at the time of separation, are on disciplinary probation or disciplinary time off without pay.

c. Employees who terminate employment prior to eligibility for retirement benefits.

3. Whenever questions arise regarding official retirement recognition of an employee, the Assistant Director will make appropriate recommendations to the appropriate Deputy Director for a final determination. When the employee is a member of the Director's staff, the recommendations of the special section head will be sent to the appropriate Deputy Director for review and recommendation to the Director.

**39.08 Functions.** Department of Public Safety retirement functions will be conducted in accordance with the following guidelines:

## 1. Definitions

a. **Official Retirement Function.** That function or ceremony where the Director or Assistant Director presents the retiree with his or her retirement certificate and other appropriate retirement items.

b. **Sanctioned Retirement Function.** A program either during or after working hours, to appropriately honor the retiree by his fellow employees. This function is provided to permit attendance by those employees in the immediate work environment of the retiree on an "on duty" status.

c. **Private Retirement Function.** A non-DPS sponsored function.

d. **Retirement.** The process by which an employee has met the requirements as promulgated in the Public Employees Retirement Act, Government Code, Sec. 811.001, et seq, is eligible to receive a service retirement.

## 2. Location and Frequency

a. The official retirement function shall be held each month in the Director's office to honor all DPS employees who are retiring during that month.

b. Sanctioned retirement function for an individual may be held either during or after normal working hours in a DPS office facility or other appropriate location.

c. A private retirement function may be held at any appropriate location as selected by the person or persons sponsoring the affair.

## 3. The Official Retirement Function

a. Ceremonies will normally be held in the office of the Director.

1) Ceremonies will usually be scheduled at 9:30 a.m. on the fourth Tuesday of each month. The employee and family are invited to attend these ceremonies. If a holiday occurs on that day, the ceremonies will be scheduled at 9:30 a.m. on the first working day thereafter.

2) The Human Resources officer will make the necessary notifications of any changes in this schedule.

b. The retiree will be brought to Austin to these ceremonies at state expense or will be reimbursed for travel expenses incident to attendance at the ceremonies only if the retiree is a current employee of DPS at the time the expenses are incurred.

c. The Director or Assistant Director will present the Retirement Certificate and other official retirement credentials.

1) Protocol for two or more retirees in the same ceremony shall be based on longevity.

2) Photographs of these ceremonies will be made for presentation to retiree.

d. No special gifts will be presented at this ceremony.

#### 4. Sanctioned Retirement Function

a. May be held during or after working hours in any suitable facility.

1) If held during working hours, scheduling should be planned so as to prevent excessive absence of any employee from his or her duty station.

2) Supervisors may coordinate staff or area meetings to allow maximum participation.

b. This program may be conducted with or without food and/or appropriate refreshments.

c. Special gifts may be presented at this function.

d. Program context should always be planned with the wishes of the retiree given foremost consideration.

e. The Sanctioned Retirement Function may be coordinated with or combined with any appropriately planned Private Retirement Function.

f. DPS photographers will not take photos.

5. **Private Retirement Function.** Private Retirement Functions may be held at any appropriate location other than DPS facilities.

#### 6. Invitations

a. The Human Resources officer will notify the retiree, and the retiree's immediate supervisor, as to date and time of the Official Retirement Function with an invitation to the retiree and spouse for the retirement ceremonies.

b. The retiree's supervisor will send announcements to employees, relatives, and other interested persons as to date, time, and place of a Sanctioned Retirement Function. These may be at Department expense.

c. Attendance at a Private Retirement Function would normally be by invitation provided by the sponsor of the function.

#### 7. Gifts

a. Special gifts may be presented at the Sanctioned or Private Retirement Functions.

b. DPS members may not solicit contributions for retirement gifts.

c. A DPS member may be designated to accept and account for positively voluntary contributions for retirement gifts.

#### 39.09 Special Ranger and Special Texas Ranger Commissions

1. The Public Safety Commission may grant special ranger (GC 411.023) and special Texas ranger (GC 411.024) commissions to employees who have served at least twenty years as commissioned officers with the Texas Department of Public Safety and who are honorably retired. The twenty year calculation of commissioned time shall include the original date of commissioning through the date of the last day as a commissioned Department employee. For



commissioned employees who have a break in service, the calculation shall be the total of the time from each date of commissioning until each date of the last date as a commissioned employee. Other types of service credit granted by the Employee Retirement System will not be included in the calculation of Department commissioned time.

2. Applications may be obtained from the Director's Office.

#### **07.40.00 OTHER BENEFITS**

Participation in the following programs and organizations may result in benefits to the Department employee or the employee's beneficiary. Careful consideration should be given to each of the possible fringe benefits.

**40.01 Credit Union.** The Texas DPS Credit Union is a cooperative association of members within the Department. It was organized for the purpose of promoting thrift among its members and to provide a source of credit to the members.

The organization is managed and operated by officers elected by the membership. Annual meetings provide a time at which changes may be made in officer members and/or laws by the membership.

Membership in the Credit Union may be applied for by writing the Texas DPS Credit Union, PO Box 15346, Austin, Texas 78761. Informative details will be sent you along with an application card for membership. Also, there are field representatives stationed throughout the state who are DPS employees and who may be contacted for information concerning the Credit Union.

**40.02 Group Insurance.** The state provides a group comprehensive medical care plan and some life and accidental death benefits at no cost for the employee. Several Health Maintenance Organization (HMO) facilities have been approved to provide health coverage in lieu of the comprehensive medical care plan for employees residing in their service area. Additional life insurance for the employee and/or dependents, as well as health coverage for dependents, may be obtained by the employee and paid for through payroll deductions. All new enrollments and changes, whether for the comprehensive medical care plan or HMO, must be submitted on the current Employee's General Purpose Form and forwarded to the DPS Group Insurance Office, Accounting and Budget Control, Department of Public Safety, Box 4087, Austin, Texas 78773-0130.

The Consolidated Omnibus Reconciliation Act of 1985 (COBRA) gives an employee the right to continue the group health care coverage in effect immediately prior to the employee's separation from this Department. In certain instances (i.e., termination for gross misconduct), continuation of health care coverage may not be possible. Employees should contact the DPS Group Insurance Office for specific information concerning COBRA.

**40.03 DPS Mutual Insurance Policy.** The Department affords to each active employee of the Department (or the Texas DPS Credit Union effective 2/1/02), or retirees of the DPS (or the Credit Union retirement system) the opportunity to buy a low cost mutual life insurance policy. The cost of becoming a member of this mutual association is \$10.00. Thereafter, assessments are made on each member upon the death of some member(s) of the association. The assessments are prorated equally among members so that the beneficiary(s) of active employees receives \$10,000 and retired employees \$5,000. Full benefits will be paid to the beneficiary(s) of a current member of the Association, who has been called to active duty by the United States Armed Forces and whose death was caused by an Act of War.

The Board of Directors shall require evidence of insurability of eligible employees who do not become members of the Association within twenty-four (24) months after the date of his/her employment with the Department or the Credit Union.

Membership in the Association shall continue as long as dues and assessments, NSF check charges and penalties are paid within thirty (30) days of the issuance of notice by the Secretary and the member continues in the employment of

the Department or the Credit Union, or is a member of the Association on the date of retirement and is eligible to draw a retirement annuity from the Employees Retirement System of Texas or the Credit Union's retirement system. Failure to pay assessments within the specified period shall lapse the membership and forfeit all claims as a member of the Association.

All persons who retire from the Department or the Credit Union may rejoin the Association by submitting forms for "Application for Membership", "Declaration of Insurability", re-paying the \$10.00 membership fee, and submitting in lump sum the total amount of all assessments from the date of retirement to the date of acceptance of the "Application for Membership" as determined by the Secretary of the Association.

**40.04 OASI.** Old Age, Survivors and Disability Insurance is better known as Social Security. An amendment approved by the people of the state of Texas on September 6, 1955, authorized Social Security coverage for state employees.

An automatic deduction is made from the salary of every state employee each month during the calendar year or until the maximum authorized by the Act has been withheld from the employee's annual salary. An identical amount is contributed monthly by the employer.

Since the program provides for numerous benefits to widows and minor children, in addition to disability or retirement pay, it is suggested that each individual contact the local Social Security office and determine possible applicable benefits.

#### **40.05 Death Benefits**

1. If the death of an employee results from natural causes and is classified as nonoccupational the beneficiaries and/or estate may be entitled to the following:

- a. Balance of unpaid monthly salary
- b. Earned vacation entitlement
- c. One-half of earned sick leave up to a maximum of 336 hours
- d. Group insurance benefits
- e. Unreimbursed travel expense
- f. DPS Mutual insurance
- g. Credit Union benefits
- h. State employee retirement benefits
- i. Social Security benefits

2. Additional benefits may be available if the death is due to occupational causes or if a commissioned officer loses his life in the line of duty:

- a. Workers' Compensation benefits
- b. Payment of funeral expenses
- c. Payment of one year's annual salary
- d. Line of duty death benefit from State Employees Retirement System
- e. Benefits under the Hometown Heroes Survivors Benefit Act of 2003

**40.07 Flower Fund.** In the event of death of a member of the Department or the death of a member of the immediate family, (husband, wife, father, mother, son, daughter, sister, brother, stepfather, stepmother, or foster parents), the Flower Fund of the Department is used to send an appropriate remembrance. Flowers will also be sent in the event of death of an honorably retired Department employee. The fund is administered by the Director and is maintained by contributions from members of the Department. When the funds have been expended, a request for donations is sent to each employee.

In the event of the death of a member of the immediate family, the regional commander, division chief, or CLE service commander will notify the Director, and provide the appropriate information. The Director's Office will make the arrangements for the selection and transmission of the floral piece for the Department. The following procedures are adopted to properly administer the collection and disbursement of funds.

1. **Selection of Florist.** Once each year a minimum of three florists should be contacted at random. The contacting person should identify himself or herself as a representative of the Department of Public Safety and inquire as to the price of a funeral arrangement. A record of the florist called, date, and price should be kept as a permanent record of the employees' flower fund. This procedure will establish that the employees of the Department of Public Safety are receiving competitive prices for their contributions. The Director's representative may at any time decide to change florists because of price, inadequate reliability, dissatisfaction with product, or inadequate service.

2. **Memorial Contributions.** The family of the deceased may request the Department of Public Safety to send a memorial contribution to a specific organization, society, or individual in lieu of flowers. In many instances, an invoice or statement cannot be obtained to authorize the issuance of a check. Proper documentation to support a check can be achieved as follows:

a. A copy of the request (TWX, Memo, E-mail, etc.) can be signed by the Chief of Finance or a specified designee and attached to the canceled check, or

b. If directions are received by phone to send a memorial contribution in lieu of flowers, a notation can be made of the conversation and approved by the Chief of Finance, or a specified designee, then attached to the canceled check. The notation must include the name of the employee receiving the directions, the date the directions were received, the name of the individual providing the directions, and the relationship to the deceased of the individual providing the directions.

Either method will be considered adequate documentation for the issuance of a check.

3. **Cash Collections.** Each regional commander, CLE service commander, assistant division chiefs, and special section head shall be appointed fund custodian for the collection of contributions to the Department of Public Safety Employees' Flower Fund. His or her responsibilities are as follows:

a. To inform all employees within their respective area that the Director is requesting voluntary donations to the employees' flower fund.

b. To accept and accumulate employee contributions from within their respective area.

c. To keep adequate records, including the issuance of receipts to each service or section contributing money.

d. To accumulate and secure all contributions at the designated office headquarters until all funds have been collected.

e. To forward all contributions to Accounting and Budget Control, Austin headquarters.

4. **Receipts for Contributions.** The collection and control of contributions shall be as follows:

a. Each service or section within the respective area will collect contributions from its employees. The Custodian, as designated by the General Manual has the authority to delegate the review of memorial contribution requests to a service/section custodian (service captain, bureau manager, regional communications

supervisor, special unit supervisor, etc.). It would include the service/section designation (DLDFS Region 5, HP District 3C, Narcotics District 3C3, etc.) and the unit custodian's signature. It would then be correctly completed in the upper section, and forwarded to the "fund custodian" as specified below.

b. These contributions are accumulated until all employees have had an appropriate time to contribute.

c. Contributions are then forwarded to the fund custodian with appropriate copies of the [HQ-129](#).

d. Upon receipt, the fund custodian (Regional Commander, Narcotics Assistant Commander, Ranger captain) or the fund custodian's designee (regional adjutant, regional commander's secretary, CLE secretary, etc.)

1) will verify the service/section contribution amount;

2) sign the [HQ-129](#) or secure the fund custodian's signature on the [HQ-129](#), and

3) return the appropriate copy to the service/section custodian.

e. After accumulating contributions from the various and respective services/sections under his/her supervision/control, the fund custodian will:

1) Enter the cumulative total onto white copy of the four part form "Cash Receipt Summary" (the lower portion of the [HQ-129](#));

2) Sign the [HQ-129](#) to authenticate its total;

3) Retain one copy of each [HQ-129](#) in the fund custodian files;

4) Send one copy to various and respective services/sections for verification of receipt of correct amount

5) Attach the remaining two copies of the [HQ-129](#) to the "Cash Receipt Summary;"

6) Forward them to Accounting and Budget Control.

A properly labeled [HQ-129](#) could be used as a "Cash Receipt Summary."

f. After all contributions within the respective area have been accumulated, they are forwarded to Accounting and Budget Control, Austin headquarters. Assigned personnel in Accounting and Budget Control will:

1) Verify the cumulative total on the "Cash Receipt Summary", sign it to verify receipt of all contributions;

2) Forward one copy of it to the fund custodian;

3) Retain one copy of all [HQ-129](#) receipts relating to that transaction in the Flower Fund files.

g. If amounts match, a receipt ([HQ-129](#)) in two copies shall be prepared and signed. The original is forwarded to the fund custodian. The copy shall be kept on file in Accounting and Budget Control along with the deposit slip for these funds.

5. **Verification of Invoices.** The Director's representative will examine all invoices for accuracy of charges and compliance to the DPS General Manual. If invoice is accurate and in compliance, it should be signed and dated by the person examining the invoice. This will place accountability in one person and denote that the invoice is approved for payment out of the employees' flower fund.

6. **Record Retention.** All records pertaining to the employees' flower fund will be reconciled each month, with supervisory review each quarter, and shall be kept on file in Finance for collection at Headquarters and maintained in the Regional Commanders office for field offices. Records may be destroyed after two fiscal years plus the current fiscal year.

7. **Chief Auditor's Office (CAO).** CAO will consider the DPS Flower Fund as an auditable unit during the risk assessment process and development of the annual audit plan.

#### **40.08 Payment of Medical Expenses When Injured or Killed in Line of Duty**

1. The Department assumes liability for the net amount of the loss sustained by the employee for medical, hospital, laboratory, and drug expenses as provided by the authorizing statute. It is not intended that the Department pay for such services as are compensated for by insurance settlements, including Workers' Compensation benefits, or any form of litigation.

2. Diagnostic and treatment costs for job-related emotional distress caused by a single significant traumatic experience of a violent nature which prevents the employee from performing those job duties related to the experience may qualify for reimbursement by the state as provided by authorizing statutes.

In these cases, a Workers' Compensation claim should be initiated as for any other job-related injury. If the claim is disallowed or partially covered, the claim must then be submitted to the group insurance carrier. If all expenses are not reimbursed by Workers' Compensation or group insurance, the Department will attempt to pay the unreimbursed expenses from appropriated funds. Vouchers should be submitted through the chain of command with documentation of Workers' Compensation and group insurance actions attached.

3. When an employee is killed in line of duty, the Department will facilitate payment of funeral expenses under appropriate circumstances. Contributions to funeral expenses may be made by the Workers' Compensation Program, the Social Security Administration, the Veterans' Administration (in some cases), or the Department, when authorized.

**Note: Sections 07.42.00 through 07.52.00 are contained in Chapter 7A.**

#### **07.54.00 PERSONAL DATA**

**54.01 Purpose.** In the best interest of the employee and that of the Department, it is necessary to have immediate availability of the most accurate and current personal data on each employee in cases of emergency and for information to the office of the Director. Failure to have this current and accurate personal information in time of need makes the possibility of error and delay considerably greater.

**54.02 Policy.** Changes in the personal data of each employee will be reported to the major division chiefs or special section heads through proper channels within ten (10) days of the date of change.

#### **54.03 Procedure**

1. Compliance with this policy will be made through in-line supervisors using form [HR-94](#) completed in duplicate.

2. The major division chief or special section head will forward the original [HR-94](#) to the Human Resources Bureau. The supervisor who submits the HR-94 to the major division chief or special section head will retain a copy.

#### **07.55.00 EMPLOYEE RECORD CARD**

**55.01** The Employee Record card, [HR-21a](#), will be used in regional and/or district offices to provide pertinent personnel data on each employee.

**55.02** Recruit Employee Record cards, partially completed, will be forwarded to the region to which he or she is assigned. As additional information becomes available, it will be added by the regional commander or designee and each employee's record will be kept current.

**55.03** Upon transfer of an employee to another region, the regional commander will forward the Employee Record card along with other pertinent items.

**55.04** When an employee's services are terminated, the Employee Record card will be forwarded to the Human Resources Bureau for inclusion in the permanent records.

#### **07.56.00 ADDRESS AND TELEPHONE REQUIREMENTS AND PUBLIC DISCLOSURE RESTRICTIONS**

**56.01 Purpose.** It is necessary to have immediately available the current address and telephone number of each employee in cases of emergency and for information to the office of the Director.

**56.02 Policy.** The Director, Assistant Directors, chiefs, managers, all commissioned personnel, and others who are identified by need as determined by the appropriate chief, regional commander, or Criminal Law Enforcement service commander shall have a telephone installed at their principal place of residence or provide the Department with a mobile telephone number where they can be reached when not on duty.

All employees are required by departmental policy to report their established address and telephone number, office and residence, at the time of employment. Thereafter, any change of address and/or telephone number or change of status (promotion, transfer of station, etc.) shall be reported within twenty-four hours. Address cards must reflect social security numbers. Employees assigned an STS number will also report this number on the card. All employees are requested to report any change of mailing address and/or residential zip code to the DPS Group Insurance Office.

The Department is prohibited by law from revealing to the public the home address and home/mobile telephone number of any DPS commissioned peace officer. Nonenforcement employees may choose to have their home address and home/mobile phone number restricted and not be made available to the public. This policy does not restrict employees within the Department from securing the information when it is deemed necessary. Other personal information may also be restricted as provided by law.

#### **56.03 Procedure**

1. Compliance with this policy will be made through in-line supervisors using the DPS online phonebook application. The appropriate group insurance change form (Annex #6) can be obtained from an insurance representative or from the DPS Group Insurance Office.

2. The regional commander, Criminal Law Enforcement service commander, division chief, or special section head is required to have the new employee complete Employee Background and Skills Form [\(HR-84\)](#) to Human Resources as soon as possible.

3. Commissioned peace officers with this Department will submit the [\(HR-84\)](#) as in the past with the following stipulation:

In instances where the peace officer does not have a station address, or if it is the same as his residence, the employee's supervisor's office address and telephone number will be reflected in the space for office address and telephone.

4. Each member of the Department will fill out a Public Disclosure Restriction, [HR-30](#), at the time of initial employment and will submit a new form any time they wish to change the disclosure restrictions previously submitted.

**56.04 Telephone Cost.** Employees who obtain permission to reside at a location other than their assigned station will be responsible for any cost involved in telephone calls concerning official business between their assigned station and their residence.

## **07.62.00 PERSONNEL PERFORMANCE EVALUATION AND PROBATIONARY PERIOD**

**62.01 Purpose.** This policy is part of a human resource management strategy used by the Department to ensure that its strategic objectives are carried out at all levels of the organization.

**62.02 Objectives.** This policy advocates a management strategy that includes ongoing communication between supervisors and staff, and emphasizes employee development as a continuous, collaborative effort between a supervisor and the employee(s) he or she supervises. The policy objectives are:

1. A performance evaluation instrument that reflects the Department's vision for all employees.
2. Clearly defined Department competencies, job duties and performance expectations that ensure all employees know what is expected of them.
3. A commitment to providing all employees with honest, constructive, timely feedback by their supervisors that will assist employees in meeting or exceeding the expectations of their positions.
4. A means to plan and implement personnel decisions such as promotions, merit raises, employee development, reclassifications, and training.

### **62.03 Definitions**

**1. Functional Job Description.** Specifies the purpose, essential functions, minimum qualifications, knowledge, skills, abilities, work hours, physical requirements, and any required licenses or certifications for each supervised position. Division management, in coordination with Human Resources, develops, maintains, and updates functional job descriptions. The functional job description is used to develop job postings.

**2. Performance Evaluation Period.** Annual performance evaluation period runs on a calendar year from January through December. New hire initial performance evaluation period runs twelve months from the hire date. As a result, after completing the probationary period, the first annual evaluation will potentially cover less than 12 months.

**3. Performance Plan.** A tool designed to highlight job duties and/or critical elements of one's job, and the associated competencies and performance expectations or indicators that serve as the criteria on which performance will be assessed. The performance expectations or indicators included on a Performance Plan are to be used as a reference by the supervisor and are not an all-inclusive list of the various elements that could be associated with each competency.

Performance Plans are found in the DPSnet Forms Repository and/or by going to the following link: <http://hqimss056/intranetforms/default/default.aspx>. Performance Plans are generally indexed on the applicable SAO series numbers (State Auditor's Office series' which comprise job classification descriptions, e.g. Accountant I-VII, Programmer I-VI, Inventory and Store Specialist I-V).

4. **Competency.** A combination of knowledge, skills, abilities and behaviors that correlate with job performance; competencies generally can be measured and strategically leveraged to improve overall Departmental performance. Competencies associated with an employee's position are considered primary job duties or critical elements.

5. **Performance Ratings and Appraisal Scale.** Performance ratings measure the extent to which an employee meets the performance expectations associated with a competency or job duty. The following indicates the ratings that will be used at the end of the evaluation period to rate the employee in each of the job duties listed in the Performance Plan.

### **Rating Categories and Descriptors**

#### **Exemplary Performance**

- Consistently and substantially exceeds in required job duties with virtually no preventable errors.
- Performs at maximum levels of effectiveness by producing exceptional quality while meeting challenging demands.
- Exhibits role model level behaviors consistent with DPS values.
- Proactively and creatively solves problems resulting in positive outcomes.
- Requires little or no direction or supervision.

#### **Skilled/Effective Performance**

- Consistently meets all job requirements and often goes beyond job requirements in terms of quality, quantity, innovation and initiative.
- Achieves objectives and often exceeds them and/or accomplishes additional tasks as opportunities arise.
- Applies creativity and problem-solving skills in certain situations and willingly implements and adapts to new processes or operating environment.
- Performs in a manner that often exceeds established standards.
- Exhibits high standard behaviors consistent with DPS values.
- Requires only occasional direction or supervision.

#### **Competent Performance**

- Consistently proficient in all job requirements and occasionally goes beyond job requirements in terms of quality, quantity, innovation and initiative.
- Needs occasional to moderate supervision, but consistently is receptive and responsive to instructions of supervisor.
- Occasionally exceeds job standard.

#### **Marginal Performance**

- Not consistent in meeting established standards and goals.
- Occasionally takes action or inaction that negatively impacts co-workers.
- Displays some deficiencies in skills/knowledge.
- Usually shows willingness or capability to perform job properly, but occasionally deviates from that standard.
- Routinely requires direction or supervision; acceptance and response to instruction from the supervisor is partial and/or incomplete.



- Occasionally displays behaviors that are inconsistent with DPS values.

### **Ineffective Performance**

- Regularly fails to meet established standards and goals.
- Fails to use resources appropriately.
- Lacks required skills/knowledge.
- Lacks willingness or capability to perform job properly.
- Fails to recognize negative impact on others and/or does not make necessary changes when directed to do so by supervisor.
- Displays behaviors incompatible with DPS values.
- Takes actions or makes statements that disrupt workplace.

## **62.04 Overview**

The Performance Evaluation process is comprised of three phases:

- Phase 1: Performance **Planning**
- Phase 2: Performance **Observation and Review**
- Phase 3: Performance **Evaluation**

a. **Performance Planning.** Department supervisors will develop performance objectives in collaboration with the employees they supervise.

b. **Performance Observation and Review.** Supervisors will regularly observe employee performance and provide informal feedback or reviews on their performance.

c. **Performance Evaluation.** Supervisors will conduct and record a formal performance evaluation for each employee; Assistant/Area Directors will ensure the Performance Evaluation is completed on each employee in their respective organizations. Likewise, the Director and Deputy Directors will ensure Performance Evaluations are completed on all employees that they directly supervise. The Chair of the Public Safety Commission (PSC) is responsible for completion of a Performance Evaluation on the Director and all other employees that are directly supervised by the PSC.

## **62.05 Performance Planning (Phase 1)**

As part of this process, the supervisor will utilize the applicable Performance Plan developed for a particular job classification. Performance Plans are found in the DPSnet Forms Repository and/or by going to the following link: <http://hgimss056/intranetforms/default/default.aspx>. When the supervisor meets with the employee to discuss his/her specific Performance Plan, they will review expectations, including any specific objectives/goals associated with the applicable job duties/critical elements.

### **1. New Employees**

The supervisor should meet with a new employee or an employee who is new to the job within the first **14 days** of employment or promotion into a position or special assignment and discuss:

a. The purpose of the position, its association to the Department's mission and strategic goals, and how the position interacts with other positions/divisions.

b. The job description, with emphasis on the position's significant duties, responsibilities and level of independence or supervision.

c. A description of the performance expectations for each competency and job duty to attain an “Acceptable Performance” level. Performance expectations for job duties can generally be defined using the following concepts:

- Quality.
- Quantity.
- Timeliness.
- Cost.
- Manner of performance.

d. A development plan that will help the employee develop/enhance the skills, knowledge, abilities and attitudes required for the employee’s present position, as well as future opportunities. The plan also serves as a means for goal setting and career mapping.

e. During the discussion, the employee should ask questions and seek additional information concerning any unclear duties, responsibilities, etc. The supervisor shall ensure the employee fully understands the Department performance expectations.

f. The employee and supervisor shall both sign the Performance Plan; the employee will be provided a copy and the supervisor will retain the original in his/her local file.

## **2. Tenured Employees**

a. Supervisors should meet with tenured employees beginning a new performance evaluation period within the first **14 days** of the new evaluation period. The discussion topics included above are to be included for tenured employees, as well, and as appropriate.

## **3. Completing the Performance Plan document**

a. **Employee Information (Part 1).** Supervisor completes applicable information for items a. through h.

b. **Job Duties (Part 2).** Generally, no information is required for completion of this section; the Performance Plans are pre-established. However, in some instances, the Plan may contain a “Specialized Function.” When this is the case, the supervisor will incorporate the specifics which are also found in the Forms Repository. Note: If a new position is established for which no Performance Plan yet exists, contact Human Resources.

c. **Appraisal Scale (Part 3).** No information required for completion.

d. **Acknowledgement (Part 4).** Once the supervisor and employee come to an agreement about job duties and performance expectations, the supervisor and employee complete this section. The next level supervisor (reviewer) then reviews the job duties and performance expectations for the employee and signs this section upon approval. Once signed, the employee’s supervisor provides a copy of the completed Performance Plan to the employee and keeps the original in the employee’s local file for AC (After Closed) + 5 years. This acknowledgement only needs to occur the first time the plan is provided to an employee.

## **62.06 Performance Observation and Review (Phase 2)**

### **1. Communication**

Communication between employees and supervisors is key to each employee's success. Employees need timely, helpful feedback from supervisors, to reinforce good performance and to know when improvement is needed. Throughout the evaluation period, both outstanding performance and poor performance should be discussed or reviewed with the employee and documented. The supervisor should adopt appropriate methods for observing and assessing employee performance such as maintaining performance-related notes, keeping copies of work products, documented coaching/counseling sessions and feedback from others (managers, employees or customers, etc.) and shares their observations and assessments with the employee.

## **2. Documenting Observation and Review**

Performance observations/reviews may be documented using a memorandum for record, an interim performance evaluation with ratings/comments, a form approved by a division Assistant Director, or any combination of these instruments deemed appropriate by the Assistant Director to provide the employee a quality feedback session. The review is to be signed by both the supervisor and employee. The supervisor will provide a copy to the employee and keep the original in the employee's local file for 5 years or until employee separates and the file is sent to Human Resources.

## **3. Frequency**

a. Supervisors will conduct a Performance Observation Review with new employees frequently enough during the first 12 months to ensure an effective assimilation into the position and/or as directed by the division Assistant Director.

b. Supervisors should conduct a Performance Observation Review with tenured employees as often as appropriate, but at least semi-annually and/or as directed by the division Assistant Director.

## **4. Suggestions for Delivering Reviews**

Suggestions for planning and conducting an effective performance review session are:

a. Select a time when work pressure and duties are minimal.

b. Select a place as private as possible; other employees should not be able to overhear the discussion.

c. Explain the purpose of the review.

d. Be positive. Emphasize strengths which the employee can build on or use more effectively. Discuss significant accomplishments.

e. Be candid, but constructive, about any areas needing improvement. Make suggestions concerning methods that could be used to make improvements. If the employee has corrected deficiencies, discuss the improvements that the employee has made.

f. Be an active listener. Concentrate on what the employee is saying. Encourage the employee to express opinions to help establish effective communications. Ask questions to allow the employee to provide feedback.

g. Ask the employee's opinion about what improvements could be made to work processes, the work environment and work operations in general.

h. Discuss employee development plans for enhancing job knowledge, skills, abilities and attitudes.

- i. Summarize and review the important parts of the discussion.
- j. Restate any action steps that may have been recommended and provide a time frame for completion.

### **62.07 Performance Evaluation (Phase 3)**

As part of this process, the supervisor will utilize the Performance Evaluation tool developed for the job classification and which corresponds to the applicable Performance Plan; The Performance Evaluation forms can be found in the Forms Repository and/or by going to the following link: <http://hqimss056/intranetforms/default/default.aspx>.

#### **1. Process**

a. At the end of the evaluation period, the supervisor develops the performance evaluation for an employee based on work performance products and observations including feedback from the team lead, if applicable.

1) The supervisor submits the completed performance evaluation showing the proposed ratings and comments to the next level supervisor (reviewer) for review and any necessary changes if applicable.

2) Once approved by the reviewer, the supervisor provides the employee with an unsigned copy of the performance evaluation at least one working day before conducting the performance evaluation review with the employee, to allow sufficient time for the employee to review the document.

b. The supervisor meets with the employee in a review conference to discuss the performance evaluation draft (see Suggestions for Delivering Reviews above). In addition to the supervisor, the team lead may attend a review conference relating to a team member. The review conference should occur in a private setting where the supervisor and employee can communicate regarding all aspects of the evaluation. Both the employee and the supervisor should discuss how they believe the employee has performed during the review period. Specifically, the supervisor will address how the employee's performance led to the ratings given.

c. The employee should provide information and documentation to explain any concerns with the evaluation or any performance/accomplishments the employee feels were not taken into account in the evaluation. The supervisor should openly consider the information provided by the employee and decide if the performance evaluation will be amended, in any way, as a result. An employee who fails to achieve the "Competent" level of performance on any of the competencies or job duties for the performance evaluation may be subject to corrective/improvement action (see Substandard Performance section).

#### **2. Completing the Performance Evaluation document**

a. **Employee Information (Part 1).** Complete applicable information for Items a. through g.

**Type of Evaluation (Item h.).** Annual, Probationary, Close-out, Completion of PIP/Special

1) **Annual:** An annual performance evaluation is an evaluation that covers an employee's work performance for a 12-month time period. It is done when an employee remains in the same job position for the entire evaluation time period.

2) **Probationary:** A probationary performance evaluation shall be completed and presented to new employees no later than 60 days after hire, but not before 30 days have been completed. Additional assessment and feedback would occur as indicated in Section 07.62.06.

3) **Close-out:** A close-out performance evaluation is done for one of the following circumstances:

i. The employee changes job positions (to include a job reclassification circumstance or special assignment).

ii. The employee's supervisor transfers or promotes.

iii. The employee leaves the Department.

A Close-out performance evaluation may consist of a cover memorandum on the last evaluation conducted if approved by the Assistant Director and if there have been no significant changes if the most recent evaluation took place within the past 12 months. However, the Assistant Director must ensure that an employee receive a full performance evaluation when the performance period has ended.

4) **Special:** A special performance evaluation is done for one of the following circumstances:

i. For a Performance Improvement Plan evaluation [see 07.62.03.5.e.2)].

ii. For a disciplinary probation evaluation.

iii. For any special circumstance not covered above in which a performance evaluation is deemed appropriate by the supervisory chain of command.

iv. The Director may order the evaluation of any Department employee for any reason.

**Date filed by HR (Item j.).** Completed by Human Resources after receipt of the completed evaluation.

#### **b. Job Duties (Part 2).**

1) Refer to Definitions section for competency and Appraisal Scale definitions.

2) All job duties listed in the employee's Performance Plan for the evaluation period will be evaluated.

3) Supervisor comments are required for all evaluated job duties. The rater should include specific examples of performance that support the rating.

4) Only one performance rating is to be used to evaluate a competency or job duty.

5) The employee's performance ratings should reflect the employee's actual job performance during the evaluation period, and how this performance related to the performance expectations set at the beginning of the evaluation period in the Performance Plan. Performance ratings should be based on the employee's level of performance over the entire evaluation period.

6) Development and training goals/accomplishments related to knowledge, skills, abilities and/or conduct/behaviors during the evaluation period should be documented in the appropriate job duty.

7) If necessary, a continuation page may be used to complete necessary narrative comments.

#### **c. Signatures and Comments (Part 3).**

1) **Employee.** The employee is expected to sign and date the performance evaluation indicating that the employee has received the evaluation and discussed its contents with the supervisor. If the employee refuses to sign the evaluation, the supervisor should tell the employee that the employee's signature does not indicate the employee's endorsement or agreement with statements contained therein. It simply means that the contents have been received and discussed. If the employee still refuses to sign the evaluation, the supervisor will write a short statement on the employee's signature line noting that the employee read the evaluation and did not wish to sign it.

2) **Supervisor.** The supervisor signs the evaluation. No comments will be written in the supervisor's comments section, unless they are in response to an employee's rebuttal. After signing, the supervisor gives the evaluation to the next level supervisor (reviewer) for signature. If changes were made to the evaluation after the reviewer read the original performance evaluation draft (see 07.62.03.6.b.), the supervisor must point out the changes to the reviewer.

3) **Reviewer.** The reviewer has the following responsibilities:

- i. Approves or disapproves the performance evaluation.
- ii. Works to establish and maintain consistency in the application of ratings for competencies and job duties by the supervisors under the reviewer's direction.
- iii. Checks the supervisor's ratings and comments to ensure they are accurate, specific, substantial and appropriate. If the reviewer (or supervisor performing an in-line review) determines that the ratings and/or comments are not accurate, specific enough, substantial or appropriate, the reviewer (or supervisor performing an in-line review) can make comments in the appropriate section or attach an addendum to the performance evaluation which will need to be reviewed, discussed and presented to the supervisor and the employee.
- iv. Ensures that the performance evaluation is complete and submitted on schedule.
- v. Ensures fairness and consistency is maintained in the employee rebuttal process (see 07.62.06.10).

4) **Employee Rebuttal.** If an employee disagrees with the performance evaluation's contents, the employee may register a written rebuttal to the supervisor within 10 calendar days of the review conference. The employee's rebuttal comments may be inserted in the employee's comments section of the performance evaluation or attached to it. The supervisor will forward the rebuttal within three business days of receipt to his/her supervisor (reviewer) with comments detailing the issue(s) associated with the rebuttal and the supervisor's recommendation(s). These comments will be inserted in the supervisor's comments block of the performance evaluation or attached to it. The reviewer will consider all documentation and the associated facts to make a decision. The reviewer's decision is considered final and will be provided in writing to both the employee and supervisor involved within ten (10) calendar days of receipt. The reviewer's decision will be inserted in the reviewer's comments block of the performance evaluation or attached to it. The completed performance evaluation will be forwarded to Human Resources within five working days of completing the review process for inclusion in the employee's personnel file.

5) **Disposition.** All performance evaluation content shall be treated as privileged information and should be handled accordingly. The supervisor will provide a completed copy to the employee and keep a copy in the employee's local file. The original document is to be forwarded to Human Resources for inclusion in the employee's personnel file. The evaluation is considered late if it is not initially presented to the employee within three weeks of the end of the evaluation period.

**62.08 Probationary Employees - Non-disciplinary evaluation guidelines.** Performance evaluation guidelines for probationary employees are listed below.

1. **Reinstated Commissioned Officers and New Non-commissioned Employees.** Follow 07.62.05 (Planning); 07.62.06 (Observation and Review); and 07.62.07 (Documentation) Procedures, as pertains to new employees.

2. **Newly Commissioned Officers.** Follow FTO program procedures in the THP manual.

## **62.09 Substandard Performance**

1. An employee's first notification of substandard performance should never occur on the performance evaluation.

2. It is the supervisor's responsibility to counsel an employee whenever the employee's performance slips below the "Acceptable Performance" level of performance in any rated area during the performance evaluation period. Supervisors are expected to make employees aware of substandard performance in a timely manner and may utilize one or both of the following:

**a. Formal Counseling**

1) If an employee is performing at the "Marginal" level for any rated area, the supervisor will conduct a formal counseling session with the employee to discuss the issues associated with the substandard performance and determine what the employee should do to improve work performance.

2) *Note: This does not apply to a new hire, transfer, special assignment or promotion employee whose work performance is advancing at a normal pace for that circumstance.*

3) The supervisor will document the counseling using an HR-31 Counseling Record. The counseling document is to be signed by both the supervisor and employee. The supervisor will provide a copy to the employee and keep the original in the employee's local file.

4) If the employee's performance does not improve to the "Competent" level within the established time frame for improvement, the supervisor will develop and administer a Performance Improvement Plan (PIP) for the employee (see next paragraph). This potential PIP consequence should be cited on the counseling document as fair warning to the employee.

**b. Performance Improvement Plan (PIP)**

1) If an employee is performing at the "Ineffective" level for any rated area, the supervisor will develop and administer a Performance Improvement Plan (PIP) for the employee. The supervisor may also utilize a PIP when an employee is performing at the "Marginal" level, if/as appropriate. The PIP is documented on an HR form and accomplishes the following:

- i. Identifies the weakness or deficiency the employee has with a competency or job duty.
- ii. Describes the job performance expectations for each competency or job duty that is an identified weakness or deficiency.
- iii. Formulates a plan that identifies the assistance that the supervisor and Department will provide to enable the employee to achieve the "Competent" level of performance (e.g., additional training, closer supervision, specific suggestions to achieve better results, etc.).
- iv. Establishes a time frame within which improvements are expected and when a special performance evaluation will be conducted.
- v. Details the consequences of not achieving the performance expectations within the specified time frames.

2) The supervisor and the employee read, discuss, sign and date the PIP. A complete understanding of the plan and performance expectations is very important. The supervisor provides a copy to the employee and keeps a copy in the employee's local file for 3 years. The original PIP is to be forwarded to Human Resources for inclusion in the employee's personnel file immediately after counseling the employee on the PIP's details.

3) During the PIP evaluation period, the supervisor must observe, sample the employee's work, and conduct feedback sessions about work performance more frequently to keep progress on track. Quality feedback reinforces progress or redirects practices that have contributed to the employee's poor performance. Frequent and

specific feedback gives the employee every opportunity to succeed. The supervisor must document all feedback sessions to reflect that the supervisor gave the employee coaching and the opportunity to succeed.

4) If the employee fails to show immediate, consistent improvement during the PIP period, the employee's supervisory chain may initiate termination procedures; the creation of a specified timeframe for the PIP does not entitle the employee to employment for the entire duration of the PIP timeframe if performance is not improving.

5) At the end of the PIP's specified timeframe, the supervisor will complete a special performance evaluation on the employee. The special performance evaluation will address all competencies and job duties, including supporting comments.

i. If the employee's performance fails to improve to the "Competent" level, the employee's supervisory chain will determine whether or not a recommendation to discharge is appropriate.

ii. If the performance rated at the "Competent" level for the special performance evaluation deteriorates to the "Marginal Performance" or "Ineffective" level within the next six months, the employee's supervisory chain may initiate termination procedures.

iii. The need to do multiple PIPs on an employee outside the six-month window mentioned above would also be cause for the supervisory chain to initiate termination procedures.

#### **62.10 Salary Actions (Promotion & Merit Raise)**

1. Strong performance evaluations are needed to support salary actions, but are in no way a guarantee of any salary action. Salary actions are not provided solely because of employee service time. In addition to employee performance, several other factors, such as budgetary conditions, business needs, economic conditions, and the relative performance of employees, affect salary actions.

2. A current performance evaluation with ratings of at least competent in every performance area must be on file for an employee being considered for a promotion or merit raise. A current performance evaluation is one that has been completed within the last 12-month period. If a current performance evaluation is not on file, the supervisor of the employee being considered for the promotion or merit raise must complete and submit one to Human Resources before any action will be taken on the salary action.

#### **07.63.00 MANAGEMENT PERFORMANCE ASSESSMENT**

**63.01 Inspection.** Each division will implement a process to proactively assess management performance through the use of a management inspection-process. The use of personnel outside the normal chain of command is encouraged in order to maintain objectivity, accountability, and accuracy.

**63.02 Review.** The director, deputy director, or designee of the director may initiate a management review regarding work performance of a department supervisor.

1. A management review authorized by this section is not an investigation and will not seek sworn statements from employees.

2. During a management review, if suspected employee misconduct is discovered, the review will be delayed until that conduct has been properly addressed by the appropriate entity as described in the General Manual, Chapter 7A.



## **07.64.00 CENTRAL PERSONNEL FILES**

**64.01 Definition.** The official files which contain the personnel records of the employees and former employees of the Department of Public Safety are designated "Central Personnel Files" and are maintained by Human Resources at Austin Headquarters. Files maintained by other organizational units at other locations are not considered official; however, the custodians of those files should be aware that their files are subject to scrutiny and should conform to the regulations governing the Central Personnel Files.

When an employee separates from employment as a result of retirement, resignation or termination, all division, section or area files pertaining to that separated employee are to be forwarded to the Human Resources office at Austin Headquarters. Those files will be incorporated into the official, permanent employee file.

### **64.02 Access to Human Resources Central Personnel File Area**

a. Full access to the Central Personnel File Area will be granted to:

- 1) Current Human Resources and Human Resources Management Staff
- 2) Assistant Director for Administration
- 3) Assistant Director responsible for Campus Security
- 4) Public Safety Commission
- 5) Deputy Directors for DPS
- 6) Director of DPS
- 7) Appropriate Facilities Management Staff

b. Limited access will be granted to those individuals authorized to view a file as noted in section 64.04, Chapter 7 of the General Manual. In all cases, those individuals will be escorted into and out of the area as necessary.

**64.03 Policy.** The Central Personnel Files will reflect a complete employment history of each employee and former employee. Items which are included in the Central Personnel Files must conform to those indicated in Annex #3 from the effective date of this directive forward. Items currently included in the files which do not conform to Annex #3 will not be purged unless the Director so orders at such time purging is determined practicable. All employees shall provide the appropriate items for inclusion in the Central Personnel Files as promulgated by this policy.

**64.04** The Human Resources Director, through the chain of command, is designated as custodian of the Central Personnel Files and is charged with the maintenance and security of the Central Personnel Files and will be contacted regarding the files.

#### **1. Central Personnel File Content**

a. Items classified on the list as Category I in Annex #3 will enter the Central Personnel Files from any source without approval.

b. Items classified on the list as Category II Annex #3 will enter the Central Personnel files after proper review and bearing the signature or initials of the Department Director, Deputy Director, Assistant Director, Deputy Assistant Director or Section Director.

**2. Modification of Central Personnel Files.** Once an item has been placed in an employee's personnel file it may not be removed or altered.

The preceding statement applies to those matters which are properly contained in personnel files. It does not apply to any matters, placed in any personnel file through oversight, administrative or clerical error, and should not be construed as applying to same. The foregoing provision applies only to those items that are properly filed in an individual's personnel file.

### **3. Access to Central Personnel Files**

a. Assistant Directors and above may check out Central Personnel files of employees under their respective organization or employees who are seeking a position in their organization. The Central Personnel file will be delivered and picked up by a Human Resources employee. A Central Personnel file will not be mailed or delivered through office distribution to a requesting director. The requesting director is required to personally sign for and safeguard the file during the file review period. The file receipt document signed by the requesting director will become a part of the Central Personnel file to indicate the file was checked out and reviewed by the director. A Central Personnel file may be checked out for no more than five (5) business days. This time period may be extended by the Chief HR Officer or HR director for a valid business need based upon a formal request (e-mail or memo) from the requesting director.

Complete files can also be released to Office of Inspector General, General Counsel, the Department Director's Office or Public Safety Commissioners. The blue placeholder card should document that the file has been released to one of these areas.

b. Individuals authorized to review a file must fall into one of the following categories:

1) Employee reviewing his/her own file.

2) An individual authorized to conduct a background investigation. A signed consent from the investigated employee is required.

3) A hiring manager reviewing files for applications for a job posting. The job posting number must be provided. Also, only relevant information such as performance evaluations, commendations, and disciplinary actions will be provided.

4) Other requests such as a C-1 investigation. These must be approved by a Service Team Manager.

5) Supervisors may review the Central Personnel files of employees under their supervision.

In all cases, the reviewer is required to provide appropriate identification prior to being granted access to the file(s) and must be viewed in the presence of Human Resources personnel. When information is made available to a designated individual, the appropriate document must be in writing and will become a part of the Central Personnel file.

c. Members of the commissioned officer promotion boards will be furnished copies of excerpts of the Central Personnel files of candidates appearing before promotion boards.

d. Members of Human Resource Management are authorized access to Central Personnel Files only when it is required in carrying out their duties.

e. Central Personnel File information of employees and former employees, as stipulated in Government Code, Chapter 552, will be furnished to officials from other law enforcement organizations when conducting investigations. Other Central Personnel File information will be furnished when properly requested through subpoena, court order or a written request under the Open Records Act or when the office of the Director has approved the release of the requested information.

f. Employment verification requests may be made by furnishing the names, sex, ethnicity, salaries, titles, and dates of employment of all employees.

g. Most information contained in state employees' personnel records is available to the public if properly requested under the provisions of state law. Information in the Central Personnel Files which would constitute a clearly unwarranted invasion of personal privacy will not be made available to the public. The law further provides, however, that all information in the Central Personnel File of an individual employee is to be made available for inspection to that individual employee or his or her designated representative. This also applies to ex-employees.

#### **4. Inactive Personnel Files**

a. Personnel files will be retained in the Department of Public Safety personnel record system for five (5) years after becoming inactive, then destroyed.

b. The Department Director's personnel file and any other personnel file designated by the Director will be retained in the Department of Public Safety personnel record system for five (5) years after becoming inactive. At that time these files would be evaluated and the current Department Director will determine if the files should be destroyed or maintained.

c. Employees who separate from the Department may designate that their home addresses and home telephone numbers not to be released except under extenuating circumstances as contained in the General Manual.

**64.05** Items in the individual's Central Personnel File may be reproduced upon the request of the employee or designated representative at the cost specified at the time of the request.

**64.06** In instances not specifically outlined in this section regarding the Central Personnel Files, the office of the Deputy Director will resolve the question upon contact by the Assistant Director of Administration or the Chief Human Resource Officer.

#### **64.07 Personal Identifying Information (PII) HR File Security**

Human Resources is expected to safeguard employee information at all times. The Human Resource Director is the Custodian of and is responsible for all documentation and information included in the master personnel file. The following policies have been implemented to ensure the protection of this information.

##### **1. General Access**

a. Master personnel files are stored in filing cabinets, behind a locked door located in a work area which is accessible only to current HRM employees, except as noted in Section 64.03, Chapter 7.

b. HRM personnel will not allow personnel files to be removed from this area, except as noted in Section 64.03, Chapter 7.

c. Access to files has been defined in Section 64.03, Chapter 7.

2. HRM follows the Records Retention Schedule implemented by the Department and all revisions that follow. Documents are marked and tracked according to the type of document and retention period. Once the retention period has been reached, the documents are placed in a locked shred bin and shredded.

### **3. HRIS System Access & Security**

The HRIS Manager is responsible for granting access to the CPA USPS Payroll/HR System and the DPS MSA HR System. The procedures listed below are followed to ensure appropriate access to systems.

a. Supervisory staff are required to complete an access form for every person that requests access to USPS or MSA HR.

b. A monthly review of transferred, promoted, terminated, or newly hired employees will be done to ensure appropriate access to records as required by job description.

c. A log of all of these transactions and the date of the action is maintained by the HRIS Manager and confirmed via a transaction report generated from USPS and MSA.

d. On a quarterly basis, the HRIS Manager will send a quality control memorandum to all Assistant Directors asking them to review and confirm the list for access and level of access. The log will be maintained by the HRIS Manager.

# COMPLAINT INVESTIGATION AND REVIEW PROCEDURES

## 01.07.00.00A

### 07.42.00 COMPLAINTS AGAINST DPS PERSONNEL

Effective public safety depends upon the personal integrity and discipline of law enforcement professionals. A vigorous complaint investigation process protects both the public and members of the Department. Therefore, the Department will receive complaints of employee misconduct in a manner that is open and courteous. The Department will determine the validity of complaints alleging employee misconduct objectively, impartially and without preconceptions. The Department will take action on valid complaints or exonerate the falsely accused expeditiously, fairly and transparently in accordance with the written policies contained in this chapter.

The Procedures for reporting, investigating and processing complaints of discrimination, unprofessional conduct, or sexual harassment are governed by General Manual section 18.25.00.

#### 42.01 Employee Responsibility to Receive Complaints

1. Any Department employee who is contacted by an individual seeking to complain about that employee's conduct will refer the complaining individual to the employee's immediate supervisor and will provide the complaining individual with the most expedient means available to contact the supervisor.

2. Any employee of the Department who is contacted by an individual seeking to complain about the conduct of another DPS employee's conduct must accept any written material offered and, in addition, attempt to obtain the name address, telephone number, nature of the complaint, name(s) of employee(s) against whom the complaint is being made, date and location of the alleged incident and the names of any witnesses to the alleged incident. The employee receiving the complaint will refer such complaint data to the employee's supervisor at the earliest practical time. The supervisor of the employee receiving the complaint will notify the supervisor of the employee against whom a complaint has been made at the earliest practical time. The employee receiving the complaint will inform the complainant that a Department representative will contact the individual regarding the complaint.

#### 42.02 Supervisor Responsibilities Regarding Complaints

1. A supervisor who receives information regarding a complaint against an employee in his chain of command will immediately contact the complainant to obtain a written complaint with the signature of the complainant affixed. The supervisor will provide the complainant a Personnel Complaint Affidavit ([C-1](#)) for this purpose. The supervisor will also provide the complainant a copy of the Department's policies and procedures relating to complaint investigation and resolution. ([OIG-10/OIG-11](#)). The Department will ensure that the Personnel Complaint Affidavits and the Department policies and procedures relating to complaint investigation and resolution may also be obtained from the internet through the Department's Web Page ([www.dps.texas.gov](http://www.dps.texas.gov)). In instances in which a person displays reluctance in dealing with the supervisor of an employee against whom a complaint is being lodged a supervisor may fulfill his or her responsibilities under this policy by referring the individual to the Office of Inspector General.

2. Supervisors and the Office of Inspector General must explain to complainants the importance of submitting their complaint in writing with their signature affixed. Government Code, Section 614.022 provides that all complaints to be considered on law enforcement officers must be written and signed by the person making the complaint. If the complainant refuses to put the complaint in writing, it should be explained that this will not necessarily prevent an

investigation from being initiated on the facts provided, but such refusal by the complainant does cause the matter to be more difficult to process to an effective conclusion.

3. A supervisor must provide the Office of Inspector General with notice of all complaints against department personnel. The supervisor will provide any written complaint to the Office of Inspector General upon receipt. Written complaints include formally completed Personnel Complaint Affidavits as well as letters and other writings alleging misconduct of a Department employee. While a supervisor as a part of the supervisor's management responsibilities may inquire of a subordinate regarding the substance of a complaint against that employee, the supervisor will not take sworn statements or otherwise initiate a formal investigation unless assigned to do so by the Office of Inspector General.

#### **42.03 Office of Inspector General Responsibility Regarding Complaints**

1. The Office of Inspector General is statutorily tasked with responsibility for administrative investigations of employee misconduct. In addition to lodging complaints with employees of the Department as described in this policy, individuals may submit complaints regarding employee misconduct directly to the Office of Inspector General. The OIG will establish standard operating procedures for the direct receipt and processing of citizen complaints.

2. The Office of Inspector General will conduct administrative investigations of complaints or assign appropriate investigators to conduct administrative investigations as necessary.

3. The Office of Inspector General will have the primary responsibility of communicating with complainants regarding the progress of the administrative investigation regarding their complaint. At a minimum the Office of Inspector General will make the following written communications to a complainant:

a. Upon receipt of a complaint, a notification will be prepared and sent to the complainant informing him or her that the complaint is to be investigated and that they will be contacted personally, if at all possible, by the investigator to discuss in detail the allegation(s) made against the Department employee.

b. If the process is not complete within 90 days, a status notification will be sent to both the complainant and the employee by the Office of Inspector General.

4. Pursuant to statute, the Inspector General reports directly to the Public Safety Commission and is also tasked with the duty to provide the Director with information regarding investigations as appropriate. The Director will be kept apprised regarding complaint investigations where:

a. Dismissal of the accused appears possible.

b. Criminal Prosecution of the accused appears justified.

c. The reputation of the Department is in jeopardy as a result of the action of the accused.

d. Widespread publicity may result.

5. The Inspector General will assign investigators to conduct investigations of discrimination or sexual harassment upon request by the Equal Employment Opportunity Officer of the Department pursuant to General Manual 18.25.00.

#### **42.04 Informal Resolution of Citizen Concerns**

Because Department members serve the public, they will interact with citizens in a variety of contexts in which individuals express concern or disappointment regarding the manner in which Department members have acted. It is understood that not all or even most of these situations require the full length and formality of the administrative investigative process. It is entirely appropriate for Department supervisors to discuss citizen concerns directly with the individual and to review relevant information with that individual, such as a video tape of a traffic stop, in an effort to address an individual's concerns. When such informal communication resolves an individual's concern, that fact should be documented in correspondence to the individual. In no situation should a Department member hinder or dissuade a person wishing to file a formal complaint.

#### **42.05 Immediate Suspension Pending Investigation**

1. The primary responsibility of the department is protection of the safety of the citizens whom we serve. Therefore, allegations of serious employee misconduct may require that the employee be suspended and removed from public interaction promptly. In order to suspend an employee pending the completion of the investigative and disciplinary process at least one of the following conditions must be met:

- a. The employee is unfit for duty.
- b. The employee may be a hazard to any person or himself if permitted to remain on duty.
- c. The employee has been formally charged with a criminal offense of felony grade or a Class A or B misdemeanor.

2. Immediate suspensions will be with pay unless the employee is afforded notice of allegations and an opportunity to meet with the Director to rebut those allegations. Provided that notice and an opportunity to rebut are afforded the employee, suspensions may be without pay.

3. A supervisor may recommend to the appropriate Assistant Director or Regional Commander that an employee be immediately suspended. Such suspension is subject to final approval by the Director.

#### **42.06 Processing of Complaints**

The Office of Inspector General may informally interview those involved and request that the complainant submit a written and signed statement ([C-1](#) or other memorandum) specifying the details of the events leading the complainant to believe a violation of this policy has occurred. The written statement must fully describe the nature of the complaint and provide sufficient details to enable the reviewer to have a thorough understanding of what is alleged to have occurred. If the written statement is insufficient, additional information may be requested from the complainant or others.

1. If the OIG determines that the alleged behavior does not fall within the guidelines necessary to warrant a formal investigation, the complaint may be forwarded to the chain-of-command for managerial action or Division Referral and appropriate resolution.

2. Managerial actions and/or Division Referrals may include action by the Assistant Director up to and including a written counseling (HR-31), a Performance Improvement Plan or a Formal Written Reprimand. The complainant shall be notified of the outcome of the investigation or resolution by the respective Assistant Director.

#### **42.07 Preparation of Personnel Complaint Form**

The Personnel Complaint Form ([C-1](#)) will be used to record and formalize complaints on Department Personnel. The Office of Inspector General will prepare the personnel complaint form based upon information in the initial complaint

intake or other writing signed by a complainant. Any initial writing signed by a complainant must be attached as an exhibit to the Personnel Complaint Form. The Personnel Complaint Form will identify the factual basis of the alleged misconduct as well as the departmental policy alleged to have been violated. The Personnel Complaint Form will provide sufficient detail of alleged misconduct to allow an employee to intelligently respond to the allegations against him or her. The Personnel Complaint Form should identify the individual initiating a complaint as the complainant when such identity is known. A Department supervisor or a member of the Office of Inspector General should be identified as a complainant only when the identity of the original complainant or alleged victim is unknown but sufficient information known to the Department requires further investigation.

#### **42.08 Investigation of Complaints**

1. The Inspector General will assign an investigator from the Office of Inspector General or some other qualified investigator to investigate personnel complaints. Employees assigned to conduct administrative investigations will report to the Office of Inspector General for purposes of the administrative investigation. An administrative investigator will:

- a. Serve written notice of allegations on the affected employee.
- b. Advise the employee of his right to present a written response to the allegations.
- c. Contact the complainant to fully discuss the complaint.
- d. Contact affected employee to fully discuss the complaint.
- e. Contact relevant witnesses to fully discuss complaint.
- f. Conduct recorded interviews as necessary within the discretion of the investigator as directed by the Inspector General. Interviews of employees should be transcribed, reviewed, corrected as necessary, and sworn to by the employee. Non-employee witnesses should be given an opportunity to review, correct and swear to transcribed interviews. An investigator may allow the employee to submit a sworn written statement rather than conducting an interview to be recorded transcribed and sworn.
- g. Obtain all legally obtainable evidence reasonably relevant to the allegations being investigated.
- h. Submit a detailed investigative report of the evidence obtained and the relevant facts established by a preponderance of that evidence. As to each allegation set forth in the Personnel Complaint Form the investigative report should state an appropriate classification as set forth in this policy.

2. Investigators will be responsible for thoroughly investigating matters to which they are assigned. In fulfilling this responsibility investigators must maintain common sense and flexibility. The procedures outlined in this policy create no contractual or employment rights for the employee being investigated and these procedures may be modified when such is within the public interest and such can be done without harming the legitimate due process rights of the employee. Modification of these investigative procedures should be approved by the Inspector General based upon good cause.

3. Notwithstanding paragraph 2 above, the Office of Inspector General and its designated investigators must initiate any formal investigation of employee misconduct by written notification to the employee adequately giving notice of the allegations of misconduct.

#### **42.09 Prohibition Against Retaliation**



Department employees shall not discourage individuals from participating in the administrative investigation process as either a complainant or witness. Department employees shall not retaliate against individuals who participate in the administrative complaint process as either a complainant or witness.

#### **42.10 Voluntary Polygraph Examinations**

The use of a polygraph is an effective means to ascertaining the truth. It is acceptable to inform an employee of the department who is the subject of an administrative or criminal investigation that he or she may request to take a polygraph examination. The department's use of polygraph on its employees is governed by the State of Texas General Appropriations Act which provides that "none of the funds appropriated to the Department of Public Safety may be expended for polygraph testing of commissioned law enforcement officers of the Department of Public Safety, unless requested by the officer." Therefore the department must be able to demonstrate that the request for a polygraph is voluntary. All affected employees shall be advised that taking a polygraph is completely voluntary and shall sign an Employee/Commissioned Officer Polygraph Request Form before the commencement of a polygraph test.

#### **42.11 Interviewing Department Employees**

1. Interviews of Department personnel should take place in a reasonable and appropriate location designated by the investigator. Interviews must be conducted in a respectful manner and at a reasonable hour when the employee is on duty unless the seriousness of the matter requires otherwise.

2. A representative of an employee may attend an interview of an employee under administrative investigation. An investigator need not unnecessarily delay an investigation to accommodate the schedule of a particular representative. A representative who becomes disruptive of the interview process will be excluded from the interview.

3. Employees who are questioned by an investigator in a manner that could illicit an admission of their own criminal conduct should be advised that since they are required to fully cooperate and answer questions posed by the administrative investigator their answers will be deemed to have been compelled and will not be used in a criminal prosecution against the employee based upon the Supreme Court decision in *Garrity v. New Jersey*. An employee should acknowledge receipt of a "Garrity" warning in writing on the appropriate department form ([OIG-3](#)). An employee who refuses to cooperate after receiving a copy of the [OIG-3](#) will be subject to a separate disciplinary action up to and including termination.

#### **42.12 Candor by Employees in Administrative Investigations**

1. Employees must cooperate fully with administrative investigations. Employees contacted during the course of administrative investigations must exhibit complete candor. Employees must respond truthfully and completely to questions posed by department investigators and refrain from any conduct intended to interfere with the department's ability to ascertain the truth of the matters in question. An employee's failure to be truthful during an administrative investigation may form the basis for disciplinary action separate and apart from the allegations under investigation.

2. Investigators conducting administrative investigations of alleged employee misconduct must seek to determine the truth regarding the matter under investigation and shall refrain from any attempt to create a candor issue through unclear or ambiguous questioning. Employees should be immediately confronted regarding apparent inaccurate statements from the employee and given an opportunity to clarify such statements when such can be done without harm to the investigation.

#### **42.13 Classification of Complaint Allegations**

1. Each separate allegation on a Personnel Complaint Form must be classified under one of the following categories:

- a. Recommendation to Sustain: The investigation disclosed sufficient evidence to prove the allegation by a preponderance of the evidence and the employee violated a provision of the department's policy.
- b. Recommendation not to sustain: The investigation failed to disclose sufficient evidence to prove or disprove the allegation by a preponderance of the evidence.
- c. Unfounded: The alleged incident did not occur.
- d. Recommendation to Exonerate: The alleged incident did occur, but the actions of the employee were justified, legal and proper.

2. An investigation may be administratively closed in instances in which completion of the investigation is impractical due to employee resignation, withdrawal of complaint or other circumstances.

#### **42.14 Duties of Inspector General Following Administrative Investigations**

The investigator will forward the complete investigative report to the Inspector General. The Inspector General, or his designee within the Office of Inspector General, will review the investigative report and determine the following:

1. That the investigation is complete or that the investigation must be returned to the investigator for additional investigation.
2. Whether the allegations of the Personnel Complaint have been classified appropriately or which classification is supported by the evidence gathered by the investigation.

#### **42.15 Timelines Regarding Administrative Investigations**

1. The following timelines will govern completion and review of administrative investigations conducted under this chapter:

- a. The Inspector General will forward the investigation or a copy thereof to the appropriate assistant director and regional commander no later than 28 working days following the initiation of the investigation.
- b. The assistant director or his designee will forward the investigation along with recommendations regarding classification of the complaint and discipline to the Office of General Counsel within 15 working days. The Office of General Counsel will provide a written legal evaluation of the investigation and the disciplinary recommendation regarding that investigation to the appropriate assistant director within 15 working days of receipt. The assistant director should consult with the regional commander as appropriate regarding classification and disciplinary recommendations arising from the investigation. In instances in which the assistant director recommends termination the assistant director will forward the investigation to the Director's office.
- c. An assistant director may impose all discipline less severe than termination.
- d. An assistant director must provide written notification to all parties of the outcome of the investigation within seven (7) working days after receiving the legal evaluation from the Office of General Counsel (OGC).
- e. Pursuant to Government Code 411.007(e), the Director will determine whether an employee is discharged.

2. Each timeline set forth in this section is an internal department standard subject to extension for good cause shown. The validity of any disciplinary decision will not be affected by these standards.

3. If an investigation has not reached a final conclusion at the end of 90 days, the Inspector General will notify the complainant and the employee subject to the investigation of the status of the investigation. Such notices shall continue each 30 days thereafter until a final conclusion has been reached.

#### **42.16 Director Inquiries**

1. The director, deputy director, or designee of the director may initiate an inquiry into work related issues regarding any employee or group of employees. A director's inquiry is intended to provide factual information on performance issues for decision making by management. A director's inquiry will not be used as a substitute for an administrative investigation of alleged employee misconduct under this chapter. A director's inquiry is also not intended to be a substitute for a division's assessment of management performance as required in Chapter 7, Section 07.63.00.

2. Nothing in this policy limits the authority of supervisors in the Department to gather information regarding employee work-related conduct for purposes of fulfilling their supervisory obligations.

#### **42.17 Criminal Investigations of Department Employees**

1. Initiation of a departmental criminal investigation of an employee must be approved by the Director's office and will be conducted by the Texas Ranger division or Criminal Investigations division as assigned by the Director.

2. The office of inspector general shall not conduct criminal investigations but is tasked with providing oversight and coordination of criminal investigations of department employees. This policy addresses how the coordination between OIG and the criminal investigators should occur with a particular emphasis on enabling the Department to take swift and legally defensible employment action against employees under criminal investigation when evidence is gathered establishing the need for such action.

a. Upon referring an investigation to a criminal investigator or upon receiving notification of an ongoing criminal investigation of an employee, OIG will assign an ECI # (denoting employee criminal investigation).

b. Upon the assignment of ECI #, the OIG will assign an OIG investigator to monitor the investigation. Neither assignment of ECI # nor assignment of a monitoring investigator authorizes initiation of an independent OIG investigation unless such has been authorized pursuant to policy.

c. The criminal investigator will provide the OIG monitor periodic summaries of evidence regarding the criminal investigation. The criminal investigator will provide all evidence deemed to be relevant to the employment status of the employee including any statements given by the employee.

d. Upon receipt of evidence indicating a need to take employment action against the employee, the OIG investigator will prepare a "Memorandum Recommending Administrative Action, ECI#." The memorandum should include attachments and summaries allowing reviewers to justify employment action based solely upon the evidence included. The OIG investigator should be prepared to serve as a witness if necessary in any hearing before the Public Safety Commission.

e. The OIG memorandum and all attachments should be provided by the Inspector General to the Assistant Director of division in which the employee works, the applicable Regional Commander and the Office of General Counsel. The Assistant Director and Regional Commanders should provide recommendations to the

General Counsel and the General Counsel should forward these recommendations along with an appropriate legal analysis to the Director for action.

f. Removal of employees who have abused the public trust is crucial to maintaining the integrity of the Department. Therefore, completing a review and recommendation regarding administrative actions arising from a criminal investigation will be a priority for the Assistant Director, Regional Commander and General Counsel. Standard disciplinary timelines and approval periods will not apply.

g. Department criminal investigators conducting criminal investigations on employees will be aware of the employee's right to refuse to speak with the criminal investigators and will ensure that all statements are given by employees subject to criminal investigation are voluntary. Where appropriate, the criminal investigator will inform the employee that employment action cannot be taken against the employee based solely upon the employee's refusal to speak with a criminal investigator. The Department will produce warning and advisement forms to be used when deemed appropriate by criminal investigators conducting investigations on employees.

#### **42.18 Parallel Administrative and Criminal Investigations**

1. Serious allegations of misconduct by an employee of a law enforcement agency may implicate both a violation of a criminal statute and a violation of department policy. As a result, simultaneous criminal investigations and administrative investigations may be needed to properly resolve a misconduct complaint. In cases in which simultaneous investigations are authorized, if the Assistant Director of the Texas Ranger division or the Criminal Investigations division concludes that a criminal prosecution could be jeopardized by an administrative investigation, the Assistant Director will communicate such to the Inspector General in writing and the Inspector General will abate the administrative investigation during all or part of the criminal investigation and prosecution.

2. It shall be a violation of Department policy for any member of the Department who is engaged in an administrative investigation of an employee to divulge any statement made by the employee during the administrative investigation or any information derived from the statement made by the employee to any person engaged in a criminal investigation of the employee when the two investigations arise from the same subject matter. Such a transfer of information could have a deleterious impact on any criminal prosecution.

#### **42.19 Confidentiality of Administrative Investigations**

Employees involved in the administrative investigation or review of investigations of alleged employee misconduct will refrain from disclosing matters discovered in the course of their investigation or review except to the extent disclosure is made pursuant to an appropriate open records request, a court order or a written inquiry by a Department supervisor. All requests for information regarding an administrative investigation made by individuals outside the department must be made in writing and processed pursuant to the Information Act.

#### **42.20 False Information**

1. The Department will provide the appropriate prosecutor information establishing that an individual intentionally provided false information to the Department for the purpose of causing an investigation to be initiated or for the purpose of hindering ongoing investigation.

2. Assistant Directors or Regional Commanders may initiate such action when approved by the Director or a Deputy Director.

#### **42.21 Withdrawal of Complaints**

If a complainant expresses the desire to withdraw a complaint, he or she shall be requested to sign a Complaint Waiver Request ([C-2](#)). All Complaint Waiver Request should be forwarded to the Office of Inspector General which will determine whether an investigation should continue.

## **07.43.00 DISCIPLINARY ACTION**

### **43.01 Types of Disciplinary Action**

1. Allegations of misconduct that are sustained through the investigative and review process herein are subject to the following disciplinary actions:

- a. formal written reprimand,
- b. time off without pay,
- c. demotion,
- d. discharge.

Disciplinary action not listed including but not limited to reimbursement to the State and reduction in salary rate may be considered by the Assistant Director and is subject to approval by the Director.

2. Routine corrective action by a supervisor including written counseling is a primary duty of the supervisor and does not require approval.

### **43.02 Disciplinary Probation**

1. In addition to the disciplinary actions stated above, employees subject to an action other than discharge may be placed on disciplinary probation for a period not to exceed six months. A supervisor of an employee placed on disciplinary probation will prepare a written probationary plan advising the employee of the terms and conditions of probation.

2. Each month during a period of disciplinary probation the supervisor of the employee subject to disciplinary probation will meet with the employee and provide to the employee and the chain of command a memorandum detailing whether the employee has met the terms and conditions of probation during the preceding period.

3. If at any time during the disciplinary probation period the probationer fails to meet the specific terms and conditions of probation, a supervisor may recommend, through his or her chain of command, extension of the disciplinary probation period and additional discipline up to and including termination.

4. Disciplinary probation is distinct from the initial probationary period of an employee and the evaluation form related to the initial probationary period (HR-23) should not be used to document issues related to disciplinary probation. Rather, the monthly memorandum procedure set out in paragraph 2 above should be used.

### **43.03 Termination Procedures**

1. An Assistant Director or Regional Commander may recommend that the Director commence termination procedures against an employee. Such recommendation must be based on just cause as demonstrated by one or more of the following:

- a. Sustained allegations in an administrative investigation;
- b. Evidence developed in a criminal investigation of employee;
- c. Special Circumstances including:

1) Absence in excess of three (3) consecutive scheduled working days without a valid and acceptable excuse, which have been communicated to an appropriate supervisor by the employee or a representative of the employee.

2) Absence from duty for illness or injury when the employee has exhausted all sick leave, vacation, and compensatory leave to which they are entitled and eligible. Such discharges must also comply with any applicable provisions of the Family and Medical Leave Act (FMLA).

3) Failure to meet acceptable standards of performance after all reasonable remedial efforts has been exhausted.

4) A finding that a probationary employee is unsuited for work as documented by form [HR-23](#) (Progress Report for Probationary Employee.)

5) Failure of an employee on disciplinary probation to meet the specific terms and conditions of disciplinary probation.

6) Discovery that an employee provided false information or omitted material information on pre-employment forms submitted to the Department.

#### **43.04 Action by Director Regarding Recommendation for Termination**

1. Upon receiving a recommendation that an employee be terminated the Director may:

a. Decline the recommendation and impose discipline less severe than termination. In such an instance there is no appeal from the Director's action.

b. Decline the recommendation and refer the matter to the Assistant Director for imposition of discipline less severe than termination.

c. Initiate a Statement of Charges

#### **43.05 Procedure Regarding Statement of Charges**

Upon making a preliminary determination that just cause supports termination the Director will cause a Statement of Charges to be served on the employee informing the employee of the preliminary determination. Such statement shall provide notice of the alleged misconduct and cite the relevant manual provisions or standards of conduct allegedly violated. The statement need not be a recitation of all evidence against the employee or meet the formal requirements of a legal indictment. However, the statement should give the employee fair notice which allows the employee an opportunity to meaningfully respond to the allegations. The statement shall afford the employee a period of time of not less than five (5) days from the date the statement is served on the employee for the employee to respond in writing, personally or both directly to the Director.

#### **43.06 Meeting Before the Director**

An employee wishing to afford himself of an opportunity to respond to a statement of charges by meeting with the Director will do so on a voluntary basis. The burden will be upon the employee to provide information to cause the Director to alter his preliminary determination. Any presentation made by the employee, either in writing or personally to the Director, shall be on a non-adversarial basis. This opportunity is provided to the employee to bring to the Director any facts and circumstances or other information which the employee deems appropriate for the Director to consider with regard to the preliminary determination of discharge detailed in the Statement of Charges. The final decision of the Director will be communicated to the employee in writing.

After the employee has been afforded an opportunity to respond to the statement of charges, the Director may affirm the preliminary decision and discharge the employee. Such decision will be communicated to the employee in writing which will inform the employee of any right of appeal. The Director may alter the preliminary decision and return the employee to duty with or without the imposition of modified discipline. In the event that disciplinary action less than discharge is imposed against the individual there is no appeal from the Director's action.

#### **43.07 Determining Appropriate Level of Discipline**

1. The Department imposes discipline upon its employees for the purpose of correcting misconduct, deterring future misconduct and to acknowledge this Department's special history and responsibility to the people of Texas to uphold the highest standards of ethical behavior.

2. The Department will apply its core values in determining an appropriate level of discipline. Therefore, the most severe sanctions will be reserved for conduct that compromises INTEGRITY through dishonesty or dissemination, defeats TEAMWORK by negatively impacting colleagues, avoids ACCOUNTABILITY by denying responsibility or thwarts EXCELLENCE by impacting the Department's ability to provide either public safety or world class service. Conversely, conduct that violates policy but does not call into question an employee's integrity, which does not adversely impact colleagues, for which the employee accepts responsibility and that does not negatively impact public safety or the ability to provide exceptional service will be dealt with less severely. The disciplinary matrix attached as Annex 1 reflects the Department's recognition of its core values and the impact those values have upon disciplinary decision making.

#### **43.08 Categories of Misconduct Under Disciplinary Matrix**

1. **Category A** – Conduct in violation of law or policy that has a minimal negative impact on either public safety or customer service.

2. **Category B** – Conduct in violation of law or policy that has more than a minimal impact on either public safety or customer service or that negatively impacts relationships with colleagues, other agencies or the public.

3. **Category C** – Conduct in violation of law or policy that has a pronounced negative impact on either public safety or customer service or a pronounced negative impact on relationships with colleagues, other agencies or the public.

4. **Category D** – Conduct in violation of law or policy that involves the serious abuse or misuse of authority, unethical behavior or that causes a serious and adverse impact on either public safety or customer service.

5. **Category E** – Conduct in violation of law or policy that causes death or serious bodily injury, constitutes a callous disregard of the core values of the Department, demonstrates a serious lack of integrity related to the fitness to hold a position in a law enforcement agency or involves any conduct which constitutes the failure to adhere to a requirement of certification or licensure mandated by law.

#### **43.09 Presumptive Disciplinary Penalties and Consideration of Mitigating and Aggravating Circumstances**

1. The Penalty Table included with the disciplinary matrix (Annex 1) identifies a “presumptive penalty” for each discipline level. The presumptive penalty assigned to each discipline level may be increased or decreased based upon mitigating or aggravating circumstances.

2. Mitigating circumstances may include, but are not limited to:

- a. Willingness to accept responsibility and acknowledge wrongdoing;
- b. Circumstances under which the rule was violated;
- c. Lack of intent to cause harm;
- d. Prior disciplinary history;
- e. Prior work history.

3. Aggravating circumstances may include, but are not limited to:

- a. Injury or harm to a member of the public or a colleague;
- b. Existence of actual legal financial risk to the Department based on the behavior;
- c. Supervisory status of employee;
- d. Prior disciplinary history;
- e. Prior work history.

4. In recommending a disciplinary action a reviewer must articulate a conduct category that justifies the recommendation including justification for mitigation or aggravation of the recommended penalty.

#### **43.10 Office of General Counsel Review**

The Office of General Counsel will review all disciplinary recommendations and ensure that specific instances of sustained employee misconduct have been assigned an appropriate misconduct category and that mitigating and aggravating factors have been appropriately considered so that disciplinary actions are applied consistently as to individual employees and across divisions.

#### **07.46.00 ADMINISTRATIVE HEARINGS AND REVIEWS OF DISCIPLINARY ACTION**

**46.01 Policy.** It is the policy of the Texas Department of Public Safety to receive and process points of contention concerning disciplinary action when an employee or former employee makes proper application. Such requests shall be processed in a fair and prompt manner.

No employee shall be disciplined, penalized, coerced, or otherwise prejudiced in employment for exercising the rights provided for in this policy.

In exercising any of the rights provided for by this policy, an employee may choose to be represented by an attorney at his or her own expense.



An employee who has become involved in an administrative hearing or review at his or her own request may thereafter refuse to answer or reply to questions related to the review. If such should occur, the review or appeal procedure will be discontinued and the employee will have forfeited the rights to this and other departmental avenues which would otherwise have been open to hear points of contention.

1. There are two (2) types of administrative hearings and an administrative review procedure provided for employees by policy.

a. **Public Safety Commission Hearing.** For discharged employees who have completed their initial probationary period of employment.

b. **Disciplinary Process Appeal Hearings.** For employees who are demoted, assigned time off without pay, or whose salary rate has been reduced.

c. **Chain-of-Command Administrative Review.** For all other instances of disciplinary action review or for employees who are entitled to, but waive the right of, the Disciplinary Process Appeal Hearings. An employee, once he or she has elected the chain-of-command review, cannot change the choice of review procedures.

2. All appeals of disciplinary action must be made in writing by the employee to the appropriate individual within the appropriate time frame as set out in this chapter. The time limits for appeals may not be waived or expanded by any member of the Department. Additionally, if the employee is going to be represented by legal counsel, the employee shall provide the name and business address of their attorney.

#### **46.02 Administrative Hearings**

1. **Public Safety Commission Hearing.** Pursuant to Government Code 411.007(e) commissioned officers who are discharged by the Director who have completed their initial probationary period of employment prior to the effective date of discharge are entitled to a hearing before the Public Safety Commission. A commissioned officer is on probation from the date the person is inducted into the service of the Department until the first anniversary of the date the person is commissioned. For the purpose of this policy, commissioned officers who have experienced more than one period of employment with this Department must have completed not less than the probationary period of employment applicable to their most recent period of employment preceding the date of discharge.

Commissioned officers who are legally entitled to a hearing before the Public Safety Commission and desire to appeal their discharge must submit a written request for a hearing to the Director's Office. The written request for a hearing must be received by the Director no later than fifteen (15) calendar days from the commissioned officer's receipt of the Director's discharge letter. If the Director's discharge letter was sent to the commissioned officer rather than personally served, the letter is presumed received on the third working day following the mailing of the document by regular mail. The document is presumed to have been mailed on the date identified on the letter.

If requested, the Department will provide the commissioned officer or the commissioned officers legal representative a copy of the investigative file that was the basis for the Statement of Charges and notice of discharge.

Copies of the Policies and Procedures for the Appeal of an Employment Discharge to the Public Safety Commission may be obtained at any time from the Office of General Counsel in Austin Headquarters. Any supervisor receiving such a request from a commissioned officer should refer the request to Office of General Counsel, who will provide the most recent copy of the policies and procedures established by the Public Safety Commission.

2. **Disciplinary Process Appeal Hearings.** An employee that receives discipline of time off without pay or demotion may contest the decision through the Department's appeal process. A commissioned employee may request

either a peer review board hearing or a disciplinary action hearing. A non-commissioned employee may not request a peer review board but may request a disciplinary action hearing.

**Peer Review Board Hearing.** If the commissioned employee chooses to appeal the classification of the complaint, he or she may request, in writing, a Peer Review Board Hearing.

**Disciplinary Action Hearing.** If a commissioned or non-commissioned employee chooses to appeal the level of disciplinary action recommended, or the classification of the complaint, he or she may request, in writing, a Disciplinary Action Hearing before the assistant director.

A request for a hearing must be received by the employee's assistant director no later than ten (10) days from the date of receipt by the employee of the formal written notice of the Department's actions. A commissioned employee is entitled to a hearing before the Peer Review Board or a disciplinary action hearing before the assistant director, but not both. Once a commissioned employee makes a hearing selection, such selection is final.

a. **Peer Review Board Hearing.** The responsibility of the Peer Review Board shall be limited to making a recommendation of the complaint classification. The Board will not review the disciplinary action. The parties may not discuss the recommended disciplinary action before the Board. Board hearings will be conducted in Austin at a time and place determined by the employee's assistant director.

- 1) **Board Composition.** The board shall consist of a total of five (5) commissioned members.
- 2) **Board Member Qualifications.** In order to be qualified, board members must:
  - a) be a full-time commissioned member of this Department at the time of the hearing;
  - b) not be on disciplinary or initial employment probation at the time of the hearing;
  - c) not have a complaint investigation pending, or have received a sustained complaint within the previous five years;
  - d) not have served on a Peer Review Board in the last six (6) months at the time of the hearing;
  - e) not be a party, witness, or complainant in the complaint process being heard;
  - f) not be in the chain of command of the employee requesting the hearing;
  - g) not be from the same THP district, THP Austin headquarters' operation, DLD district, Administration bureau or section, CLE district, CLE Austin headquarters' operation as the employee requesting the hearing;
  - h) not be on the Director's Staff if the employee requesting the hearing is a member of the Director's Staff;
  - i) be of equal or higher rank for commissioned personnel (rank can be established by salary structure) of the employee requesting the hearing;
  - j) not be a close relative of the employee requesting the hearing. The definition for close relative is found in General Manual 15.10.02;

k) not communicate regarding the pending matter with the employee or a representative of the employee who has requested the hearing. (Except for the usual communication to the board members regarding times, dates, and other logistical items pertinent to the hearing, no employee shall communicate with the board members); or

l) be a supervisor, if the employee requesting the hearing is a supervisor.

**3) Board Selection Process.** The Human Resources Bureau will use a computer-aided at random selection process to create a pool from which qualified board members and alternates are selected. The random selection process will be applied to the computer employee database existing at the time of the selection. The names, in order of random selection, will be reviewed by the Human Resources Bureau to ensure board qualifications until ten (10) qualified members are selected. The first five (5) qualified members will serve on the Peer Review Board. The next five (5) qualified members will serve as alternates. Alternate members will serve on the board only when one (1) of the five (5) board members cannot serve and will be selected to serve based on their order of appearance on the pool list.

In cases where the qualified pool does not produce a sufficient number of qualified or alternate members, the next lower rank or salary group as applicable will be used.

At the conclusion of the selection process, the appealing employee and the assistant director each will have one, and only one preemptory challenge. No explanation is necessary in order to exercise the preemptory challenge. If the preemptory challenge is exercised, the prospective board member will be excluded. The challenge extends to the alternates. Preemptory challenges must be exercised no later than five (5) days after receipt of the names comprising the board. Such challenges will be made to the Human Resources Bureau without the employee's assistant director or the employee requesting the hearing having the benefit of knowing which board member was excluded by the other party through the preemptory challenge process until the five (5) days have expired. Once made, the preemptory challenge becomes final.

If the selection of a member or alternate member creates a personal hardship as determined by the Human Resources Commander, who is the final judge in such matters, the next qualified member will be selected from the pool list. The member declaring the personal hardship will apply to the Human Resources Commander in writing as to the reasons to be excluded due to such hardship.

At the conclusion of the selection process, the first alternate will be instructed to report to the Peer Review Board Hearing to be utilized if a member is unable to serve.

**4) Board Hearing Officer.** The Board Hearing Officer shall be the employee's assistant director or designee. If the employee requesting the hearing is assigned to the Director's staff, the Board Hearing Officer will be the Deputy Director or designee. Duties of the Board Hearing Officer:

a) To ensure that all evidence is presented in a fair and impartial manner. To be empowered to limit the scope of the inquiry of the hearing to disputed fact issues.

b) To appoint a bailiff and court reporter, if necessary. If either party requests a court reporter, the Hearing Officer will make the proper arrangements. The expense for the court reporter will be the responsibility of the party making the request.

c) To limit the issues, limit the number of witnesses, dispose of unrelated matters prior to the time the hearing convened. The Hearing Officer is also empowered to dispose of

preliminary and/or disputed matters on motion of the Department or the employee, prior to the time that the hearing is convened.

d) Maintain a list of all witnesses available to both the Department and the employee. The employee requesting the hearing shall submit, to the Hearing Officer no later than ten (10) days prior to the day of the hearing, a list of all persons that the employee intends to call as witnesses. The Department shall likewise submit a list of prospective witnesses to the Hearing Officer no later than five (5) days prior to the hearing. The Hearing Officer shall have the power to determine which witnesses shall be called to testify before the board and shall be responsible for the following:

- 1) To ensure the testimony is confined to the disputed, relevant, and material facts of appeal; and
- 2) To make a final determination in matters not otherwise addressed by this hearing process.

g) The Hearing Officer shall be responsible for reporting the recommended finding of the board, in writing, to the assistant director.

5) **Board Action.** The Peer Review Board Hearing members are not permitted to ask questions of any witnesses. The board members may ask that the Hearing Officer ask questions of a particular witness. The board will determine a recommended finding on each allegation as "Affirmed" or "Not Affirmed" based on the preponderance of the evidence as defined in Black's Law Dictionary. A recommended finding rendered by the board will be based on majority rule.. The board's recommended finding will be reduced to writing by the Hearing Officer and submitted to the employee's assistant director.

a. If an allegation is recommended as Affirmed, the assistant director will set appropriate disciplinary action not to exceed the initial disciplinary action. The employee will then be notified in writing.

b. If an allegation is recommended as Not Affirmed, the assistant director will review the recommendation and make a determination of classification. If the assistant director sustains the allegation, the assistant director will set appropriate disciplinary action not to exceed the initial disciplinary action. If the assistant director concurs with the recommendation of "Not Affirmed" the assistant director may modify the disciplinary action as appropriate, including dismissing the case. If the assistant director modifies the sustained misconduct or discipline and imposes any discipline greater than a written reprimand, the employee may appeal to the director as provided under 6)

6) **Appeal Process.** The employee requesting the hearing may within ten (10) days after notification (as defined in 01.25.02 in the General Manual), appeal the disciplinary action to the Director of the Department of Public Safety. The request for appeal must be in writing with immediate notification to the employee's in-line supervisors. Such appeal will be conducted at the time and place specified by the Director and may be attended by the appealing employee, his or her attorney, and any others deemed necessary by the Director to ensure a thorough understanding of the matter.

After hearing the appeal, the Director will notify the appealing employee in writing of the decision which is subject to no further departmental review.

**b. Disciplinary Action Hearing.** An employee that wants to appeal a disciplinary action by having a disciplinary action hearing, may request the hearing by submitting a request in writing directly to the appropriate assistant director with notification to in-line supervisors. The assistant director's decision will be reported in writing to the employee.

**c. Disciplinary Action Review by the Director.** An employee not satisfied with the assistant director's final decision may, within ten (10) days (as defined in 01.25.02 in the General Manual) of receipt of notice of disciplinary action to be taken, appeal the decision to the Director. The request for appeal must be in writing with appropriate notification to in-line supervisors. The Director's decision will be reported in writing to the employee and is not subject to further departmental appeal.

**d. Effective Date, Transition.** All formal complaints ([C-1](#)) filed on or after the effective date of this policy will be governed by the procedures related herein.

#### **46.03 Chain-of-Command Administrative Review**

1. In instances when disciplinary action review is not provided for either before the Public Safety Commission or in the Disciplinary Process Appeal Hearings, the employee may request a review through his or her in-line supervisors. In addition, employees who qualify for the hearing procedure set out in 46.02 but prefer to have a review by their in-line supervisors may have their point of concern reviewed in this manner.

2. An employee desiring a review before his or her in-line supervisors regarding a disciplinary action must submit a written request to the immediate supervisor within ten (10) days\* from the date of the formal written notice of the Department's action requesting an interview setting forth points of contention of the employee and a statement that an attorney will or will not represent the employee. When properly appealed, disciplinary action will be stayed pending conclusion of the chain-of-command review. A claim that the written notice of disciplinary action was not received by the employee will not be a defense. If the employee desires to make the Director aware of the request, he or she may submit a copy to the Director's Office. Supervisors receiving requests from employees for a disciplinary action review will make every effort to comply in a fair-minded spirit and will arrange an interview as soon as possible. The supervisor will conduct the review in an informal, personal interview method and will make every effort to satisfy questions raised by the employee. If for any reason the employee is not satisfied with the results of the review by the supervisor, the employee may within ten (10) days\* of the date of the review request an audience with the next in-line supervisor. Should an in-line supervisor fail to respond to a request for a hearing within ten (10) days\* from the date of the request, the employee should then request an audience with the next in-line supervisor. This procedure may be continued up the chain of command until the employee at some point is satisfied the point of concern has been properly exhausted, including a review before the Director. As an employee moves through the chain of command with this process, each supervisor providing a review should furnish the reviewing supervisor with copies of previous reviews by other supervisors if any have occurred. In instances when the employee submitted a copy of his or her first request to the Director's Office, the employee should notify the Director's Office by written communication when and if the employee wishes to discontinue the procedure so that unnecessary follow-up by that office will be eliminated. Copies of this notice should be sent by the employee to all in-line supervisors concerned.

3. If an employee desires to waive a review before some supervisors in order to appear before others in the chain of command, he or she may do so up to the rank of assistant director. A review before the assistant director is required before a review before the Director will be permitted.

4. Supervisors who conduct a review of disciplinary action at the request of an employee may concur or may recommend an alternative to the disciplinary action through proper channels to the Director's Office. The Director will take such recommendations under advisement and render a finding which will be communicated to all parties concerned.

5. The Chain-of-Command Administrative Review should normally be completed within forty-five (45) days\* of the employee's notification requesting the review.

\*As defined in General Manual 01.25.02

**46.04** Any disciplinary actions at any stage in the review or hearing process at the time of the adoption of this amended policy shall be governed by the applicable administrative procedure in effect at the time of the commencement of said hearing or review. The procedures herein may be substituted for any in progress at the time of the adoption of these procedures if the grievant desires to continue his hearing or review under the procedures outlined herein and should such change be considered feasible by the assistant director.

**46.05** At any time during the pendency of a complaint investigation or during the appeal of a sustained disciplinary action, the previous action may be dismissed, amended, vacated, or revised, as deemed necessary and appropriate by the Director. In each instance where such action occurs, the Department will afford an affected employee all rights and privileges associated with the position in which he/she is thereafter placed. Such action on the part of the Department shall have no impact or effect on any pending appeal, except to the extent that if a greater right of appeal is afforded by the amended action, then such greater right shall control over any preexisting right of appeal. For example, in the event an employee has been assessed disciplinary action which only warrants an Administrative Chain-of-Command Review, if the action is modified to include disciplinary action which would afford an employee an additional right to a Disciplinary Process Appeal Hearing, then that employee shall have a right to a Peer Review Board, Disciplinary Action Hearing or Administrative Chain-of-Command Review with regard to the matter. Likewise, if an employee has a Peer Review Board pending, and the Director at his discretion, revises the preexisting action for whatever reason to include discharge, then the employee shall have an appeal to the Public Safety Commission, but the employee shall not also have a right of appeal to the Peer Review Board on the original disciplinary action.

In determining whether or not such action as is contemplated hereunder should be taken, the Director may consider, among other things, such matters as best utilization of manpower and most effective techniques to afford an employee review of an aggrieved matter. It is the intention of this provision that an employee be afforded one opportunity to appeal disciplinary action against him/her on each collected set of circumstances giving rise to disciplinary action. It is the intention of this section to avoid the necessity of multitudinous reviews of same or similar disciplinary action or disciplinary action arising out of a course of conduct or series of events connected or not connected, giving rise to disciplinary action. In each instance where disciplinary action is increased, then the employee shall have the more significant appeal right. In the event disciplinary action is reduced, then the employee shall have the right to the appeal, as appropriate. In other words, if a "days off without pay" situation is reduced to a written reprimand, then, and in that event, the employee may still appeal to the chain of command, if such be the wishes of the employee.

Nothing contained in this provision shall in any way prevent, preclude, hinder, or impair the Department's ability to agree with the employee to modify previously imposed action which the employee may agree to accept and thereby agree to waive the right of appeal.

#### **07.50.00 NONDISCIPLINARY ACTION - CHANGES IN POSITION FOR THE GOOD OF THE SERVICE**

**50.01** It is the policy of the Texas Department of Public Safety to ensure that the people of the state are afforded the best service possible in terms of results achieved for expenditures. This means, among other things, that each individual employee must perform at acceptable levels. It is recognized that administrators and supervisors have the responsibility of attaining desirable output from persons performing under them. To this end employees and supervisors are rated at regular intervals so that top management will be afforded an opportunity of judging results and to see that required goals are reached.

The Director is responsible for the direction and success of departmental activities in the final analysis and must make the decision as to whether an individual is performing at an acceptable level. The Director must also determine if each supervisor or commanding officer has that necessary undefinable quality which enables him or her to lead, administer, manage, and earn loyalty and respect of subordinates and supervise fellow employees.

**50.02** Supervisors will make every reasonable effort to assist and develop employees having difficulty in reaching or maintaining acceptable performance levels on the job.

**50.03** The Director may take whatever action deemed necessary to ensure the most effective operation of the Department. Nondisciplinary action may include, but not necessarily be limited to, transfer, reassignment, or demotion.

1. Such change in status shall be classed “for the good of the service” and shall not be considered disciplinary. An employee not satisfied with such a change of status may request an explanation from his or her in-line supervisors. The Director will, where such action is taken, be available to discuss the matter with the affected employee in the event the employee is not satisfied with the explanation.

2. Such discretionary activity shall be considered and used only where necessary and shall not be exercised in an arbitrary or capricious manner. If any doubt exists in the supervisor’s mind as to whether a particular case should be processed as a complaint or as a nondisciplinary action, the case should be processed as a complaint.

This does not mean that the judgment of the Director need be specific, demonstrable, or documented. The prerogative of ensuring direction to departmental goals remains in the Director, who has the responsibility for management and administration of Department business. Tools available to the Director include the discretionary transfer, reassignment, or demotion of employees where required.

## **07.52.00 CONFLICT MANAGEMENT AND DISPUTE RESOLUTION**

**52.01 Introduction.** A positive work environment increases effectiveness, productivity, and morale. It is the responsibility of every employee within the Department to foster teamwork and cooperation through effective communication and conflict management.

**52.02 Policy.** It is the policy of the Texas Department of Public Safety to promote proactive conflict management and dispute resolution processes for its employees. Normal day-to-day discussions among employees and supervisors regarding employment-related matters are the most constructive and expeditious means of preventing and resolving conflicts or disputes while developing positive and effective working relationships. Differences are best dealt with before they rise to the level of a serious dispute or on-going conflict.

When conflicts or disputes occur, the parties should, as soon as possible, engage in face-to-face meetings utilizing interest-based problem-solving skills to resolve the conflict or dispute. If the discussions fail to result in resolution, then dispute resolution methods—such as conflict coaching, chain-of-command review, facilitation, or mediation—should be utilized in an attempt to resolve the conflict or dispute, thereby enabling Department personnel to more effectively utilize time and resources to pursue the Department’s overall mission.

Dispute resolution methods shall be used to the maximum extent practicable, especially by personnel in supervisory and management positions. Management shall proactively use, positively support, and actively foster effective conflict management and the use of dispute resolution methods. Use of these methods may resolve the entire issue or a portion of the issue. The goal is to effectively resolve disputes and conflicts at the earliest stage feasible, at the lowest possible organizational level necessary for effective resolution, and by the fastest and least expensive method possible. Employees who use dispute resolution methods do not forfeit the right to future use of formal administrative procedures as outlined in chapter 7A of the General Manual.

Concerns alleging harassment, sexual harassment or discrimination based upon race, color, gender, religion, age, sexual orientation, national or ethnic origin or disability or retaliation are to be presented to the Equal Opportunity Office in accordance with provisions of §18.25.00.

The Department's Dispute Resolution Office (DRO) is entrusted with promoting and managing the Department's conflict management and dispute resolution processes. It is supervised by the Chief Dispute Resolution Officer, who is assisted by the Deputy Dispute Resolution Officer, and reports to the Director or designee.

### 52.03 Definitions

1. **Chain-of-Command Review.** This process allows an employee to submit a grievance in writing, other than disciplinary actions, to successively higher members in the chain of command in an effort to reach final resolution.
2. **Conflict Coaching.** Conflict coaching is a set of skills and strategies used by a trained conflict management coach to support an employee's ability to engage in, manage, and productively resolve conflict. Conflict coaching typically consists of one-on-one sessions that provide the employee a proactive way to gain new insights and conflict resolution tools, such as active listening and effective communication skills, to assist the employee in resolving conflict.
3. **DRO.** The Department's Dispute Resolution Office.
4. **Dispute Resolution.** Any strategy or method used to resolve grievances, conflicts, or disputes, including, but not limited to, consultation with a dispute resolution officer, conflict coaching, chain-of-command review, facilitation, and mediation.
5. **Dispute Resolution Officer.** A dispute resolution officer is a Department employee assigned to the DRO and who can provide confidential assistance to employees and management as an independent, neutral, and impartial expert in conflict management, facilitation, and mediation.
6. **Facilitation.** A facilitation or workshop is a method in which facilitators lead employees through processes focused toward agreed-upon objectives in a way that encourages participation, ownership, and creativity from all involved.
7. **Grievances.** Employment-related grievances are any disputes or conflicts regarding work-related issues other than disciplinary actions.
8. **Mediation.** Mediation is a dispute resolution process in which an impartial third party, the mediator, assists two (2) or more individuals to reach resolution, understanding, or reconciliation. The role of the mediator is not to determine who is right or wrong or make decisions on behalf of the parties, but instead to assist the parties to understand the root of the problem, improve communication, work through misunderstandings and misperceptions, devise their own solutions, and improve the work environment.

**52.04 Employee Options.** In addition to the informal avenues for an employee to address grievances or concerns with management, including consulting with a dispute resolution officer and conflict coaching, there are two formal procedures that may be used. In no event shall these procedures interfere with the immediate compliance of a lawful command or directive. Employees do not need supervisory permission to contact the DRO.

1. **Chain-of-Command Review.** The purpose of these meetings is to bring a grievance or concern, other than disciplinary actions, to the attention of management for resolution. The steps are:



- a. Within ten (10) calendar days of the event giving rise to the grievance, or as soon thereafter as possible, the employee must complete a Chain-of-Command Review Request Form (Form DRO-01). The employee will forward a copy to the DRO and provide the original to the lowest and most appropriate level in the chain of command with whom the employee wishes to meet. The employee and the designated supervisor should consider scheduling conflict coaching sessions with a trained conflict coach or dispute resolution officer prior to their meeting with each other.
  - b. The designated supervisor shall meet with the employee within ten (10) calendar days of when the request is received, or as soon thereafter as possible. The supervisor will record the outcome of the meeting on the original request form, have the employee notate a response, ensure the appropriate signatures are collected, make a copy for retention, and return the original to the employee. If more time is needed to complete a response on the original request form, the supervisor should take no longer than five (5) calendar days to return the completed form to the employee for a response and signature. Once the employee has received the completed request form, the employee shall provide a new copy to the DRO.
  - c. If the employee wishes to meet with the next person in the chain of command regarding the same grievance or concern, the employee shall submit the original Form DRO-01 to that person, and the process outlined in the above paragraph shall be followed. This process continues up through the chain of command until the employee is satisfied with the outcome, no longer wishes to proceed further, or a final decision is made by the Director. All documentation shall be recorded on the original request form.
  - d. Upon conclusion of this process, the final original document is retained by the DRO. Copies will be provided to the employee and the chain of command by the DRO.
2. **Mediation.** Employees may use mediation to resolve employment-related grievances and other work-related concerns. Mediation is a process that encourages and facilitates communication between parties who are in dispute. The purpose of mediation is not to judge guilt or innocence but to assist people in conflict to discover the root of their own problems and devise their own solutions. Mediation gives the parties an opportunity to meet and try to resolve the situation in a safe setting. The steps are:
- a. The employee must submit a completed Mediation Request Form (Form DRO-02) to the DRO. The employee does not need supervisory permission to request mediation.
  - b. If the employee's grievance or concern is determined appropriate for mediation, the DRO will notify the parties, select the mediators, and coordinate with the parties (and, if necessary, their supervisors) to schedule a mediation as soon as possible after receipt of the request.
  - c. When an employee requests that members of their chain of command attend mediation the DRO will determine which levels of management are relevant to the process. Any supervisor requested by the DRO to attend must participate in the mediation.
  - d. Any agreement achieved through the process must be voluntarily reached by all parties involved.
  - e. Because mediation is a non-adversarial process, legal counsel is not necessary.

**52.05 Management Options.** A key function of supervision and management is the effective proactive management of conflict and dispute resolution. There are numerous mechanisms to achieve this, such as using the skills learned in leadership development courses, consulting with members of the DRO, and conflict coaching. Other options include:

1. **Mediation.** Management may refer employees to mediation in an effort to improve communication; resolve differences; address misperceptions and misinformation; and/or improve teamwork, work effectiveness, and morale. A supervisor may also request to participate with an employee(s) in a mediation to address areas of conflict. The steps are:
  - a. The supervisor must submit a completed Mediation Referral Form (Form DRO-03) to the DRO.
  - b. If the conflict or dispute is determined appropriate for mediation, the DRO will notify the parties, select the mediators, and coordinate with the supervisors to schedule a mediation as soon as possible after receipt of the request.
  - c. Any employee requested to participate in the mediation must attend.
  - d. Any agreement achieved through the process must be voluntarily reached by all parties involved.
2. **Facilitation.** Management may also refer an entire work group, team, or office staff to participate in a facilitation or workshop. The steps are:
  - a. The supervisor must submit a completed Facilitation Referral Form (Form DRO-14) to the DRO.
  - b. The dispute resolution officers will review all requests and determine if a facilitation or workshop is appropriate. If so, the DRO will notify the parties, select the facilitators, and coordinate with the supervisor(s) to schedule the facilitation or workshop as soon as possible.
  - c. Any employee requested to participate in a facilitation or workshop must attend.

**52.06 Dispute Resolution Roles.** The dispute resolution officers are not agents of notice and, therefore, any communications made to them are NOT considered notice to the Department. The DRO's mediation/facilitation/conflict coaching services are provided directly by the dispute resolution officers or in coordination with various Department personnel who have been trained to provide the relevant services.

1. **Mediators.** Mediators are trained impartial third parties who establish and maintain a safe process to listen to and assist the parties identify the underlying causes of their conflict and brainstorm options to best resolve the conflict. Mediators do not take sides; do not decide if someone is right or wrong; do not issue decisions or tell the parties what they should do; and do not provide legal counsel or therapy. While the parties retain complete control over any agreement or resolution they may reach, the mediators maintain control over the process itself, including whether to declare an impasse. Mediators are bound by confidentiality and may only discuss issues in the mediation with the dispute resolution officers, under whose direction and guidance they work and who are bound by the same confidentiality provisions.
2. **Facilitators.** Facilitators are trained impartial third parties who contribute structure and process to interactions during a group facilitation or workshop so the group members are able to function effectively and make high-quality decisions. The facilitator's aim is to support others as they pursue their goals and objectives.
3. **Conflict Coaches.** Conflict coaches are trained impartial third parties who assist individuals gain the skills, competence, and confidence to manage and resolve conflicts and disputes. Coaches assist individuals in exploring the most appropriate strategies and methods for dealing with conflict. They also help the person generate options for solutions or choices that may be feasible for resolving the conflict or dispute.

Mediators, facilitators, and conflict coaches are required to attend the minimal continuing education classes as set by the DRO and abide by the Department's mediator/facilitator/coach standards of conduct.

**52.07 Confidentiality.** The confidentiality of those consulting with a dispute resolution officer or involved in employment-related grievances will be maintained to the extent permitted under state or federal law and Department policy.

Mediation conducted through this program is confidential to the extent authorized by law. Employees involved in mediation will not discuss or divulge information related to the mediation with others not involved in the mediation process. What occurs or is said in mediation is confidential and should not be disclosed or otherwise made public by any of the parties unless all parties agree to do so or disclosure is required by law. Information known prior to the mediation does not become confidential simply because it was discussed during the mediation. Documents completed prior to and during a mediation (such as mediation request forms, notices or agreements to mediate, final mediation reports or agreements and action plans produced during and removed from the mediation setting with the approval of all parties) are retained by the DRO and may be subject to release under the Public Information Act. The fact that a person has attended mediation is not confidential; however, reference to a mediation request made by the employee should not be placed in a performance evaluation or personnel file. Mediators will not breach confidentiality and cannot be compelled to do so unless statutorily required.

Information shared and documents completed during dispute resolution processes, other than mediation and consultations with a dispute resolution officer, may be subject to disclosure or release. Discretion should be used when sharing information revealed or documented during these dispute resolution processes and only shared with individuals who have a business-related need to know. Conflict coaching conducted with a dispute resolution officer is intended to be confidential to the extent possible. However, conflict coaches, other than a dispute resolution officer, are agents of notice and must report certain information as required by DPS policy or law.

**52.08 Retaliation.** It is a violation of policy for any Department employee or supervisor to retaliate against another for contacting the DRO, requesting assistance from a dispute resolution officer, or using any dispute resolution process available to Department personnel.

**52.09 Good Faith.** Each of the available dispute resolution processes has proven effective when those participating in them do so in an honest and sincere effort to open lines of communication, truly understand the other's interests and perspective, improve the working relationship, and/or reach a mutually agreeable resolution. If any of the parties are unwilling to commit to this good faith effort, the likelihood of success is minimal and usually short.

# **DEPARTMENT RISK MANAGEMENT PROGRAM**

## **01.08.00.00**

### **08.01.00 DEPARTMENT RISK MANAGEMENT PROGRAM**

**01.01 Risk Management Policy.** The Department recognizes the following facts concerning the physical, human, fiscal and environmental resources of this agency:

1. As a result of conducting business, Department resources are routinely exposed to risks that can result in losses.
2. Said resources are valuable assets to the Department and the citizens of Texas.
3. Protection of Department resources, especially its employees, within the limits of the funds available is imperative.
4. Unless preventive and protective measures are taken, losses will occur.
5. A significant amount of time, money, resources and staff must be committed to manage, preserve, and protect Department resources in the most cost-effective manner.

### **01.02 Risk Management Goals**

1. In carrying out the agency's business, the long-term goal is to minimize harm to the physical, human, fiscal and environmental resources of the agency, and to minimize the total cost of risk to the agency.
2. To minimize the harm and the cost of the risk, the Department shall:
  - a. attempt to routinely identify all significant known perils and risks to which the Department may be exposed;
  - b. develop and implement the most appropriate combination of loss control and risk financing techniques consistent with the activities of the Department, thereby reducing and controlling the adverse human and financial consequences of risk;
  - c. avoid unnecessary or unreasonable exposures to the extent practicable considering we are tasked with enforcing the law; and
  - d. take all reasonable and practical steps to prevent harmful events and losses.

**01.03 Risk Management Authority and Responsibilities.** The Director shall hire a risk manager who shall serve under the direction of the Assistant Human Resources Director. The risk manager shall be given the authority to, and shall be responsible for, the Department's Risk Management Program. The Risk Management Program includes planning, organizing, coordinating, implementing, monitoring and controlling.

The risk manager's authority and responsibilities shall not cross over into other functional areas of the Department but shall act in an advisory capacity to assist division chiefs and special section heads identify and control possible losses to departmental assets under their command.

## **08.02.00 COMPREHENSIVE DEPARTMENT SAFETY PROGRAM**

### **02.01 Purpose**

1. As unsafe acts and unsafe conditions are the primary cause of personal injury and property damage, the Department is dedicated to providing a safe working environment for all employees. The Comprehensive Department Safety Program is an integral part of departmental operations and includes all aspects of job safety and accident prevention. An effective program will reduce the number of injuries to personnel and will reduce the cost of operating Department vehicles in the form of vehicle damage, loss of time, and general maintenance, thereby contributing significantly to overall effective and economical operations.

2. The Department is charged with the responsibility of supervising traffic on public highways in such a way as will prevent injuries to persons and damage to property. The Comprehensive Department Safety Program, therefore, aims at doing for the Department the very thing which the Department is charged with doing for the public.

**02.02 Comprehensive Department Safety Program Responsibility.** The responsibility for oversight of the Comprehensive Department Safety Program of the Texas Department of Public Safety is delegated by the Director to the Chief of Administration and administered through the Health and Safety Section of the Human Resources Bureau. The Department Risk Manager is appointed by the Chief of Administration.

### **02.03 Administration of Program**

1. The administration of this program is the responsibility of line commanders at every level and division chiefs. The staff work will be done by the Department Risk Manager and other staff personnel, but the basic responsibility for results rests on supervisors, managers, line commanders, and division chiefs.

2. The Department Risk Manager has the responsibility of keeping all employees aware of all aspects of safety practices with the objective of reducing accidents and preventing employee injuries, thereby reducing employee work time loss that results from injuries.

3. Each employee shall be responsible for assisting the Department in maintaining a safe working environment and shall report any unsafe act or condition through proper channels.

### **02.04 Safety Program Philosophy**

1. The Texas Department of Public Safety was created by law to protect the lives and property of the people of the state of Texas and departmental employees. As unsafe conditions and unsafe acts are the primary causes of property damage and injuries, the Department is dedicated to providing safe

equipment and safe conditions for employee performance. In turn, each employee must maintain safe equipment and safe conditions for work performance. Constant exposure to normal work procedures causes employees to disregard hazards of an unsafe act.

2. Unsafe acts are often committed by employees intentionally or without knowing that the act is unsafe. If an employee commits an unsafe act and does not know the act is unsafe, supervision and training have not properly prepared the person for effective performance. If the unsafe act is intentional and/or unjustified, sanctions may be imposed.

3. The Department recognizes that its law enforcement officers must be exposed to unsafe conditions because of work demands. Administrators, supervisors, and employees must follow safe work procedures as demonstrated in training and as prescribed in written manuals. Proper judgment should be exercised in the performance of duties. Following Department procedure and using proper judgment will keep property damage and injuries to minimal levels.

**02.05 Safety Program Inspection.** Inspectors of the Office of Audit and Inspection will include an evaluation of comprehensive safety program emphasis in every level of inspection, paying particular attention to the level of safety training and safety awareness existing in the various Department units.

#### **02.06 Department Safety Committees**

1. The Department Risk Management and Safety Committee will study and evaluate all Department safety practices and reported injuries and make appropriate recommendations to improve departmental safety. Committee members will be the Department Risk Manager (chairman) and the eight Regional Safety Coordinators (designated by the regional commander). The Department Risk Management and Safety Committee will meet at the call of the Department Risk Manager to discuss overall employee safety programs and to formulate plans to reduce employee injuries and to further the Department's goal of providing a safe workplace for employees to function within.

2. Selective evaluation of on-the-job injuries, including fleet accident injuries, will be initiated by the Risk Manager and the Regional Safety Coordinators so employees may know "why" and "how" injuries occur and steps can be taken to reduce the injury potential.

#### **02.07 Headquarters Safety Program**

1. The Headquarters Risk Management and Safety Committee in Austin will study overall safety practices and problems and make appropriate recommendations to improve headquarters safety. Committee members are selected as follows: Department Risk Manager, Chairman; one member each from Texas Highway Patrol, Criminal Law Enforcement, Fleet Operations, Laboratory, Emergency Management Service, Building Program Bureau, General Services Bureau, Information Management, Crime Records, Motor Carrier Bureau, Driver License Division, Training, and Office of General Counsel. The committee will meet quarterly. Committee recommendations and meeting minutes will be forwarded to the Chief of Administration for consideration.

2. Additional Duty Safety Officers (ADSOs) will be appointed by the bureau managers, as appropriate, and will assist the managers in creating a safe working environment and serve as liaison to the appropriate member of the Headquarters Risk Management and Safety Committee. Bureau

managers shall inform the Risk Manager of their designated ADSO, and necessary training will be conducted by the Risk Manager.

3. Safety inspections of all buildings in the headquarters complex will be conducted semiannually in February and August. The Chief of Administration, Chief of Texas Highway Patrol, Chief of Criminal Law Enforcement, Chief of Driver License Division, Chief of Texas Rangers, and the head of each section/service/unit of the Director's staff will assign a person the responsibility of conducting a building inspection of all their respective areas located within the headquarters complex utilizing the "Building Inspection Checklist" (OAI-15)

(Annex #3) and guidelines located in Annex #4. A copy of the checklist will be forwarded to the Risk Manager and the Building Program Bureau Manager. All employees will cooperate and assist the personnel assigned to conduct the inspections. The assigned personnel will report to the appropriate division chief or head of each section/service/unit of the Director's staff any deficiencies and corrective actions taken. It is the responsibility of the division chief or head of each section/service/unit of the Director's staff to ensure that deficiencies are corrected. The chiefs of each division or the head of each section/service/unit of the Director's staff will maintain the permanent file on each Building Inspection Checklist (OAI-15) of their respective areas. These files shall be made available upon request.

## **02.08 Regional Safety Program**

1. **Goal.** The Regional Safety Committee's goal is to serve as a means of safety communications by creating and maintaining an active interest in all safety aspects and to encourage employees to become actively involved in developing and maintaining a safe work environment.

### **2. Structure**

a. The chairman will be the Highway Patrol lieutenant designated by the regional commander.

b. The secretary will be the adjutant, unless the regional commander indicates a desire to have another member of the committee serve as secretary.

#### **c. Members**

1) Highway Patrol lieutenant, one from each subdistrict.

2) Driver License lieutenant, one from each district.

3) Commercial Vehicle Enforcement lieutenant.

4) CLE supervisor or designee.

5) Texas Ranger supervisor or designee.

6) Field Laboratory supervisor or designee.

7) Vehicle Inspection regional supervisor or designee.

8) Regional Communications supervisor or designee.

9) Any other member appointed by the regional commander or appointed by the committee chairman and approved by the regional commander.

### **3. Meetings**

a. The Regional Safety Committee will meet semiannually in February and August to review reported on-the-job injuries, injuries to the public on Department property, fleet accident-related injuries, and to review building safety inspection reports. The committee's report will be forwarded to the regional commander, with a copy to the Risk Manager. The report will outline the cause of injury, if it can be determined, along with the committee's recommendation(s) or step(s) to reduce the injury potential, which may include additional training, if deemed necessary. If the committee has no recommendation(s), it should be so noted. If a safety hazard or a building deficiency is reported, the committee's report will include their recommendation(s) to correct the hazard or deficiency.

b. Upon receipt of the committee report, the regional commander shall cause the recommendations to be evaluated and provide the committee chair with a progress report prior to the next scheduled Regional Safety Committee Meeting.

### **4. Membership and Duties**

#### **a. Highway Patrol lieutenant designated by the regional commander**

1) Serve as regional safety coordinator.

2) Serve as chairman of the Regional Safety Committee.

3) Coordinate training programs on job and employee safety for all Department employees within the region.

4) Maintain the regional commander's files on employee safety training and safety-related material.

5) Notify committee members of meeting dates, times, and locations.

6) Serve as a member of the Department Safety Committee.

#### **b. Adjutant**

1) Maintain files on Incident Report (HQ-12) (see Annex #1).

2) Serve as a member of the Regional Safety Committee.

3) Serve as secretary at semiannual Regional Safety Committee meetings, unless the regional commander indicates a desire to have another member of the committee serve as secretary.



4) Prepare summary of all Incident Reports for review by the Regional Safety Committee.

5) Coordinate the preparation of the meeting minutes for the chairman's signature.

6) Maintain a file of each Department-owned building and any other facility routinely occupied or used by Department personnel along with the inspection reports (OAI-15) (see Annex #3) for that building or facility. The file will also contain any reported deficiency or hazard, committee recommendations, and corrective actions.

c. Highway Patrol Lieutenant. Serve as field coordinator as described in section 5.

d. Driver License Lieutenant. Serve as field coordinator as described in section 5.

e. Commercial Vehicle Enforcement Lieutenant. Serve as liaison and spokesperson for Commercial Vehicle Enforcement Service.

f. CLE Supervisor. Serve as liaison and spokesperson for CLE services.

g. Texas Ranger Supervisor. Serve as liaison and spokesperson for the Texas Rangers.

h. Field Laboratory Supervisor

1) Serve as liaison and spokesperson for the laboratories within the region.

2) Ensure that the laboratories are inspected and present the inspection reports to the committee at the semiannual meetings.

i. Vehicle Inspection Regional Supervisor. Serve as liaison and spokesperson for Vehicle Inspection.

j. Regional Communications Supervisor. Serve as liaison and spokesperson for Communications.

## **5. Field Coordinator**

### **a. Responsibility**

1) Highway Patrol lieutenants are responsible for all facilities within their assigned subdistricts which are not utilized by Driver License personnel only. This includes all facilities whether owned by the Department, leased, or donated.

2) Driver License lieutenants are responsible for all facilities within their assigned districts that are staffed or utilized by Driver License personnel only. This includes all facilities whether owned by the Department, leased, or donated.

**b. Duties**

- 1) Coordinate semiannual field inspections.
- 2) Train field Additional Duty Safety Officers (ADSOs).
- 3) Review all Building Inspection Checklists (OAI-15) (Annex #3) and deliver the checklists to the Regional Safety Committee for review at the scheduled semiannual meetings.

**6. Field Additional Duty Safety Officers (ADSOs) will be Highway Patrol and Driver License sergeants.**

**a. Duties**

- 1) Make semiannual inspections of the following areas utilizing the Building Inspection Checklist (OAI-15) (Annex #3) and the inspection guidelines (Annex #4) and submit the inspection checklists to the appropriate field coordinator and the Building Program Bureau Manager in Austin not later than the 31st day of July and the 31st day of January each year.

a) Highway Patrol sergeants or their designees will inspect:

(1) All Department-owned buildings and any other facility routinely occupied or used by Department personnel in their respective sergeant areas.

(2) Parking areas around those buildings where the Department is responsible for the maintenance of the parking area.

(3) Areas where Department-owned bulk gasoline tanks are located.

(4) Firearm ranges utilized by Department personnel to conduct semiannual firearms qualifications.

(5) All offices utilized by Department personnel when those offices are located in the same building/facility as the Highway Patrol office.

(6) Any other area that a supervisor or field coordinator requests.

b) Driver License sergeant or designee will inspect:

(1) All Driver License offices in their respective sergeant area that are located in a building or facility separate from that of the Highway Patrol.

(2) Any other area that a supervisor or field coordinator requests.

## **02.09 Additional Duty Safety Officers (ADSOs)**

1. Additional Duty Safety Officers will be responsible for:

a. Assisting supervisors and bureau managers in carrying out assigned duties and responsibilities for safety and health.

b. Serving as liaison between the workplace and the respective Safety Committee representative.

c. Conducting or arranging for safety orientation, refresher, and regular safety awareness training programs.

d. Assisting the supervisor in making regular safety inspections of physical conditions and work practices, and maintaining a record of those inspections.

e. Assisting the supervisor in investigating accidents and completing required reports, and in taking action to prevent recurrence.

f. Suggesting safety items for inclusion in the agenda of the respective Safety Committee meetings.

g. Taking appropriate actions to inform employees of safety program activities and encouraging full participation in these activities.

## **02.10 Training**

1. **Highway Patrol Service.** The Highway Patrol Service will actively promote safety awareness and train regional personnel, including Criminal Law Enforcement, Driver License Division, Texas Rangers, and regional administrative personnel, in safety awareness and responsibilities of each employee in job safety.

2. **Department Safety Training.** Departmental safety training will be included in recruit schools and supervisory and managerial schools. In addition, in-service schools will receive departmental safety training on recommendation of training committees.

3. **Administrative Personnel.** Administrative personnel will strongly emphasize and promote overall departmental safety through training and actual participation. Administrative, command, supervisory, and operational level personnel will promote a general safety awareness among all employees so that each can be constantly aware of job safety for themselves and fellow employees.

## **02.11 Safety Practices Policy**

1. The Department is dedicated to minimizing injuries to personnel and damage to property through sound safety practices. Although many employees are exposed to unsafe conditions because of their jobs, proper equipment, training in and use of proper safety techniques, and good judgment can reduce the hazards significantly.

2. Each supervisor is responsible for training assigned employees in proper techniques, observing work habits and conditions, and correcting unsafe acts and conditions when noted. This responsibility includes:

a. Maintaining a safe working environment for all employees.

b. Providing and maintaining safe equipment.

c. Correcting unsafe work habits and procedures.

d. Correcting, if possible, or reporting to their immediate supervisor any unsafe condition which could cause injury or death to any employee or nonemployee or cause property damage.

e. Cooperating with field coordinator, Safety Committee member, or ADSO when safety inspections are conducted.

f. Submitting to the Regional Safety Coordinator or Headquarters Safety Committee member, by memo, through proper channels, any recommendations on how to correct unsafe working conditions or improving normal working conditions, with a notation of corrective action already taken.

3. It is the responsibility of each employee to learn to operate assigned equipment properly, to use all safeguards available, to perform in a safe manner consistent with the requirements of the job, and to correct or report any unsafe condition. This responsibility includes:

a. Following safe procedures as outlined in training classes, operations manuals, or counseling sessions.

b. Reporting to the Regional Safety Coordinator or Headquarters Safety Committee member, by memo, through proper channels, any of the following with notations of corrective actions already taken:

1) Unsafe equipment.

2) Unsafe working conditions or procedures.

3) Suggestions on how to improve working conditions.

4. Training committees and training staff are responsible for including safety training in basic, in-service, and other training courses, when applicable.

### **08.03.00 HAZARD COMMUNICATION (HAZCOM) PROGRAM**

**03.01 Policy.** Department employees will conduct all work operations and activities in such a manner as to comply with the requirements of the Texas Hazard Communication Act, Chapter 502 of the Health and Safety Code, and Chapter 506, Public Employer Community Right-To-Know Act. It shall be the responsibility of each division chief to carry out the requirements of both Acts as it pertains to their division. All employees are expected to follow accepted safety procedures and manufacturer's recommendations in the handling of any hazardous chemical or material. It is the purpose of the Hazard Communication Program to ensure that all employees are informed of and understand any potential hazardous chemical exposures at Department work sites.

**03.02 Notice To Employees.** The "Notice to Employees" is required to be posted in the workplace, and informs employees of their rights and responsibilities. It is the responsibility of the building manager to ensure that this notice is properly posted. The "Notice to Employees" poster is available from the Department's Risk Manager in the Health and Safety Section of the Human Resources Bureau or the Texas Department of Health (TDH) Hazard Communication Branch.

### **03.03 Employee Training and Education**

1. The Act requires two groups of employees to be properly trained.

a. All new employees must be trained concerning the hazardous chemicals used in their workplace prior to working with those chemicals.

b. When new hazardous chemicals are introduced into the workplace, or new hazards are recognized concerning certain chemicals, all employees that are exposed to those chemicals must receive training.

2. The training must include the following areas:

a. information on interpreting labels and material safety data sheets (MSDS) and the relationship between those two methods of hazard communication;

b. MSDS location and composition;

c. acute and chronic effects of chemical exposure;

d. safe handling of hazardous chemicals known to be present in the workplace and to which the employee may be exposed;

e. proper use of personal protective equipment;

f. necessary first-aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and

g. proper spill cleanup and proper disposal.

3. The employee's first-line supervisor is responsible for conducting the training and maintaining a record of the training in the workplace. The supervisor shall keep a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years. A copy of the training record shall be forwarded to the Department's Risk Manager.

#### **03.04 Labels**

1. The Act requires that all chemicals be appropriately labeled at all times. Primary containers must be relabeled with at least the identity appearing on the MSDS, the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer's name and address.

2. Secondary containers must be relabeled with at least the identity appearing on the MSDS and appropriate hazard warnings. An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use by the employee who performs the transfer during one work shift. It is advisable to indicate what the contents of all containers are even if it is only water.

#### **03.05 Material Safety Data Sheet MSDS**

1. An MSDS is a document that contains the following information:

- a. Manufacturer's Name, Address and Telephone Numbers
- b. Hazardous Ingredients
- c. Physical and Chemical Characteristics
- d. Fire and Explosion Hazard Data
- e. Reactivity Data
- f. Health Hazards
- g. Safe Handling and Use
- h. Control Measures

2. MSDS sheets themselves must be:

- a. Prepared per OSHA standards.
- b. Prepared by the manufacturer or distributor and supplied to the purchaser.
- c. Maintained by the employer in the workplace where the chemical is used and readily available to employees. Upon request, MSDS sheets must be provided to the Director of the Texas Department of Health and the local fire chief.

### 3. Supervisor Responsibilities

a. MSDSs must be maintained in a central location for easy access by the employees.

b. MSDSs must be kept current and there must be one corresponding MSDS readily available for every hazardous chemical used or stored on the work site.

c. When new hazardous substances are received at any work site, the supervisor of that area is to ensure that an MSDS is included. If not, the supervisor will contact either Purchasing in the Accounting and Budget Control Section or the original manufacturer to request an MSDS for the product.

4. Because MSDS and proper labeling are required on all hazardous chemicals, employees are not allowed to bring hazardous chemicals from home to use at work. Hazardous chemicals used at work must be purchased in accordance with Chapter 10 of the General Manual. This policy does not extend to items for personal use such as nail polish remover.

#### **03.06 Workplace Chemical List**

1. The Department shall compile and maintain a workplace chemical list that contains the identity used on the MSDS and container label and the work area in which the hazardous chemical is normally present in excess of 55 gallons or 500 pounds or in excess of an amount that the TDH determines by rule for certain highly toxic or dangerous chemicals.

2. The supervisor shall ensure the workplace chemical list is readily available to the employees and ensure all employees are aware the workplace chemical list exists.

3. The supervisor of each section affected shall update the workplace chemical list as necessary, but at least by December 31 of each year. A copy shall be forwarded to the Department's Risk Manager.

4. The supervisor shall maintain a workplace chemical list for at least 30 years.

**03.07 Texas Tier Two Report.** The Public Employer Community Right-To-Know Act, Chapter 506 of the Health and Safety Code, requires the Department to compile a list of all hazardous chemicals present in the workplace in excess of certain quantities and submit this list annually to TDH. Currently, petroleum fuels are the only chemicals maintained by the Department that must be reported under this section. The Building Program Bureau will be responsible for submitting this report annually. A copy of the report will be maintained by the Building Program Bureau and the Risk Manager for at least 30 years.

**03.08 Reporting Fatalities and Injuries.** The supervisor shall immediately verbally notify the Department's Risk Manager of an employee accident that directly or indirectly involves chemical exposure that involves asphyxiation, and that is fatal to one or more employees, or that results in the hospitalization of five or more employees.

**03.09 Additional Information.** For additional information concerning the Texas Hazard Communication Act and the Public Employer Community Right-To-Know Act, employees should contact:

Department of Public Safety - Risk Manager  
Health and Safety Section  
Phone (512) 424-2725  
Fax (512) 424-2739

Texas Department of Health  
Hazard Communication Branch  
1100 West 49th Street  
Austin, TX 78756  
Phone (512) 834-6600

#### **08.04.00 USE OF TOBACCO**

**04.01** The use of tobacco products are prohibited in:

1. All buildings owned or managed by the Department, and
2. Any vehicle designated as a pool vehicle.

“Tobacco products” includes e-cigarettes and any similar product.

**04.02** Members of the Department of Public Safety shall refrain from the use of tobacco when in direct official contact with the public when such use might be considered objectionable.

**04.03** The use of tobacco products is only permitted at ‘Designated Smoking / Tobacco Use Areas’ at facilities owned or managed by the Department.

**04.04** The building manager of each property owned or managed by the Department shall designate at least one designated smoking / tobacco use area for each facility and provide waste receptacles for tobacco products only in those designated areas. At least one designated smoking / tobacco use area must be accessible for public use.

**04.05** Division management is responsible for the strict enforcement of this policy.

**04.06** Department employees shall comply with:

1. Section 48.01 of the Penal Code regarding Smoking Tobacco, and
2. Section 365.012, of the Health and Safety Code regarding Illegal Dumping.
3. Any local ordinances or rules governing the use of tobacco in all public buildings.

**04.07** The building manager of each property owned or managed by the Department shall:

1. Place signs at each public entrance providing notification of 08.04.01 (1).
2. Place signs at the designated smoking / tobacco use area indicating such designation.



3. Place signs at the designated smoking area indicating the Penalty for Littering.

### **08.05.00 FLEET SAFETY PROGRAM**

**05.01 Purpose:** The purpose of the fleet safety program is to: minimize injury and property damage, accurately and efficiently investigate fleet crashes, identify driving behavior trends that contribute to crashes, implement both proactive and reactive driving training, decrease the liability to the Department, create incentives for good driving behavior, and create consequences for unsafe or dangerous driving behavior.

**05.02 Policy:** It is the policy of this agency to take an active role in reducing the number of fleet crashes involving Department personnel. In doing so, the Department can reduce the number of injuries and the cost of operating Department vehicles due to vehicle damage. Department administrators should devote a sufficient amount of time to ensure employees receive proper driver training and immediately correct deficiencies or unsafe driver behavior exhibited by employees under their supervision. An employee involved in a fleet collision or incident shall immediately notify their immediate supervisor of the occurrence. The Texas Highway Patrol Division in the area where the event occurs will be contacted to make the determination if the occurrence should be classified as a fleet collision or fleet incident.

#### **1. Definitions.**

**A. Fleet Collision:** The Department shall investigate all crashes involving Department vehicles as defined by the Texas Transportation Code; Section 550.041:

1. A motor vehicle collision resulting in injury to or death of a person or property damage to an apparent extent of at least \$1,000.

2. This section does not apply to:

- a. A collision which occurs on a privately owned residential parking area;
- b. A collision which occurs on a privately owned parking lot where a fee is charged for parking or storing a vehicle;

- c. A collision which occurs during the course of Department approved training in a pre-defined training area; or

- d. An intentional act.

3. Damage to the apparent extent of at least \$1,000 will be determined by the estimated cost to repair the damage from a reputable repair facility not the actual cost of repairs.

**B. Fleet Incident:** Any damage to a Department vehicle or damage to other property by a Department vehicle that does not meet the definition of a fleet collision.

**C. Department drivers:** Any Department employee who operates a Department owned vehicle a minimum of 2,000 miles per year.

**D. Department Fleet Safety Coordinator:** A member of the Department appointed by the Director. The Coordinator has the responsibility to:

1. Receive appeals from Department drivers regarding the consequences assessed by this section due to certain contributing factor(s) which resulted in a collision.
2. Convene appeal boards and hearings as needed to determine the status of an appeal.

**E. State Crash Reconstruction Team Leader:** A member of the Texas Highway Patrol Division appointed by the Assistant Director of the Texas Highway Patrol. The Team Leader has the responsibility to:

1. Receive, review, and approve all fleet crash investigations. In order to ensure the accuracy and completeness of all investigations, the State Crash Reconstruction Team Leader may request, through the appropriate chain of command, additional information as needed.
2. Maintain the files of fleet crash investigations in compliance with the Department's records retention policy.
3. Report the results of fleet crash investigations to the affected Department driver, Human Resources, the Assistant Director of the Texas Highway Patrol, ETR, the Regional Commander (if applicable), and the Assistant Director of the Department (if applicable) driver involved.
4. Provide a summary of fleet crash trends to Education, Training, and Research Bureau on an annual basis.

**F. Causative Contributing Factor:** A contributing factor indicated on a crash report for a Department driver that is attributed to a driver's actions.

1. For the purposes of identifying a causative contributing factor, the following conditions would not apply:
  - a. Factors shown under "May Have Contributed",
  - b. Factors under "Vehicle Defects"
  - c. Factors, 1- Animal on Road, Domestic, 2- Animal on Road, Wild, 40 -Fatigued or Asleep, 41- Faulty Evasive Action, 42- Fire in Vehicle, 46- Handicapped Driver, 47- Ill, 48- Impaired Visibility, 62- Taking Medication
2. All other factors may be considered causative contributing factors.

**2. Fleet Safety Program Components.** The Departments Fleet Safety Program is made up of four primary components: investigation, training, awards, and consequences.

## **A. Investigation:**

1. **Fleet Collisions:** all Department fleet collisions will be investigated by the Texas Highway Patrol Division, regardless of whether another law enforcement agency has conducted an original investigation. All fleet collisions will be submitted, through the involved employee's chain of command, to the State Crash Reconstruction Team for review and approval in order to ensure that a thorough and accurate investigation has been completed. The Texas Highway Patrol will establish and publish procedures as necessary to ensure consistent and efficient processes to report fleet collisions. All Fleet Collisions require the completion of a Blue Team Incident Report to be forwarded to the Texas Highway Patrol Division with the required documents as established by the THP Assistant Director.

2. **Fleet Incidents:** all Department fleet incidents will be reported through the chain of command utilizing the current Department incident reporting form or process to the Regional Commander (or Assistant Director if not applicable). Incidents indicating that corrective action and/or training are necessary will be identified and recommended through the chain of command to the Regional Commander (or Assistant Director if not applicable) for determination. All fleet incidents require the completion of an HQ-12 Incident Report which will be completed as per General Manual, Chapter 8, 08.03.

3. Texas Highway Patrol division personnel will determine if a fleet occurrence is classified as a Fleet Collision or a Fleet Incident. In the event that an occurrence has been incorrectly reported as a Fleet Incident, the Regional Commander (Assistant Director if not applicable) or his designee will direct that a Fleet Collision investigation be conducted.

## **B. Training:**

1. The primary responsibility for training Department drivers rests with the Education, Training, and Research Bureau (ETR).

2. ETR will develop appropriate driving training in order to proactively prepare and maintain proficiency of Department drivers.

3. ETR will develop reactive training initiatives to correct driver deficiencies identified in the fleet crash investigation. This remedial driving training will be categorized according to the type of driving circumstance causing the fleet collision and may take into account a driver's fleet driving history.

4. Every immediate supervisor is responsible for monitoring and evaluating the fleet driving behavior of their personnel and to providing sufficient driving training.

C. **Awards:** Human Resources Bureau (HR) will maintain Department driver records and manage the Department's fleet driving awards program.

1. HR will document the investigation results, awards earned, training received, and any corrective action taken into each employee's personnel file.

2. Department supervisors and members from ETR will be allowed access to fleet driving history in order to adequately address corrective action and training requirements.

### 3. Fleet Driver Awards

a. Department drivers will earn a fleet driver award for every 12 months of safe driving without a causative contributing factor collision. The fiscal year, September 1<sup>st</sup> to August 31<sup>st</sup>, will be used as the period for award determination. Partial years will not be used for consideration. The awards will consist of:

- (1) a safe driving coffee cup with the appropriate year in 5 year increments,
- (2) a lapel pin or recognition breast bar with the appropriate year in 5 year increments, and
- (3) administrative leave in the following increments:

# Years Safe Driving	# Hours Admin Leave Earned per Year
1-5 years	8
6-10 years	12
11-15 years	16
16-20 years	24
21 + years	32

NOTE: Administrative leave is subject to provisions provided in statute. Employees may not exceed the maximum administrative leave allowed per fiscal year.

- b. When a Department driver has a fleet collision with a causative contributing factor attributed to their driving, the employee will lose one year of eligibility for award consideration and will not be eligible to receive any awards for that fiscal year.
- c. HR may identify additional awards and implement them with the approval of the Assistant Director of Administration.

D. Consequences of Contributing Factor Crashes: for each fleet collision in which a causative contributing factor has been determined for a department driver, appropriate consequences for the driver will be assessed.

#### 1. Assessment of consequences.

a. The Department shall assess the consequences as indicated in this chapter.

b. Upon final review of fleet crashes, the State Crash Reconstruction Team Leader will determine causative contributing factors with the approval of the Texas Highway Patrol Assistant Director or his designee.

c. The State Crash Team Leader will provide written notification of the results to the affected Department driver, Human Resources, ETR, the affected Department driver's Regional Commander (if applicable), and that driver's Assistant Director (if applicable).

d. It is the responsibility of the immediate supervisor to ensure that the appropriate assessment of consequences has been completed.

e. Other actions may be initiated at the discretion of the Assistant Director (or Regional Commander if not applicable) in the Department driver's chain of command in addition to or in lieu of the consequences provided under the Fleet Safety Program.

f. In order to provide sufficient time and opportunity for proactive driving training, the assessment of consequences will not begin until September 1, 2013.

**2. Consequences:**

<b>Any Consecutive 5 Year Period</b>		<b>Minimum Consequences</b>
<b># of Fleet Crashes with Causative Contributing Factors</b>	0	Award Earned
	1	Verbal or Written Counseling Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History
	2	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History
	3	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for promotion, merit, or pay raise for 6 months
	4	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for commissioned secondary employment, promotion, merit, or pay raise for 12 months
	5	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for commissioned secondary employment, promotion, merit, or pay raise for 12 months Possible Disciplinary Action up to and including termination

	6 +	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for commissioned secondary employment, promotion, merit, or pay raise for 12 months Removed from duties requiring the operation of a fleet vehicle Possible Disciplinary Action up to and including termination
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3. **Appeals.** Employees wishing to appeal either the results of the fleet collision investigation or the consequences assessed must submit a request to appeal in writing through their chain of command to the Assistant Director of the Texas Highway Patrol. Appeals of the results of the fleet collision investigation will be directed to the Deputy Assistant Director of THP. Appeals of the minimum consequences assessed from this section will be directed to the Fleet Safety Coordinator.

**A. Appeal of Fleet Investigation.**

1. The appeal board for this process will be appointed by the THP Assistant Director. The board will include a THP Major, a THP Sergeant, a member from the State Crash Reconstruction Team, a member from the District Crash Reconstruction Team, and a non-commissioned Department Fleet Driver. Each member will be appointed to serve until replaced. Alternate board members may be appointed and serve at the discretion of the THP Assistant Director.

2. The THP Major on the board will serve as the chairman for this process.

3. The appeal board will make their recommendation to the THP Assistant Director.

4. The THP Assistant Director will determine the final ruling of the appeal and provide this finding to the affected employee, Human Resources, ETR, the Assistant Director of the Texas Highway Patrol, the Regional Commander (if applicable), and the Assistant Director of the affected employee’s division.

**B. Appeal of the Consequences.**

1. The appeal board for this process consists of the Fleet Safety Coordinator and a quorum of at least 7 members consisting of a member from each of the following divisions: THP, CID, Rangers, ICT, LESD, RSD, Administration, DL, and TDEM. Division Assistant Director’s will designate the board members from their division. Each board member will serve until replaced by that division Assistant Director.

2. The Fleet Safety Coordinator will serve as the chairman. The chairman will convene the board at least once per quarter to handle appeals in a timely manner. If there are no pending appeals, the Fleet Safety Coordinator may postpone a quarterly meeting until needed.

3. Division designees shall be employed, at a minimum, at the rank of Major/Deputy Administrator.

4. The decision of the board will be based on a consensus of the members for each case appealed. The board's decision will be reported to the affected employee, the affected employee's Regional Commander (if applicable), Assistant Director of the affected employee's division, and Human Resources.

5. Appeals under this section apply only to the consequences specifically listed in this section. Appeals of any disciplinary action initiated or assessed will follow the process outlined in the General Manual, Chapter 7A.

## **08.07.00 DRUG-FREE WORKPLACE**

### **07.01 Drug-Free Workplace Policy**

1. **Purpose and Scope.** The purpose of the Department's Drug-Free Workplace policy is to set forth objectives, policies, and procedures to achieve a drug-free workplace for its employees in compliance with Title 41, Section 702, United States Code, and the Texas Workers' Compensation Act. The Department as a result of its legal and moral responsibilities, as well as the sensitive nature of its work, has a compelling obligation to provide a workplace free of drugs and alcohol for its employees. This policy applies to the manufacture, distribution, dispensation, possession, or use of a controlled substance, alcohol, or inhalant by employees. For purposes of this policy, "inhalant" means a volatile chemical under Chapter 484 of the Texas Health and Safety Code or aerosol paint under Section 485.001 of the Texas Health and Safety Code.

Employees are prohibited from injecting, inhaling, ingesting or otherwise administering into their body any substance in violation of the terms of the Controlled Substances Act, Title 21, United States Code or the Texas Controlled Substances Act, Chapter 481 Texas Health and Safety Code. This prohibition includes conduct that occurs outside of Texas regardless of the laws or the prosecutorial standards of the jurisdiction in which the conduct occurred.

The Department recognizes alcoholism and chemical dependency as illnesses which can be effectively treated. Alcoholism and chemical dependency are illnesses in which a person's continued consumption of any alcoholic beverage or intoxicating chemical definitely and repeatedly interferes with his/her work situation and/or health. The Department's concern with regard to alcoholism and/or chemical dependency is not solely limited to its effects on the member's performance, attendance, or general conduct. It is concerned with the general well-being of each individual as well.

#### **2. Federal Requirements**

a. If an employee is engaged in the performance of a federal grant, the employee shall notify his or her chain of command of any criminal drug statute arrest and/or conviction for any offense involving or related in any way to drug, alcohol, inhalant, or controlled substance abuse no later than five days after such arrest or conviction.

b. This Department shall, within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of such criminal drug statute conviction, notify the appropriate federal agency of such conviction.

c. It is incumbent on the supervisor of an employee who has been convicted for any violation of a criminal drug statute to require that employee to report to the Chief Psychologist and to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, local health, law enforcement, or other appropriate agency. This requirement shall be imposed on the employee within 30 days after receiving notice of the conviction. This requirement is in addition to any disciplinary action taken pursuant to Chapter 7A of the General Manual. Complaint and grievance procedures initiated as a result of criminal drug statute convictions shall be given priority consideration to ensure that any sanctions taken against the employee be imposed as expeditiously as possible.

### **3. Drug and Alcohol Services of the Employee Support Services**

a. The Department recognizes that various personal problems may detract from an employee's effectiveness. Whenever an employee's performance, attendance, on-the-job behavior, or conduct is poor or below standard, sound management practices dictate corrective actions or termination. All levels of supervision shall be alert to unsatisfactory or still acceptable but deteriorating job performance related to alcohol or chemical abuse by a subordinate.

Supervisors and coworkers should refrain from practices that foster the concealment of an employee's alcohol or chemical abuse as such practice generally serves only to prolong the problem.

The Department operates Employee Support Services under the direction of the Chief Psychologist, as part of a comprehensive stress management program as described in 05.63.00. The program staff is comprised of licensed behavioral health professionals known as Employee Support Services Counselors. The Employee Support Services Staff are available to assist employees by providing confidential assessment and referrals to appropriate professional services such as drug and alcohol counseling and treatment/rehabilitative facilities. Employee Support Services Staff are also available to provide follow-up and case management services to employees during the rehabilitation period to track their progress and encourage successful completion of the program. The Employee Support Services Staff provide training and consultation to supervisors and employees regarding behavioral signs that might indicate the presence of a substance abuse problem in an employee.

b. An employee with an alcohol or chemical dependency problem will not jeopardize his or her job security by requesting or utilizing professional services such as counseling or treatment programs. In fact, self-referral of employees who suspect that they may have a drinking or substance abuse problem is strongly encouraged.

c. Should an employee require time off work for treatment or counseling, necessary arrangements should be made with supervisors in order to utilize accrued sick leave or vacation entitlement or apply for sick leave pool time. The employee is always responsible for accepting help and restoring and maintaining his or her job performance at acceptable levels.

d. The cost of treatment, counseling, or rehabilitation resulting from referrals by the Chief Psychologist or Employee Support Services Counselor will be the responsibility of the



employee. Employees should contact their medical insurance providers directly to determine available coverage and referral or per certification requirements, if any.

e. The Chief Psychologist or Employee Support Services Counselor shall maintain only such records as are necessary to carry out his or her duties. To the maximum extent permitted by law, all medical and/or rehabilitation records concerning the employee's alcohol or chemical dependency problem, if any, are confidential and may be disclosed only upon written consent of the employee or in accordance with any applicable laws.

**4. Drug-Free Awareness Program.** The Department will provide each employee a copy of the Department's drug-free workplace policy. Each new employee will be provided a copy of the Department's drug-free workplace policy on or before the first day of employment. Education literature regarding the dangers of drug and alcohol abuse as well as information to increase awareness of possible signs of drug or alcohol problems, will be provided to any employee requesting them by the Psychological Services Bureau, the Employee Assistance Specialists and the Employee Assistance Counselors.

**5. Comment.** Nothing in the administrative policies and procedures expressed here shall be construed to abridge or override existing agency policies relating to hiring, disciplining, or discharging employees. The guidelines regarding drug-free workplace and the employee assistance program are designed to support the ongoing safe and successful accomplishment of the agency's mandate.

**07.02 Mandatory Drug Testing Program Purpose Statement.** The Department of Public Safety is charged with the responsibility of providing leadership, coordination and delivery of law enforcement and public safety related regulatory service. The safety and protection of the people and property within the State of Texas is our primary mission. Department employees often work outside the traditional workplace/office environment and their duties are often carried out with minimal direct supervision in potentially hazardous situations. Many Department employees also handle highly sensitive information the misuse or improper release of which could affect the safety of the Department employees and could damage the ability of the Department to carry out its mission to protect the public. It is important that the Department assure that such employees do not suffer from drug related impaired perception and judgment, therefore, the Department adopts this mandatory drug testing program.

**1. Scope.** The Department of Public Safety has established a Mandatory Drug Testing Program including Random Selection drug testing, For Cause drug testing and Critical Incident drug testing.

**2. Definitions.**

a. **Approved emergency situation** - occurs after testing notification of the employee by the supervisor and refers to required enforcement action, accident, illness or other situations outside the control of the employee.

b. **Approved excused absence** - refers to situations known to the supervisor prior to the notification of the employee of a test that prohibit an employee from submitting a sample, such as:

- 1) An employee's inability to leave a work assignment due to a critical need.

- 2) A safety or hazardous situation involving the employee or public.
- 3) A required appearance in court.
- 4) A previously authorized training away from the duty station or approved leave.
- 5) An employee's inability due to being in a travel status out of state.

c. **Chain of custody** - refers to the method of documenting the handling of a specimen, from collection through final testing procedures, to suitable storage of the specimen. Signed and dated forms and sealed containers are used in this process.

d. **Collection site** - a medical facility, doctor's office or hospital authorized by the Department to collect employee urine and blood specimens to be used in laboratory analysis. A collection site shall be authorized through the drug testing laboratory contract and certified by the federal Department of Health and Human Services.

e. **Collection site personnel** - A person employed by a medical facility that assists and instructs Department employees with specimen collection at the collection site. Collection site personnel are to carry out trained functions that include receiving and making the initial examination of the urine specimen and the proper packaging and sealing of the specimen in front of the employee. This person is also trained in appropriate chain of custody procedures.

f. **Confirmatory test** - the second laboratory test, used to confirm non-negative test results (above cut-off levels) from an initial testing test. Gas Chromatography/Mass Spectrometry (GCMS) shall be the technique used for the confirmatory test.

g. **Contract Laboratory** - An independent scientific Laboratory under contract to the Department that meets federal Department of Health and Human Services guidelines for drug/metabolite testing.

h. **Critical Incident** - an event in which an employee injures another to the point of causing a life threatening injury or death.

i. **Cut-off level** - an established concentration, usually measured in nanograms per milliliter (ng/ml), used to determine whether a specimen is non-negative (at or above the cut-off level) or negative (below the cut-off level) for the target drug.

j. **Drug(s)** - encompasses dangerous drugs, controlled substances or volatile chemical inhalants as those terms are defined by the Health and Safety Code; alcohol, as defined by the Alcoholic Beverage Code; and over the counter medications.

k. **Initial test** - the first laboratory test used in the drug testing protocol, also known as a screening presumptive or preliminary test. Initial tests are rapid and less expensive, but not as accurate as the confirmatory test. An Immunoassay test shall be the technique used for the initial testing.

l. **Medical Review Officer** - a certified, currently licensed physician who reviews all laboratories tests results that are non-negative or suspicious. The MRO uses his/her knowledge of alternative medical explanations and best medical judgment in deciding whether to report a positive or negative test result to the Department.

m. **Negative test** - test results that indicate no finding of drugs above the cut-off level or test certified by the MRO as having the presence of a drug at or above the cut-off level for which there is a valid or acceptable authorization or explanation or in the case of alcohol testing a result below .01.

n. **Non-negative test** - test results that indicate the presence of a drug at or above the cut-off level that must be sent to the MRO for investigation.

o. **Positive test** - test certified by the MRO as having the presence of a drug at or above the cut-off level for which there is not valid or acceptable authorization or explanation or in the case of alcohol testing a result at or above .01.

p. **Program coordinator** - a program coordinator will be assigned from the Human Resources Bureau to coordinate the objectives of the Mandatory Drug Testing Program.

q. **Proper identification** - a valid Texas Driver License or Department-issued identification card containing a photograph.

r. **Random selection drug testing** - all employees required to submit to random selection drug testing have an equal opportunity to be selected and the method used for selection will not differentiate between those previously selected and those who were not.

s. **Reasonable suspicion** - reasonable suspicion is based upon specific, objective, and articulable facts and any rational inferences from those facts that would lead a reasonable person to suspect an employee has used drugs in violation of Department policy.

t. **Safety sensitive positions** - positions within the Department which require:

1) the use or operation of firearms, motor vehicles, aircraft, heavy equipment or hazardous chemicals; or

2) acts or procedures that can be considered potentially hazardous.

u. **Security sensitive position** - positions of public trust within the Department that do not work in a setting with direct supervision capable of finding and rectifying mistakes or misconduct before harm occurs, including:

1) the responsibility for maintaining work place integrity through program or financial auditing, program administration or agency management;

2) access to monies or property belonging to the agency or over which the agency has a propriety or fiduciary responsibility prior to such time that these items are

placed in inventory or otherwise catalogued in a manner where audit control has been established;

3) access to computer databases containing information the loss or damage of which would adversely affect the ability of the agency to carry out its public mission;

4) the direct execution of regulatory services or functions as trainers, inspectors, auditors or testers;

5) having access to information the improper release of which could reasonably lead to:

a) public ridicule or scorn of an employee or citizen, if the release of such information is also unlawful;

b) the hindrance of or damage to a criminal investigation or prosecution; or

c) the placing of a person in danger of injury or death.

v. **Split-sample method** - when an employee provides a specimen for testing, the specimen is split into two collection bottles. One collection bottle remains sealed and is analyzed only if an employee requests a re-test by an independent laboratory.

w. **Suspicious test** - a test that the collection site or laboratory personnel believe might have been tampered with or otherwise compromised.

x. **Unobserved setting** - the specimen collection procedures for drug testing which calls for the urine specimen to be collected in a private setting without an observer present.

y. **Under observation** - when the collection site personnel believe that the urine specimen has been tampered with or otherwise compromised, the specimen is then collected with an observer present. The observer must be of the same sex as the employee.

### 3. Random Selection Process

a. Random selection drug testing is required of designated positions. Safety and security sensitive positions that will be required to participate in the program will be designated by the Director.

b. Employees to be tested will be randomly selected by computer from a list of all employees subject to testing.

c. The percentage of employees tested quarterly will be determined by the Director. Records of the employees tested will be maintained in the Human Resources Bureau.

### 4. Random Selection Drug Testing

**a. Employee selection and notification.**

1) A list of persons to be tested will be randomly selected by computer.

2) The first line supervisor of each employee on the list will be notified by the Program Coordinator through the receipt of the form HR-175, Notification to Report for Random Drug Testing.

**b. Duties of the supervisor.**

1) The supervisor of the employee to be tested will arrange for a urine specimen collection and test at the nearest approved collection site. The scheduled date of the test shall be within five (5) days of receiving notification of the test requirement. After checking the selected employee's schedule, the supervisor will contact the appropriate test site, schedule the test and inform the contracted facility of the supervisor's name and phone number and the name and position title of the person to be tested. The supervisor must verify that the collection site has Chain of Custody (COC) forms for DPS. If the collection site does not have COC forms for DPS, contact the Program Coordinator to assist in locating one. The COC form must be obtained prior to notifying your employee.

2) The selection of the employee for testing shall be kept confidential until the employee is notified. This process should not be delegated to a non-supervisor. At that time, the supervisor will serve the selected employee with the HR-175 and give instructions to the employee about reporting for testing and completion of the form, including instructing the employee to ensure that the collection site uses the confirmation number on the HR-175 as a billing reference. The supervisor will require the affected employee to report to the collection site immediately.

3) The supervisor will schedule the affected employee for specimen collection during the employee's regular working hours whenever possible.

4) The supervisor shall cause the employee to return the completed HR-175 to the supervisor immediately after testing and forward the form to the Program Coordinator.

5) The supervisor will not inform an employee of the testing order if the supervisor knows the employee will be unable to report for testing within 5 days because of an approved excused absence. The supervisor will complete the approved excused absence portion of the HR-175 and return it to the Program Coordinator with a copy to your Division Chief/Special Section Head.

6) If an employee fails to report to the collection site or refuses to submit to testing after receiving a notification order, the supervisor shall complete the appropriate section of the HR-175 to notify the Program Coordinator and advise if the test will be rescheduled within 24 hours and if the failure to report was due to:

a) an approved emergency situation; or

b) an unexcused absence or refusal to report on the part of the employee.

c. **Rescheduling of a random test.** When an employee has an approved excused absence or approved emergency where the employee could not be rescheduled for a specimen collection appointment within 24 hours, the test will be rescheduled by the Program Coordinator within the following six months. Testing procedures on a rescheduled test will be the same as if it were an original notification.

d. Nothing in this section should be construed as a limit on appropriate disciplinary action for failure to comply with the provisions of the Mandatory Drug Testing Program.

e. Nothing in this section should be construed as a limit on the Department's ability to order the testing of other employees or on other occasions where testing is warranted under the circumstances and such testing is in compliance with applicable law.

## 5. For Cause Drug Testing

a. All Department employees in safety sensitive or security sensitive positions shall be subject to drug testing, whenever there is reasonable suspicion to believe that an employee has used drugs, including alcohol, in violation of Department policy, including policy on reporting to duty mentally and physically fit.

b. Circumstances constituting "reasonable suspicion" may include, but are not limited to:

1) An on-the-job accident or occurrence where there is evidence that the accident or occurrence was possibly the result of the employee's actions or inaction and/or the employee exhibited behavior consistent with the use of drugs.

2) Direct observation employee behavior indicating that the employee may be unable to perform his/her job or might pose a threat to the safety or health of the employee, fellow employees or the general public, if such conduct could reasonably be attributed to drug abuse.

3) Presence of the physical symptoms of the use of drugs including, but not limited to slurred speech, bloodshot eyes, unsteady gait, abnormal pupil size and reaction.

4) A conclusion based on good information produced by a credible and reliable person.

5) Other physical on-the-job evidence of drug use by an employee.

c. An employee required to provide a urine specimen as a result of a For Cause circumstance shall be required to follow the collection procedures as described in Section 7, except that if the employee is unable to provide the urine specimen immediately, a blood specimen shall be collected at an approved collection site. An investigator or supervisor ordering

a For Cause test will serve the employee with form HR-176, For Cause Alcohol/Drug Testing Order. In the case of a urine test the investigator or supervisor will accompany the employee to the test site and confirm the collection of the sample and the completion of the HR-176 by site personnel. The investigator or supervisor will forward the completed HR-176 to the Program Coordinator immediately.

d. If during normal office hours, the investigator or supervisor will contact the Program Coordinator for information about the closest test site and to receive a Confirmation Number for billing purposes. After normal office hours, a purchase order will be used. Site location information will be available on the Mandatory Drug Testing Program webpage.

e. In addition to the drugs listed in Section 9, the Department can order a test for any other drug.

f. When a breath specimen as a result of a For Cause circumstance shall be required, the following procedures shall be used:

1) An employee can be ordered to submit a For Cause Alcohol Test by a Department employee assigned to investigate an accident/incident or by a supervisor when meeting the requirements outlined above and the employee shall be required to submit to testing. An investigator or supervisor ordering a For Cause test will serve the employee with form HR-176, For Cause Alcohol/Drug Testing Order. The investigator ordering a For Cause test will immediately notify the first-line supervisor of the employee being ordered to testing.

2) The Breath Test will be used as the primary testing procedure for suspected alcohol use. The tests will be run by a commissioned officer or a Breath Alcohol Testing employee using a portable breath analysis device on the Federal Register Conforming Product List, such as the Intoximeter. Intoxilyzers and similar non-portable instruments can be used, but only if set up specifically for employment testing. If a Breath Test cannot be obtained promptly, a blood test will be used.

3) The employee will be administered a breath test using the standard procedures for such tests. Intoxilyzers and similar non-portable instruments can only be used if the tests are run by a commissioned officer or a Breath Alcohol Testing employee who is a DPS certified breath alcohol test operator.

4) If the test detects any level at .01 or higher then the test will be certified as a positive result.

5) If the machine prints results, the original and two copies will be made of each test results. One will be retained by the test operator, one will be given to the supervisor/investigator ordering the test and one will be forwarded to the Program Coordinator.

6) If the machine does not print results, the test operator will document the results by completing the appropriate portion of form HR-176.

7) The supervisor/investigator ordering the test will immediately forward the completed HR-176 to the Program Coordinator.

g. Nothing in this section should be construed as a limit on the Department's ability to order the testing of other employees or on other occasions where testing is warranted under the circumstances and such testing is in compliance with applicable law.

#### **6. Critical Incident Testing.**

a. The Department will require drug and alcohol testing after the following incidents:

1) A firearms discharge on duty, during enforcement action or involving a Department weapon, which results in human injury or death;

2) A fleet accident in which the employee injures another to the point of causing a life threatening injury or death;

3) An event in which a commissioned employee while performing a law enforcement function injures another to the point causing a life threatening injury or death;

4) An on duty event in which a non-commissioned employee injures another to the point causing a life threatening injury or death.

b. The collection procedure for Critical Incident testing will be the same as that used in For Cause testing except that form HR-177, Critical Incident Alcohol/Drug Testing Order, will be used.

c. Nothing in this section should be construed as a limit on the Department's ability to order the testing of other employees or on other occasions where testing is warranted under the circumstances and such testing is in compliance with applicable law.

**7. General Specimen Collection Procedures.** Any employee who is required to submit a urine specimen or sample shall be sent to an approved collection site and the following procedures shall be used:

a. Upon arrival at the approved collection site, the employee will sign in and provide proper identification to site collection personnel.

b. The employee will fill out a Chain of Custody form or other like required paperwork provided by the collection site personnel.

c. The employee shall list any legally ingested substances and may voluntarily list any illegally ingested substances taken with the past 30 days which they believe might be detected in the testing process.



d. The employee will receive a specimen container and be escorted to the collection area by collection site personnel. All outer garments such as jackets, coats, etc., and all items such as handbags and packages will be left outside the collection area.

e. The employee will be allowed to provide a urine specimen in a private, unobserved setting [Exception: when the collection site personnel believe that the specimen has been tampered with or otherwise compromised].

f. If the collection site personnel believe that the test has been tampered with or otherwise compromised, the Program Coordinator will be notified immediately of the suspicious test. The employee shall be required to submit to a second specimen "under observation" and both specimens will be tested.

g. Insufficient Urine Specimen Procedures:

1) In the event the employee is unable to provide a minimum of 45 milliliters (approx. 1.5 oz.) of urine for a specimen, the employee will be asked to drink not more than 24 ounces of fluids and wait up to two (2) hours in order to provide a sufficient urine sample.

2) If after two (2) hours a sufficient specimen cannot be provided, a blood specimen shall be immediately given.

h. Once the specimen is provided, the tested employee shall keep possession of the specimen until custody can be transferred to the collection site personnel.

i. If the specimen is adequate, collection site personnel will divide the specimen into a split specimen container and seal the containers in the presence of the tested employee.

j. The employee and the collection site personnel will verify that all chain of custody procedures, within their control, are followed. The specimen will then be mailed or otherwise delivered by the collection center to an authorized contract laboratory for analysis.

k. The employee, investigator or supervisor will present the appropriate Testing Notification Order to the site personnel and have it completed.

**8. Blood Collection Procedure.** Any employee who is required to submit a blood specimen or sample shall be sent to an approved collection site and the following procedures shall be used:

a. Upon arrival at the approved collection site, the employee will sign in and provide proper identification to site collection personnel.

b. The employee will fill out a Chain of Custody form or other like paperwork provided by the collection site personnel.

c. The employee shall list any legally ingested substances and may voluntarily list any illegally ingested substances taken within the past 30 days which they believe might be detected in the testing process.

d. The collection site personnel will draw, store and label the blood as outlined in subsection (h) below.

e. Once the specimen is provided, it shall remain in sight of the employee until verification of proper labeling by the collection site personnel.

f. The employee and the collection site personnel will verify that all chain of custody procedures, within their control, are followed and the specimen will then be sent by the collection center to an authorized contract laboratory for analysis.

g. The employee, investigator or supervisor will present the appropriate Testing Notification Order to the site personnel and have it completed.

h. The collection site personnel will draw blood using the following guidelines:

1) The personnel drawing the blood shall be a doctor, nurse or clinical laboratory technician.

2) The site will be a hospital, doctor's office or other appropriate site.

3) No alcohol, ether, acetone, or other volatile reducing agent should be used as a sterilizing agent for the syringe, tubes, needle, or employee being tested. An aqueous solution of bichloride of mercury is recommended as the sterilization agent.

4) At least 10 c.c. of blood shall be drawn and preserved. The blood shall be preserved in two sterile tubes with at least 5 c.c. of blood in each tube. A dry anti-coagulant should be added to the blood.

5) The employee submitting the sample should be allowed to witness the preparing, labeling and filling of the blood tubes by the collection site personnel so that the employee can sign the chain of custody form.

**9. Laboratory Analysis.** The Department will contract with a provider Laboratory that is certified or approved by the federal Department of Health and Human Services. The contracted Laboratory shall be capable of performing the initial test and the confirmation test as well as collecting and analyzing blood specimens.

a. Initial test will be an Immunoassay test. Should a specimen test non-negative during the initial testing, the specimen shall be analyzed in a confirmation test.

b. Confirmation test will be a Gas Chromatography/Mass Spectrometry (GCMS) test.

c. The following initial and confirmatory cut-off levels shall be used to determine whether the test result is non-negative or negative for the drugs or metabolites listed:

Drug/Metabolite(s)	Initial Level	Confirmatory Level
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Marihuana Metabolites	50 ng/ml	15 (THCOOH)
Cocaine Metabolites	300 ng/ml	150 (Benzoyloecgonine)
Amphetamines	1000 ng/ml	500 (Amphetamines)
Barbiturates	300 ng/ml	200 (Barbiturates)
Opiates	2000 ng/ml	2000 (Morphine/Codeine)
Phencyclidine	25 ng/ml	25 (Phencyclidine)

d. Both the initial and the confirmatory test will be conducted on the same part of the split sample. If a negative test is reported, both samples will be destroyed/discarded. If a non-negative test result is reported the second sample will be stored in such a way as to allow for later testing.

e. The Laboratory will report any negative test results to the designated Program Coordinator. Non-negative and suspicious test results will be reported by the Laboratory to the Medical Review Officer.

f. In addition to the drugs listed above, the Laboratory will test for any other drug when specifically requested by the Department using the acceptable industry standards for their detection and confirmation.

**10. Medical Review Officer**

a. The MRO shall review the results on all non-negative or suspicious drug tests to ensure accuracy, completeness and confidentiality.

b. When the drug testing Laboratory reports a non-negative or suspicious test result, the MRO will conduct an investigation that includes:

- 1) contacting the employee by telephone within one (1) business day of receiving the test result,
- 2) obtaining statements from the employee concerning any legal drug usage that could have resulted in a non-negative test result, and
- 3) verifying employee's statements by contacting physicians, dentists, pharmacies, or other witnesses.

c. Within three (3) business days after receiving the non-negative or suspicious test results from the testing laboratory, the MRO shall report test results to the Program Coordinator and discuss/explain the reports with the Program Coordinator on all non-negative or suspicious tests. This contract should be done in a manner that ensures the security and confidentiality of the information.

d. The MRO shall, upon request of the Department, provide expert testimony for court or Departmental administrative hearings.

**11. Program Coordination and Administration.** Duties of the Program Coordinator include:

- a. Use a computer program to generate a list of employees for random testing and generate Notification Orders as appropriate.
- b. Document all aspects of the Drug Testing program, including the maintenance of a list of all employees tested and results of all tests.
- c. Obtain confirmation from the supervisor once the employee has submitted a urine/blood/breath specimen.
- d. Act as the Department liaison with the Collection Sites, the Medical Review Officer and the Testing Laboratory.
- e. Notify supervisors of negative test results of employees.
- f. Notify the Division Chief of positive and suspicious test results.
- g. Collect budget numbers for all testing from the area employing the tested employee and process all billing paperwork and submit it to Accounting and Budget Control for payment.
- h. Conduct overall coordination of the Drug Testing Program.

**12. Confidentiality of Test Results**

- a. The test results from the Department's Mandatory Drug Testing Program will not be filed in the employee's personnel file unless it is referenced as part of an administrative complaint investigation or disciplinary action.
- b. All statistical reports created or maintained for the overall Mandatory Drug Testing Program will not contain any information with regard to the identification of an employee.
- c. Information obtained as a result of the Department's Mandatory Drug Testing Program may be subject to release under the provisions of the Public Information Act.

**13. Responsibility for Reporting Legal Drug Use**

- a. If the medically approved and appropriate use of a prescription or over-the-counter drug adversely affects any employee's work performance or the safety of the employee or others, the employee must bring this fact to the attention of his/her immediate supervisor.
- b. The immediate supervisor will then consult with the chain of command, and make a determination whether to question the employee's fitness for duty, and whether to limit, suspend or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect.

c. As part of this process, the employee may be requested to provide medical documentation of his/her ability to safely and effectively perform the essential functions of the position.

d. Any information about the employee's medical condition obtained by a supervisor or manager is confidential, and will be shared only on a need to know basis.

e. Employees subjected to the passive inhalation of a drug (e.g., marijuana) must immediately notify the supervisor on duty.

1) The supervisor should document in writing by means of a memorandum:

- a) The substance the employee was exposed to;
- b) The period of exposure; and
- c) A brief statement explaining the necessity for exposure.

2) The memorandum will be forwarded to the Program Coordinator, who will maintain this documentation for use if needed in the drug testing program.

14. **Forms.** Forms can be found in Annex #8.

**07.03 Prohibited Conduct.** For the purposes of this policy, "on duty" is defined as an employee's work hours (including a meal period unless the employee is not returning to work); attendance at classes or conferences during the instructional program, if such classes are paid for by the Department or attended while on the Department payroll; attendance at any public function while speaking or attending as an assigned representative of the agency; and, participation in any DPS-sponsored function.

1. The unlawful manufacture, distribution, dispensing, possession, or use of a drug by an employee is prohibited on the premises of or while operating any Department property or at any other time whether the employee is on or off duty.

2. No employee while on or off duty shall consume alcohol while in uniform.

3. No employee shall report for duty, emergency or otherwise, or operate a Department vehicle or other motor-driven equipment when his or her mental or physical faculties are impaired through the use of legally ingested drugs. Except as provided in subsection d, no employee shall report for duty, emergency or otherwise, or operate a Department vehicle or other motor-driven equipment when evidence of his or her consumption of alcohol may be detected. The use or possession of the employee's own prescription drug while on duty is permissible only if the use or possession is pursuant to the physician's directives. If the medically approved and appropriate use of a prescription drug or over-the-counter drug adversely affects the employee's work performance or the safety of the employee or others, the Department reserves the right to limit, suspend, or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect or risk.

4. The ingestion of alcohol while on duty is permitted for legitimate law enforcement purposes (as stated in the State Appropriations Act) with prior supervisory approval, or where it is not practicable to get such supervisory approval and the reasonable possibility exists that the mission of the employee will be compromised if he or she does not ingest alcohol. Limited ingestion of alcohol for the purpose of

accomplishing the employee's mission is not a violation of this policy, provided it does not preclude him or her from performing assigned duties in a safe manner. The foregoing provisions will not relieve the employee from the obligation to operate a vehicle with safety and in a manner consistent with state law and Departmental policy.

Circumstances may require an employee to return to on-duty status after having ingested alcohol and while it may still be detected on his or her breath. Prior supervisory approval should be obtained where practicable, but under no circumstances shall an employee return to duty while impaired and where public safety would be endangered.

5. Submitting a contaminated or false specimen or otherwise tampering with the drug testing process is prohibited.

6. An employee may not refuse to take a drug test, or fail to appear at the collection site in accordance with this policy, or otherwise refuse to cooperate with the collection site personnel, the Medical Review Officer, a Law Enforcement Officer, or a Department employee with responsibilities under the Mandatory Drug Testing Program.

Employees who are required by this policy to submit to testing in a situation which involves allegations that could be criminal in nature, should be advised that since they are required to fully cooperate, information obtained from the employee's test is information which the courts have held is not generally admissible against that individual in a criminal prosecution arising out of the same set of facts. This is in accordance with the Supreme Court decision in the case of *Garrity v. State of New Jersey*, [87 S.Ct 616 (1967)]. The administrative and criminal investigations will be conducted separately.

**07.04 Sustained Violations.** If a violation of this policy occurs disciplinary procedures will be instituted in accordance with the provisions of General Manual, Chapter 7A. If a violator is not discharged, in addition to any action taken, the violator may be required to participate in the Rehabilitation Program for treatment of a continuing drug problem.

#### **07.05 Rehabilitation Program**

1. **Participation Requirements.** An employee participating in the Rehabilitation Program will be placed on leave of absence. Whether or not it is paid or unpaid will depend on available leave balances. (If applicable, the provisions of the FMLA will be followed). An employee participating in the Rehabilitation Program must abide by the following:

a. Actively participate in an appropriate alcohol or other drug treatment program of a licensed, accredited treatment facility and follow all rules, guidelines and recommendations of that program or facility, including but not limited to after-care recommendations;

b. Complete the program, not reject any treatment or recommendation of the program or facility and not leave or discontinue the treatment program before being properly discharged; and

c. Sign all necessary authorizations and consents to allow the treatment facility to furnish copies of the employee's treatment records to the Chief Psychologist or the designated

Employee Support Services Counselor so that the Department can monitor the employee's treatment program.

2. **Return to Work.** An employee who seeks to return to work while undergoing or after completing treatment must sign and fully comply with a written agreement setting out the special conditions for the employee's return, including but not limited to the following:

a. The employee must submit to a drug test and obtain a negative result before returning to work;

b. the Chief Psychologist, or designed Employee Support Services Counselor in consultation with any treatment program staff, must certify that the employee has successfully completed the program requirements; and

c. The employee must agree to unscheduled, periodic drug tests for a period of not less than one (1) year.

#### **08.08.00 TEXAS TORT CLAIMS**

**08.01 General Administrative Responsibilities.** The Office of the Attorney General has the ultimate responsibility and authority to represent the state's interest in claims originating under the Texas Tort Act.

The Department's role is to provide thorough and accurate incident reports to protect the interests of the employee, the Department, and the state.

Claims for damages under these provisions will be processed through Department channels to the state Office of the Attorney General.

**08.02 Liability.** The Department of Public Safety may be responsible for personal injuries and death incurred through negligence of DPS employees in the maximum amounts of \$250,000 for any individual, \$500,000 for any single accident, and up to \$100,000 for any single occurrence for injury to or destruction of property. The Department is liable for personal injuries or death or damage to or destruction of property caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment, arising from the operation or use of a motor vehicle, or caused from some condition or some use of tangible property, real or personal, under the same circumstances which would exist if a private person were liable in accordance with the laws of this state.

**08.03 Incident Report (HQ-12).** When Department personnel, acting within the scope of their employment, are involved in incidents where property of a nonemployee is damaged or a nonemployee is killed or injured, an Incident Report, HQ-12, (see Annex #1), will be executed. This report will provide a written record of the incident and will inform the Director, the Office of General Counsel, and the Office of the Attorney General of the possibility of legal action against the employee, the Department, or the State of Texas.

Personal injury for the purposes of this report is defined as:

1. Killed.
2. Incapacitating Injury. Severe injury that prevents continuation of normal activities. Includes broken or distorted limbs, internal injuries, crushed chest, etc.
3. Non-incapacitating Injury. Evident injury such as bruises, abrasions, minor lacerations which do not incapacitate.
4. Possible Injury. Injury which is claimed, reported or indicated by behavior but without visible wounds. Includes limping, momentary unconsciousness or complaint of pain.

This report will not replace any other required report.

**08.04 Procedure.** Any employee involved in or witness to an incident involving nonemployees that might fall within the scope of this section will adhere to the following guidelines.

1. Report the available details to his/her immediate supervisor as soon as practicable.
2. Make no statements or comments to those involved other than to exchange identifying information or to give factual information to any investigating officer.

**08.05 Supervisor's Responsibility.** The immediate supervisor of the involved employee(s) will submit a teletype to line commanders and to the Director as soon as practicable relating the basic incident information. The supervisor will investigate, or cause the incident to be investigated, and be responsible for completion of the HQ-12 report and submission of the report through channels to the division chief.

The report should be filled out completely. The section "Employee's Description of the Incident" should contain a statement from the involved employee(s). If an employee has previously given a written statement to an investigator regarding the incident, as in the case of an employee involved in a shooting, a copy of that statement should be attached in lieu of the employee completing an additional statement. A notation of "see attached statement" should be made in this section. Any other reports, witness statements, or supplemental information should be included. The reports will be submitted as follows:

1. Original, after review by division chief, to the Office of General Counsel. The Office of General Counsel will maintain Department files on all HQ-12's submitted to report nonemployee injury or property damage.
2. Copy retained by adjutant for review by Regional Safety Committee for incidents that occur in the field. After review by safety committee, adjutant will maintain regional file copy.
3. On incidents that occur at the headquarters complex in Austin the copy will be submitted to the Risk Manager for review by the Headquarters Safety Committee.

**08.06 Follow-Up Investigations.** In any incident resulting in death or serious bodily injury, or in any incident deemed appropriate by the Director or Assistant Director, an investigation may be conducted by Internal Affairs. Investigation by Internal Affairs will be submitted to the Director's Office, who will



forward a copy to the employee's service commander for his review and recommendations which will then be submitted back through channels to the Director's Office.

**08.07 Office of General Counsel.** The Office of General Counsel will be responsible for coordinating the Department's response to any claim for injury or damage. Any Department member who receives contact pertaining to a tort claim or possible tort claim should refer all questions concerning procedure, liability, or payment of the claim to the Office of General Counsel. Any correspondence regarding a claim should be forwarded to the Office of General Counsel promptly. An evaluation of the claim file and relevant law will be performed by the Office of General Counsel on each claim. The Office of General Counsel will review each claim file for completeness prior to forwarding the file to the Office of the Attorney General for processing.

### **08.09.00 WORKERS' COMPENSATION**

The Texas Workers' Compensation Act provides income, medical, and death benefits to employees in Texas for injuries sustained in the course and scope of their employment. The state agency charged with the enforcement of the act is the Texas Workers' Compensation Commission TWCC. Under the act, most employers carry insurance which pays out benefits for work-related injuries according to the provisions of the act. A special section of the act requires that the State of Texas be self-insured and provides that the Attorney General set up a division in his office to administer the act for state employees. The act mandates that the Director of the Workers' Compensation Division of the Office of the Attorney General shall act as the insurer in administering the provisions of the act for state employees. State agencies are the employer of record and are entitled to certain rights and have specific responsibilities under the Texas Workers' Compensation Act. State agencies are also subject to certain administrative penalties that may be assessed for failure to comply with the Texas Workers' Compensation Act. The Department is required under rules issued by the Office of the Attorney General to cooperate with their agency in providing information necessary for the carrying out of their responsibilities under the act.

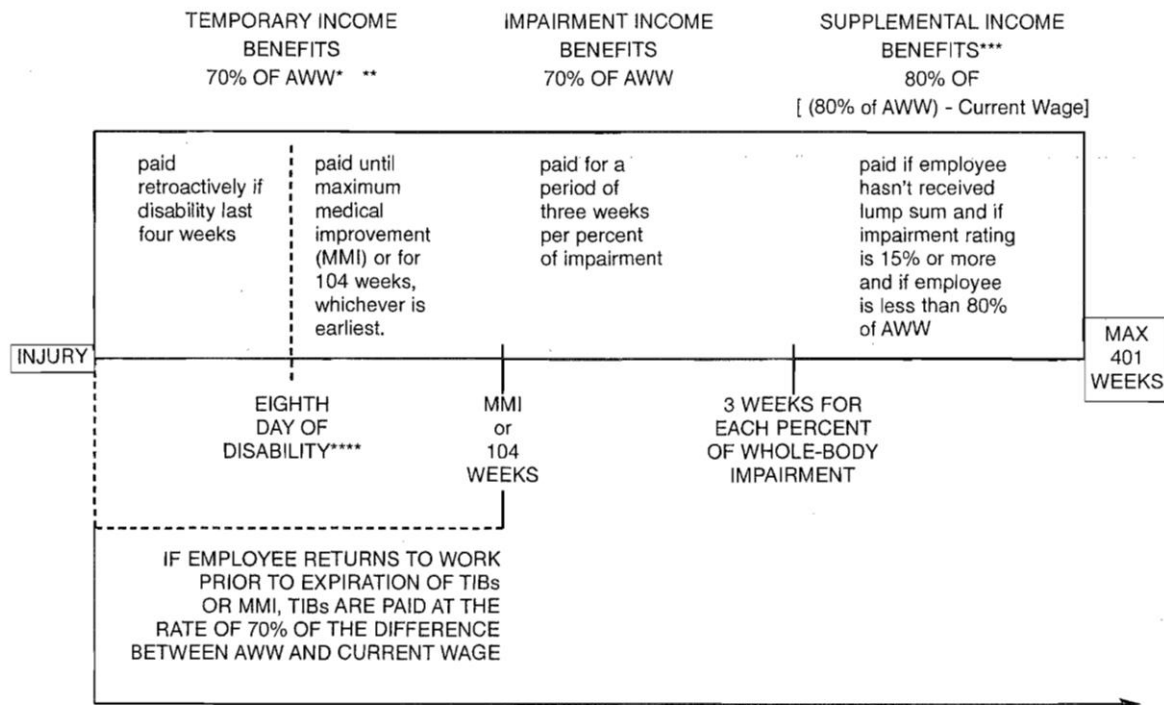
Any questions regarding a claim for benefits under Workers' Compensation should be made to the Office of the Attorney General, as the office that administers the payment of all claims for state employees. The Texas Workers' Compensation Commission can provide employees with information concerning their rights under the act. If an employee is unable to get information from or is having problems with the Office of the Attorney General, the employee may call the Texas Workers' Compensation Commission and ask to speak with an OMBUDSMAN. Questions concerning the reporting requirements found in the General Manual should be directed to the Health and Safety Section of the Human Resources Bureau.

An employee must notify the employer of his injury within 30 days after the date of a compensable injury, in order to be eligible for compensation under the act. The employee must also file a claim for benefits with the Texas Workers' Compensation Commission within one year from the date of the compensable injury. A compensable injury is an injury sustained in the course and scope of employment and for which the employee may receive medical or income benefits as described below. A compensable injury would also include an occupational disease. The employee shall complete form TWCC-41, Employee's Notice of Injury or Occupational Disease and Claim for Compensation (see Annex #13), and file the report with the Texas Workers' Compensation Commission within one year after the date of injury or if an occupational disease, within one year after the date the employee knew or should have known that the disease was related to the employment.

An employee has a right under the act to dispute the decisions of the Office of the Attorney General concerning a claim. The employee can request a Benefit Review Conference by submitting form TWCC-45, Request for Setting a Benefits Review Conference (see Annex #14), to the Texas Workers' Compensation Commission's local field office. Any questions about an employee's rights concerning a claim should be directed to an OMBUDSMAN with the Texas Workers' Compensation Commission.

**09.01 Income Benefits.** An employee injured in the course and scope of employment with the Department is entitled to receive income benefits if the injury results in a disability that causes an employee to be unable to perform his/her job for more than one week. The amount of benefits varies depending on the type, duration, or extent of injury and the wage of the employee at the time of injury. Below is a chart that summarizes income benefits under the Workers' Compensation Act:

### INCOME BENEFITS SUMMARY



#### LIFETIME INCOME BENEFITS

75% of AWW, with 3% annual increase

(paid until employee's death for loss or permanent loss of use of hands, feet, eyes and other conditions described in the Workers' Compensation Act)

- \* Average Weekly Wage (AWW) is calculated by adding the injured employee's weekly wages for the 13 weeks immediately prior to the injury and dividing by 13
- \*\* For employees who earn less than \$8.50 an hour. Temporary Income Benefits (TIBs) equal 75% for the first 26 weeks, if amount does not exceed the employee's previous year's earnings.
- \*\*\* Supplemental Income Benefits (SIBs) are calculated quarterly, paid monthly. All other income benefits are paid weekly.
- \*\*\*\* Disability is defined as the loss or reduction of wages because of a work-related injury.

**09.02 Medical Benefits.** An employee is entitled to payment for all health care arising out of an injury covered under the Workers' Compensation Act that is reasonably required to:

1. Cure or relieve the effects from the injury;
2. Promote recovery from the injury; or
3. Enhance the ability of the employee to return to or retain employment after the injury.

All medical treatment must be approved or recommended by the employee's treating doctor, except in emergencies.

1. **Treating Doctor.** The employee may make a choice of the doctor who will be responsible for treatment. After the employee's initial choice of doctor, the employee may only change the treating doctor with the permission of the Commission. The request for authority to change the treating doctor should be submitted on form TWCC-53, Request to Change Doctor (see Annex #17), and should include the reasons for the change. (If a medical necessity exists, a request can be made by telephone.)

The following do not constitute a change in the employee's treating doctor:

- a. Treatment by another doctor during a medical emergency;
- b. Referral by the treating doctor;
- c. Services ancillary to surgery;
- d. A change necessitated by the doctor's unavailability to provide medical care;
- e. A change of doctor necessitated by a change in residence of the employee; or
- f. A second opinion on the appropriateness of the diagnosis or treatment.

2. **Preauthorization of Medical Treatment.** Some medical treatment requires preapproval by the Attorney General's Office (except in emergencies). The health care treatments and services requiring preauthorization are:

- a. All nonemergency hospitalizations, ambulatory surgical center care, and transfer between facilities;
- b. Psychiatric or psychological therapy or testing except as part of work hardening;
- c. All external and implantable bone growth stimulators;
- d. All chemonucleolysis, facet, or trigger point injections;
- e. All nonemergency myelograms, discograms, or surface electromyograms;

f. Unless otherwise specified, repeat individual diagnostic study, with fee established in the current Medical Fee Guideline of greater than \$350 or DOP (documentation of procedure). (Diagnostic study is defined as any test used to help establish or exclude the presence of disease/injury in symptomatic persons; the test can help determine a diagnosis, screen for specific diseases/injury, guide the management of an established disease/injury, and help formulate a prognosis.)

g. Video fluoroscopy;

h. Radiation therapy or chemotherapy;

i. Biofeedback except as a part of work hardening;

j. Physical therapy or occupational therapy beyond eight weeks of treatment;

k. Work hardening, in excess of six weeks limited to a one-time two-week extension;

l. Work conditioning, in excess of four weeks limited to a one-time two-week extension.

m. All durable medical equipment in excess of \$500 per item and all TENS units;

n. Nursing home, convalescent, residential, and all home health care services and treatments;

o. Pain clinics, chemical dependency clinics, or weight loss clinics; and

p. All nonemergency dental service, including reconstructive dental care or dental appliances.

**3. Failure to Follow Rules.** If the rules on preapproval of a change in the treating doctor or the preauthorization of the above treatments and services are not followed, it may result in the refusal of payment for the medical services performed in violation of the rules. Normally the medical care provider makes the request for preauthorization. In order to assist in maintaining compliance with the rules, an employee may want to inquire whether a doctor takes workers' compensation claims prior to selecting that doctor as the treating doctor for the employee's injury.

#### **08.10.00 WORK-RELATED EXPOSURE TO INFECTIOUS DISEASE**

**10.01 Employees Exposed to Communicable Diseases.** Because the Department recognizes that apprehension and controversy exist regarding infectious diseases such as AIDS and Hepatitis B, the following guidelines and precautions have been developed to assist in minimizing the exposure to and contagion from these diseases.

##### **1. Guidelines for Suspected Work-Related Exposures**

a. **Puncture or Open Wound Exposure.** An employee who sustains a possible percutaneous through the skin exposure via contact with a needle, knife, or other sharp object

or has an open wound exposed to suspected infectious material should: 1) encourage the wound to bleed by application of pressure, 2) wash the area thoroughly with soap and water, and 3) seek medical attention if necessary.

b. **Mucous Membrane Exposure.** Disease may also be contacted through exposure of mucous membrane (eyes, mouth, or nose) to infection. If this occurs, rinse the area thoroughly.

c. Report the incident to your first-line supervisor and consider completing and submitting to the Health and Safety Section form (LS-12), Notification of Exposure to Infectious Disease (see Annex #9).

2. **General Infection Control Guidelines.** All personnel who are in regular contact with the public should consider the possibility that anyone with whom they come in contact may be a carrier of AIDS, Hepatitis B, or other infectious disease. In addition, any employee who comes in contact with an incarcerated or recently released TDCJ inmate should also consider that the individual might be infected with AIDS or Hepatitis B. Therefore, to avoid infection through the bodily fluids of another, the precautions specified below should be enforced routinely, regardless of whether the persons involved are known to be infected with a contagious disease.

a. All wet or dry blood and body fluids should be considered infectious.

b. Because good personal hygiene is the best protection against infectious diseases, hands should be frequently washed with soap and water. Hands and skin that become accidentally contaminated with blood or body fluids should be thoroughly washed immediately.

c. While on duty, keep all wounds carefully protected with a bandage which provides complete and impermeable coverage. A soiled bandage should be changed.

d. Disposable latex gloves should be worn when handling blood, body fluids, or any object exposed to contamination; gloves should be disposed of after each use. Additional protective equipment including gowns, masks, and eye protection should be utilized during the performance of procedures which may involve extensive exposure to potentially infectious blood or body fluids. This includes the handling and transportation of bodies and laboratory specimens and the conducting of postmortem examinations.

e. Contaminated surfaces and objects should be cleaned using household bleach or chemical germicides that are approved for use as "hospital disinfectants" and are tuberculocidal.

f. Constantly be alert for sharp objects. When handling hypodermic needles, knives, razors, broken glass, nails, broken metal, or any other sharp object, use the utmost care to prevent a cut or puncture of the skin. All such objects should be placed in puncture-resistant containers.

g. Spill kits will be placed in strategic locations at headquarters and at all regional, district, and area offices at a minimum. Spill kits should also be placed in offices where Department personnel are in contact with the general public. These spill kits shall contain 4 rags; 2 pairs of gloves; 15 paper towels; 1 red plastic contamination bag; 1 bottle of disinfectant

(Super Wex-Cel solution or its equivalent); and 1 large, clear plastic bag. Service commanders will purchase and distribute the kits and see that they are properly maintained to ensure reliability.

### **3. Guidelines for Field Law Enforcement and Crime Scene Personnel**

a. Special masks are to be used when administering car diopulmonary resuscitation (CPR). It is the officer's responsibility to see that the mask is disinfected after each use or thrown away. Masks are available through General Stores.

b. Precautionary measures should always be exercised to avoid being bitten or assaulted during arrests.

c. During searches, hands should not be placed in areas where one is unable to see such as underneath seats or inside hidden compartments.

d. When searching a suspect, a cautionary pat search should be conducted first. If possible, the suspect should be directed to empty his/her pockets and socks.

e. Appropriate personal protective equipment including gloves, coverall gowns, face masks, and footwear protectors should be used when conducting crime scene searches when appropriate.

f. Blood and body fluid stained clothing and objects must be air dried, placed in paper (NOT PLASTIC) bags, and labeled properly. If evidence is collected from a possibly infected person, the package should be labeled "Caution: Possibly Infectious Material."

g. Any contaminated reports, labels, or evidence tags should be destroyed after the information has been copied on clean forms.

h. Latex gloves, surgical masks, and protective eye wear should be used when collecting or handling liquid blood, body fluids, dried blood, blood contaminated evidence, or deceased bodies.

i. Latex gloves, eye-coverage, surgical masks, and a gown should be worn when attending an autopsy.

j. If possible, use only disposable items at a crime scene when infectious blood is present. All nondisposable items must be decontaminated after each use.

k. Spill kits, as previously described, will be placed in all THP and DLD marked units, and all Ranger and CLE sergeant units. The placement of kits in all other Department vehicles is desirable but not mandatory.

### **4. Crime Laboratory Guidelines**

a. Food and beverages are prohibited in workbench areas.

b. Evidence should only be handled in work areas. Laboratory tests should not be performed in office areas.

c. Access to work areas should be restricted when hazardous evidence is being analyzed. When handling hazardous evidence, the analyst should avoid making or receiving phone calls.

d. Possibly infectious biological evidence transported to court should be packaged and handled in such a manner as to minimize risks to witnesses, court officials, juries, and others present in the courtroom. Prosecutors and judges, if possible, should be informed of the risks before evidence is introduced or handled in the courtroom.

## **10.02 Peace Officers Exposed Through Contact with Persons Requiring Hospitalization**

1. **Report of Contact to Hospital.** It is the responsibility of the peace officer to notify the receiving hospital if he/she has been potentially exposed to the blood and/or body fluids of a patient carrying a communicable disease. A form entitled "Report of Possible Exposure of Transporter" shall be completed and submitted to the receiving hospital. The form will be made available to the peace officer upon arrival at the hospital, usually from the admitting room. The peace officer shall not contact the receiving hospital regarding the diagnosis of the communicable disease of the hospitalized individual. This would not preclude the peace officer from obtaining information necessary to a traffic or criminal investigation (examples: injury code, blood alcohol level, etc.).

2. **Hospital and Health Authority Responsibilities.** It is the responsibility of the receiving hospital to notify the health authority when a transporter has been unknowingly exposed to a patient with a reportable disease. The health authority, in turn, must notify the director of the employing agency.

3. **Department Responsibilities.** The Department shall then provide the employee with the name and phone number of the health authority staff member, who will further advise the employee about medical treatment.

**10.03 AIDS Education.** Education is the cornerstone of efforts to prevent transmission of AIDS. In order to keep Department personnel informed all employees will receive a pamphlet concerning AIDS and the workplace on a yearly basis. The pamphlet will be distributed in the employee's pay envelope. All new employees will receive the pamphlet on their first day of employment. Headquarters Personnel Bureau and the regional adjutants will ensure the pamphlet is furnished to all new employees. The Health and Safety Section will coordinate the printing and distribution of the pamphlet.

**10.04 Information on AIDS.** HIV destroys a person's defenses against infection. These defenses are known as the immune system. Once infected with HIV, a person may remain without symptoms for a long period of time, but is able to infect others through sexual or direct blood contact. As the disease progresses, the immune system can become so weakened that a person may eventually develop life-threatening infections and cancers. AIDS (Acquired Immunodeficiency Syndrome) is the final stage of HIV infection.

HIV virus can be passed from the infected person to others through sexual or direct blood contact:

1. By having sex with an infected person (through semen, vaginal fluids, blood);

2. By sharing needles and syringes with an infected person;
3. By an infected woman to her baby during pregnancy or possibly breast-feeding; or
4. By infected blood or blood products (a very low risk factor since the implementation of blood screening procedures in 1985).

HIV is transmitted through certain behaviors, not through the environment. Except through these behaviors, it is difficult to be infected by this fragile blood-borne virus.

Current scientific and medical technology has determined that there is no risk of HIV/AIDS transmission in the normal work setting. Routine daily encounters with coworkers and agency clients pose no risk of transmitting the fragile blood-borne virus.

Because modes of transmitting HIV do not involve environmental factors, but rather particular behaviors, HIV/AIDS infected individuals will not be discouraged from remaining contributing members of the Department for as long as possible. The Department will institute reasonable procedures to make the HIV-infected employee's continued employment as productive as possible within the scope of available resources.

Because law enforcement officers, crime scene technicians, and other first responders are exposed on a daily basis to the blood and body fluids of others, the specific guidelines outlined above for these employees will be followed in addition to the basic workplace guidelines.

#### **10.05 Confidentiality of AIDS-Related Reports and Records**

1. **Confidential Information.** Any medical documentation or information provided by an HIV-infected employee to Department personnel must be considered confidential.

Any test result or statement indicating that an identifiable individual has or has not been tested for HIV infection, antibodies 2-HIV, or any other infection probably caused by AIDS is confidential. This includes any statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody. No such information is considered public information under the Texas Open Records Act.

2. **Release of Confidential Information Prohibited.** Any member who has access to confidential information is charged with maintaining strict confidentiality and privacy. A person who possesses or has knowledge of confidential information may not release or disclose the information on subpoena or allow information to become known except as provided by law in Section 81.103 of the Texas Health and Safety Code, which generally requires a written authorization from the protected individual. This provision does not preclude an employee from reporting information to his chain of command, the Legal Office, or the Health and Safety Section regarding the subject matter of this section.

Release of this information other than by law is a criminal offense and may expose the individual releasing the information to civil liability, as well.



3. **Request for Legal Opinion.** Any member of the Department receiving a request for any information deemed confidential, which is or may be in the possession, custody, or control of the Department or one of its members, must request a legal opinion from the Chief of Legal Services on the status of the information prior to taking any other action on the request.

4. **Authority to Release.** An employee may waive his right to confidentiality under this section by providing a signed authorization which states the person or class of persons to whom the information may be released or disclosed.

#### **08.11.00 GUIDELINES FOR PAYMENT OF EXPENSES ASSOCIATED WITH EXPOSURE TO INFECTIOUS DISEASE**

**11.01 Workers' Compensation.** Workers' compensation will provide benefits for a work-related exposure to infectious disease if the exposure is incident to an injury for which medical treatment is required. This would include payment for diagnostic testing. For an exposure covered under workers' compensation, see section 09.00 and section 12.00 of this chapter concerning the description of benefits and reporting responsibilities.

**11.02 Other Exposures.** The Department is authorized to pay for the cost of counseling and testing for employees who receive a work-related exposure to an infectious disease. Payment under this section will only apply to the extent that payment is not covered under workers' compensation or the employee's group insurance carrier (HMO or Blue Cross/Blue Shield). For payment under this section, the employee must submit a request by interoffice memorandum, supported by receipt or invoice showing total cost from the health care provider, to the employee's immediate supervisor, who shall immediately forward to the Health and Safety Section. The employee must also submit an LS-12, Notification of Exposure to Infectious Disease (see Annex #9) and comply with the reporting requirements in section 12.00 of this chapter. The LS-12 and accompanying memorandum must be forwarded to the Health and Safety Section on the next working day following the incurring of expenses related to the testing or counseling.

Payment of costs for counseling and testing based on a possible exposure to HIV may only be made if the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV. Any member of the Department who may have been exposed to HIV while performing Department employment duties may not be required to be tested. However, in order to qualify for workers' compensation and other benefits, an employee who claims a possible work-related exposure to HIV infection must also provide documentation that shows that within 10 days after the date of exposure, the employee had a test result that indicated an absence of HIV. This documentation, should the employee choose to be tested, must be forwarded to the Health and Safety Section within 14 days of exposure.

#### **08.12.00 REPORTING WORK-RELATED INJURIES AND INFECTIOUS DISEASE EXPOSURES**

The Department is required by the Workers' Compensation Act to keep a record of all work-related injuries and occupational diseases, whether or not they require medical treatment or cause an employee to lose time from work. The Department is also required to turn in to the State Office of Risk Management a record of all occupational diseases and all work-related injuries which require medical

treatment or result in more than one day of lost time from work. The Department is also required to investigate work-related injuries and incidents of occupational disease for the State Office of Risk Management and participate in a risk management program. For these reasons, it is important that the reporting requirements set out below be followed. Failure to follow the requirements may result in disciplinary action. Failure to follow departmental policy will not affect benefits under the Workers' Compensation program, as long as the employee abides by the requirements of the act. A flowchart has been developed to assist employees and supervisors with the reporting requirements when a work-related injury or occupational disease occurs. (See Annex #21.)

## **12.01 Employee's Responsibilities**

**1. Injury or Occupational Disease.** An employee who receives a work-related injury or contracts an occupational disease must report the injury or the diagnosis of the disease to the employee's immediate supervisor immediately, or as soon thereafter as possible. An occupational disease should be reported as soon as the employee has reason to believe that a disease may be related to their employment. A report of an injury or disease should be made without regard to whether or not medical treatment is necessary or whether the employee lost time from work. The employee must cooperate fully with any investigation of a work-related injury or incident of occupational disease. If the employee's immediate supervisor is unavailable, the employee should report the injury or disease to the next supervisor in the chain of command.

**2. SORM-16.** The employee shall complete SORM-16, Authorization for Release of Information (Annex #19), when the employee has sought medical attention and/or lost time from work for a work-related injury or illness. This form must be submitted to the Health and Safety Section within three (3) calendar days from when the employee reported the illness or injury to their supervisor.

**3. SORM-29.** The employee shall complete SORM-29, Employee's Report of Injury (Annex #20), when the employee has sought medical attention and/or lost time from work for a work-related injury or illness. This form must be submitted to the Health and Safety Section within three (3) calendar days from when the employee reported the illness or injury to their supervisor.

### **4. Utilization of Sick Leave and Annual Leave**

a. For purposes of this section, "sick leave" includes sick leave regularly earned and accumulated by the employee, and sick leave granted from the Sick Leave Pool and extended sick leave with pay authorized by the Director.

b. If an employee loses more than one day from work due to their Workers' Compensation claim, the employee must make an election concerning whether the employee wishes to exhaust all of their earned sick leave and subsequently utilize none, part, or all of their annual leave or to begin to receive Workers' Compensation income benefits after the eighth day disability is reached. No matter which election is chosen, Workers' Compensation income benefits will not begin until the eighth day of disability. The employee must make this election on form SORM-80, Employee Election Regarding Utilization of Sick Leave and Annual Leave (Annex #15). This form must be submitted to the Health and Safety Section within four days, including weekends and holidays, of the employee losing more than one day of work as the result of a work-related injury or occupational disease. Once this form is submitted to the State Office of Risk Management (SORM), the employee may not change their choice of election. If an

employee elects to use sick leave instead of receiving income benefits under Workers' Compensation, all chosen leave accruals must be exhausted before any income benefits under the Workers' Compensation program will begin.

c. An employee absent from work for a work-related injury or disease may apply for Sick Leave Pool time or emergency leave with pay only after all available sick leave and annual leave are exhausted. If an employee with a pending Workers' Compensation claim is granted Sick Leave Pool time, or extended sick leave with pay, the employee or supervisor must immediately report the approved leave granted to the Health and Safety Section. This notice may be given over the telephone to the Workers' Compensation Coordinator in the Health and Safety Section.

d. An employee may not elect to use holiday, FLSA, or state compensatory leave while absent from work due to a work-related injury unless the employee has reached maximum medical improvement as specified by the Workers' Compensation Act.

e. If an employee is absent from work due to their work-related injury and on a leave without pay (LWOP) status, prior to reaching MMI they do not need to request Temporary Disability Leave.

5. **HR-57.** The employee shall complete Section III of the HR-57, Supervisor's Investigation of Employee's Injury/Illness (Annex #11), for all reported work-related injuries or incidents of occupational disease after their supervisor has completed Sections I and II. This form must be submitted back to the supervisor within 24 hours of receipt.

6. **Medical Bills.** An employee should submit medical bills for an injury covered by a Workers' Compensation claim directly to the SORM, except that the original bill may be submitted to the Health and Safety Section through the immediate supervisor with the initial claim form (TWCC-1S).

7. **Infectious Disease Exposure Report.** An employee must report any work-related exposure to an infectious disease to the employee's immediate supervisor immediately, or as soon thereafter as possible. If the employee's immediate supervisor is unavailable, the employee should report the exposure to the next supervisor in the chain of command. If an employee seeks reimbursement or payment of the cost for testing or counseling related to the exposure, the employee must comply with the provisions of Section 11.00 of this chapter.

8. **SORM-74 Witness Statement.** An employee who witnesses a work-related injury or infectious disease exposure of another employee shall report that fact to the immediate supervisor of the injured employee and submit form SORM-74, Witness Statement (Annex #16), to that supervisor within three days of the injury.

## **12.02 Supervisor's Responsibilities**

1. **Initial Notification.** An employee may make a report to his/her supervisor of a work-related injury or occupational disease either orally or in writing. A supervisor may also receive notice through another employee or through actual knowledge of an incident. Once any supervisory or management level personnel with the Department receives notice, from whatever source, that a Department member has received a work-related injury or has contracted an occupational disease, that supervisor or manager must immediately notify the injured employee's immediate supervisor of the injury or disease.

Any supervisor who receives a report of a work-related exposure to infectious disease by an employee shall handle that notice in the same manner as an injury or disease report.

**2. Report and Investigation.** The employee's immediate supervisor is responsible for reporting and investigating the facts surrounding the injury, occupational disease, incident, or exposure to infectious disease. If the employee's immediate supervisor is unavailable, the next supervisor in the chain of command shall be responsible for having an investigation done and having reports completed in a timely manner. The closer in time to an incident that an investigation is initiated, the more accurate and complete the information on the claim will be. This will assist the Department in dealing with questions about claims in an efficient manner.

### **3. TWCC-1S**

a. The immediate supervisor of an employee who has received a work-related injury or exposure to infectious disease or who has contracted an occupational disease shall complete form TWCC-1S, Employer's First Report of Injury or Illness (Annex #10,) and forward to the Health and Safety Section by 5:00 p.m. of the first working day following the injury, exposure, or notice of occupational disease.

b. Any serious injury to a Department employee shall be reported to the Health and Safety Section by telephone as soon as practicable after the injury. The TWCC-1S must still be filed in the normal manner.

**4. HQ-12.** The immediate supervisor of an employee who has received a work-related injury or exposure to infectious disease or who has contracted an occupational disease shall complete the Incident Report form, HQ-12. (See Annex #1). The supervisor shall discuss the results of the investigation with the employee and require them to complete "Employees Description of Incident". The original shall be sent to the Health and Safety Section located in the Human Resources Bureau within four (4) days of the injury, exposure, or notice of occupational disease. Field personnel shall forward a copy through channels to the rank of captain (or field area manager), who shall then forward to the regional safety officer. Headquarters personnel shall forward a copy through channels to the division chief, a minor division chief, or a Director's staff section/service head, as appropriate.

**5. SORM-74.** Immediately after receiving notice of any injury, the supervisor should determine the names, addresses, and telephone numbers of all witnesses to the incident. The supervisor should ensure each witness completes SORM-74, Witness Statement (Annex #16), and the supervisor will forward the completed forms to the Health and Safety Section within three (3) days from when the supervisor was first notified.

### **6. Notification of a Change in Status**

a. **Reporting Requirements.** The immediate supervisor of an employee who has a Workers' Compensation claim pending shall immediately notify by telephone, the Health and Safety Section each time the employee:

- 1) has changed earnings during any pay period;
- 2) resigns or is terminated;

3) returns to work;

4) misses work (because of the injury or disease) after a previous return to work; or

5) is absent for 60 days and every 60 days thereafter until the employee is able to resume work.

b. If the injured employee has elected to exhaust accrued sick or annual leave prior to receiving payments under Workers' Compensation, the supervisor will advise the Health and Safety Section of the status of the employee's leave balance. The supervisor must also immediately notify the Health and Safety Section upon the exhaustion of all accrued sick and/or annual leave by the employee and if that employee is placed on LWOP status and continue to lose time for the work-related injury.

**12.03 Emergency Leave Notification.** The Human Resources Bureau shall immediately inform the Health and Safety Section of any grant of Sick Leave Pool benefits to an employee who has sustained a work-related injury.

**12.04 Health and Safety Section.** The Workers' Compensation Coordinator for the Department is located in the Health and Safety Section of the Human Resources Bureau. The Health and Safety Section will be responsible for submitting all forms generated by the supervisors to the Attorney General's Office. The Health and Safety Section will be responsible for completing and forwarding the Wage Statement (TWCC-3), if the employee experiences one full day or more of lost time, or upon a request from the Attorney General's Office.

Supervisors having questions concerning the completing of forms or investigations may contact the Health and Safety Section.

**12.05 Forms.** Forms are provided in the Annex section at the end of this chapter. Forms may be copied from the Annex for use in reporting. Forms may also be obtained from the Health and Safety Section.

#### **12.06 Addresses, Phone Numbers, and Fax Numbers**

Texas Workers' Compensation Commission  
4000 South IH-35  
Austin, Texas 78704-7491

For an OMBUDSMAN call 1-800-252-7031 or contact the local field office of the Commission (see your local phone book to determine if there is one in your area).

State Office of Risk Management  
Workers' Compensation Division  
PO Box 13777  
Austin, Texas 78711  
Phone: (512) 475-1440  
Fax: (512) 472-0228

Department of Public Safety—Risk Manager  
Program Administrator  
Health and Safety Section  
PO Box 4087, Austin, Texas 78773-0251  
5805 North Lamar Blvd., Austin, Texas 78752-4422  
Phone: (512) 424-2725  
Tex-An: 225-2725  
Fax: (512) 424-2739

Department of Public Safety  
Workers' Compensation Coordinator  
PO Box 4087, Austin, TX 78773-0251  
5805 North Lamar Blvd., Austin, TX 78752-4422  
Phone: (512) 424-2738  
Tex-An: 225-2738  
Fax: (512) 424-2739

Department of Public Safety Health and Safety Section  
PO Box 4087, Austin, Texas 78773-0251  
5805 North Lamar Blvd., Austin, Texas 78752-4422  
Phone: (512) 424-2737  
Tex-An: 225-2737  
Fax: (512) 424-2739

### **08.13.00 TEXAS DEPARTMENT OF PUBLIC SAFETY RETURN TO WORK (RTW) POLICY**

The Department of Public Safety strives to provide a safe and healthful environment in which to work and conduct business. The Return to Work (RTW) Program provides a mechanism for the Department to move employees who have suffered a work-related injury or illness back into the workforce as soon as possible. If the employee is unable to perform his or her full, regular duties, whenever possible the employee is expected to participate in the RTW Program by performing temporary work assignments which are within his or her capabilities. By allowing an employee to perform modified regular duties or alternate duties, the employee remains a productive member of the workforce while recuperating. Temporary positions may not always be available for a person suffering from a work-related illness or injury, but every effort should be made to assign injured or ill employees to temporary assignments when possible.

Specific procedures shall be provided in this section to guide employees regarding the RTW Program. All employees of the Department of Public Safety are expected to support and fully comply with this policy and the procedures provided to implement this policy.

Although the program is designed to apply to work-related injuries or illnesses, temporary assignments may also be given to employees in need of modified or alternative duties as a result of nonwork-related illness or injury at the discretion of their division chief or special section head.

This section does not constitute a promise of continued employment for injured or ill employees. The business necessity of filling positions of employees unable to fulfill job requirements may dictate termination of employment with the Department under the provisions of Chapter 7A, Removal from Payroll.

### **13.01 Coordination with Other Laws**

1. The Texas Workers' Compensation Act, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) can interrelate in an RTW context when an employee who sustains a compensable injury in the course and scope of employment also meets the criteria for protection under the ADA and/or the FMLA. The ADA and/or the FMLA also affords protections in nonemployment-related illnesses and injuries. The RTW Program must be in compliance with protections afforded by the ADA to a qualified individual with a disability. The RTW Program must also be in compliance with the FMLA job protections afforded to an eligible employee who has a serious medical condition. When the qualifying disability or serious medical condition is sustained in the course and scope of employment, the state's Workers' Compensation laws come into play. Where the state's Workers' Compensation laws conflict with the ADA and/or FMLA, the federal requirements and regulations supersede state law. Supervisors and other Department employees responsible for implementing the RTW Program will do so in compliance with all applicable laws.

2. This RTW Program is meant to assist employees with a temporary disability move back into the workforce at a pace that will benefit both the employee and the Department. Participation in the program shall not be construed as recognition by the Department, its management, or its employees that any employee who participates in the program has a disability as defined by the ADA. If an employee needs an accommodation for an injury or illness that results in a disability under the ADA, it is the employee's responsibility to inform his or her supervisor or a person in a responsible management position that a disability under the ADA exists and that a reasonable accommodation is necessary to perform the essential functions of the employee's job.

3. For additional information on departmental policies regarding FMLA, ADA, and Workers' Compensation, refer to Chapter 7, 07.03.00 (FMLA); Chapter 18, 18.30.00 (ADA); and Chapter 8, 08.09.00 (Workers' Compensation) of the General Manual.

**13.02 General Administration.** Each division chief or special section head will be responsible for coordinating the RTW Program for their division or special section. Each division chief or special section head may designate a member of their staff to act as the RTW Coordinator. Modified and alternate duty assignments (bona fide job offers) will be approved by the division or special section RTW coordinator. The Health and Safety Section in the Human Resources Bureau will oversee the general administration of the RTW Program and provide technical assistance.

### **13.03 Definitions**

1. **Alternate Duty.** Performance of the essential functions of a job or position other than the position for which the employee is employed. Alternate duty allows the employee to temporarily perform other duties and tasks that are within the restrictions to duty imposed by the health care provider. Such alternate duty may be physically located in the same facility or in another facility. Alternate duty is a temporary arrangement and is not permanent in nature.

2. **FMLA Leave.** Federal leave entitlement of up to 12 weeks of paid or unpaid leave according to the Department's leave policies when an eligible employee is unable to work because of a serious health condition. The leave is normally continuous, but may also be taken intermittently or on a reduced leave schedule.

3. **Full Duty.** Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and marginal functions of the employee's regular job.

4. **Lost Time.** Time spent away from work at the direction of a health care provider as a result of an injury or illness. The term does not include time worked in a temporary assignment.

5. **Modified Duty.** Performance of some of the functions and tasks of the regular job duties for which the employee is employed. Modified duty allows the employee to return to current employment in his or her regular job, and perform those duties and tasks that are within the capabilities of the employee, given the restrictions to duty imposed by the health care provider. Modified duty is a temporary arrangement and is not permanent in nature.

6. **Temporary Assignment.** Performance of a temporary job assignment that is intended to return an injured employee to work at less than his or her full duties when an injury or illness prevents the employee from working full duty. Two types of temporary assignments are modified duty and alternate duty. Temporary assignments are not permanent in nature.

**13.04 Employee Participation.** In order for an employee of the Department to be eligible to participate in the RTW Program, the employee must have a work-related injury or illness:

- that results in lost time away from work;
- that prohibits the employee from performing the functions of his or her job;
- in which the physical restrictions or limitations are documented by the health care provider;

and

—that there is a likelihood of returning to work on a full-time and full-duty status at the end of the recuperation period.

If an employee is certified by the health care provider to return to work, but at less than full duty, the Department may provide a temporary assignment position, if available, to the employee. Normally, the expected recuperation period should be less than six months, but more than one month. The immediate supervisor will determine the availability or suitability of temporary assignments on a case-by-case basis, where the recuperation period will be for less than one month.

**13.05 Duration of Participation in Program.** The maximum length of time that an employee may normally participate in the RTW Program is six months. However, the participation of an injured or ill employee in the RTW Program can be terminated earlier or extended by the appropriate RTW Coordinator, if such action would be in the best interest of the Department. Supervisors must inform the appropriate RTW Coordinator when an employee participating in the RTW Program:

- is declared permanently impaired by the health care provider (has reached maximum medical improvement [MMI]);
- has been involved in the program for six months; or



—has completed the duration of the approved temporary assignment.

Once the RTW Coordinator has been informed of these events, a determination will be made, in consultation with the appropriate division chief or special section head, concerning the continued employment status of the employee with the Department.

Once an employee has been authorized by the treating health care provider to return to full duty with or without a reasonable accommodation, participation in the RTW Program will terminate. The employee shall return to their regular job assignment.

The procedures outlined in Chapter 18 should be followed if a reasonable accommodation is requested under ADA.

**13.06 Commissioned Employee.** A commissioned peace officer who suffers an injury or illness that effects their ability to engage in the law enforcement function, may be required to report to temporary assignments in civilian attire or be prohibited from driving a marked patrol vehicle. The appropriate RTW Coordinator will decide this issue on an individual basis after considering the restrictions of the illness or injury and the demands of the temporary assignment.

**13.07 Temporary Assignment Positions.** The injured employee will be matched to a temporary position based on the restricted duties outlined by the treating health care provider, the employee's qualifications, the employee's entitlement to FMLA leave, the availability of temporary assignments, and other appropriate factors. These temporary assignments shall be coordinated by the supervisor with the appropriate RTW Coordinator. An employee may receive more than one temporary assignment during participation in the RTW Program. Assignments will depend on the availability of suitable tasks. A temporary assignment position is not a permanent placement.

Temporary assignments are not considered demotions and the employee will continue to receive the normal rate of pay as for the employee's permanent assignment, including any regular changes in pay or grade to which the employee would be otherwise entitled.

Any temporary assignment offer shall be documented in a bona fide offer of employment letter to the employee. (For a sample, see Annex #23, Page 2 of 2.)

**13.08 Bona Fide Job Offer.** When it is determined that an employee has been released to return to a modified or alternative duty status, the supervisor must make a bona fide job offer in accordance to the steps outlined below.

1. The bona fide job offer should be made when an employee has not returned to work, but:
  - a. the health care provider notifies the Department of a release to return to work;
  - b. the State Office of Risk Management notifies the Department of a release to return to work; or,
  - c. the ability of the employee to return to work is identified from other sources.
2. A bona fide offer will consist of a written offer of employment which includes:

- a. duties of the position;
- b. physical limitations;
- c. location of position; and
- d. deadline for decision to be made.

(For a sample bona fide job offer letter, see Annex #23, page 2 of 2.)

3. If the employee is out on an employment-related illness or injury, the supervisor should immediately contact the WCC in the Health and Safety Section to discuss possible loss of Workers Compensation benefits if the employee refuses the bona fide job offer.

**13.09 Refusal of a Bona Fide Job Offer.** All eligible employees are expected to participate in the program. An employee who refuses a bona fide job offer may be subject to the following:

- 1. Workers Compensation benefits may be denied or reduced;
- 2. the employee may be placed on LWOP status;
- 3. the employee may be denied extended leave benefits; or
- 4. the employee may be terminated.

Failure to respond or appear at the specified date and time will be considered a refusal. Any employee who has not exhausted any applicable leave period available under the FMLA will not be terminated during the FMLA leave period, but the other conditions could still apply.

**13.10 Evaluative Medical Status Reports.** Before an ill or injured employee may return to work in a temporary duty capacity, the supervisor must request and the employee must provide an Evaluative Medical Status Report (Annex #22) from the treating health care provider. Also, each employee who is off duty for medical reasons or who is participating in the RTW Program is responsible for obtaining an Evaluative Medical Status Report at least once each month. These reports shall be provided to the employee's immediate supervisor within two working days of the examination.

The supervisor should complete the appropriate blanks in the Evaluative Medical Status Report and give the form to the employee. The employee should have the form filled out by the health care provider. Instructions for completing the form are in Annex #22.

The Evaluative Medical Status Report should specifically define an employee's medical condition, a prognosis for recovery with an expected time period for recovery, and an identification of any physical performance limitations or restrictions of activity.

The supervisor shall forward a copy of the Evaluative Medical Status Report to the Workers Compensation coordinator in the Health and Safety Section to be placed in the Workers Compensation file.

All medically related documentation must be maintained in a separate confidential file at the employee's work location, not the regular personnel file, for three years. Information contained therein will be disseminated only on a need-to-know basis.

### **13.11 General Procedures**

#### **1. Initial Notification of Lost Time and Coordination with the Health Care Provider**

a. An employee who needs to be off duty for medical reasons should contact his supervisor as outlined in the Department's sick leave and FMLA policies in Chapter 7 of the General Manual, as appropriate.

b. The supervisor of the injured or ill employee should call or visit the employee as soon as possible to determine what support or assistance is needed, and ensure the employee is familiar with the Department's leave policies and the provisions of the RTW Program.

c. Each employee is responsible for making every reasonable effort to return to regular, full duty at the earliest possible date.

d. The supervisor of the injured or ill employee should establish communication with the health care provider. The supervisor should explain the departmental RTW Program including our goal for the injured or ill employee to return to a productive capacity as soon as possible. (Sample letter in Annex #23, page 1 of 2.) Communication with the health care provider may need to be made through the employee because of the reluctance of providers to complete forms unless requested by their patients.

e. If the supervisor has any questions regarding an employee's ability to perform certain job tasks or functions without further injury to his/her physical well-being, the supervisor must ask the employee to obtain written clarification regarding the exact restrictions placed on the employee, if any, from the health care provider before reporting to work. An employee is not to be placed in a temporary assignment which could result in additional liability to the Department or a direct threat to the safety of the employee, coworkers, or the public.

f. Before receiving communication from the employee's treating physician, the employee should sign a release of medical information and documentation, form HR-80. (Chapter 7, Annex #12.)

g. In situations where full duty is not immediately practical or possible, the supervisor shall establish and maintain close communication and cooperation with the employee and the employee's treating health care provider. The supervisor and employee will provide the treating health care provider with information about the employee's regular job duties and an Evaluative Medical Status Report form so an informed decision can be made regarding the employee's medical condition and their ability to return to temporary duty status.

h. Supervisors should maintain a confidential log of all communications with the employee and the health care provider noting date, time, and a brief summary of conversations. Medical documentation and copies of all correspondence should be maintained. This

documentation must be maintained in a separate confidential file at the employee's work location, not the regular personnel file, for three years.

i. An injured or ill employee is still considered an employee of this Department and must comply with all Department policies and procedures. If an employee refuses to cooperate or communicate with their supervisor as requested, then they are in violation of policy and appropriate disciplinary action will be taken.

**2. The Bona Fide Job Offer.** If the treating health care provider determines that an injured or ill employee is unable to return to full duty, but would be able to return to a temporary duty assignment during a recuperative period they predict will be between one and six months in duration, then the supervisor will implement the following procedures.

a. The supervisor will review the Evaluative Medical Status Report signed by the health care provider to determine if a temporary duty position is available for the employee. The temporary duty position should be tailored to meet the physical capabilities as determined by the treating health care provider.

b. If a temporary duty position is available which meets the physical limitations of the employee, the supervisor will attach the Evaluative Medical Status Report to the proposed bona fide job offer and forward all documentation to their RTW Coordinator for approval/disapproval.

c. If the supervisor is unable to locate or create a temporary position, the supervisor will contact their RTW Coordinator concerning the availability of other possible temporary assignments. If after this further search no appropriate temporary assignment has been located, the supervisor will notify the employee in writing that a temporary position is currently not available.

d. If approval of the temporary position is received, a bona fide job offer should be made in writing to the employee requesting that the employee return to work, in accordance with the health care provider's description of limitations on a certain date. Emphasize the Department's need for the employee's expertise and that contact will continue up to the scheduled date of return to ensure everything is going well for the employee. (Sample letter in Annex #23, page 2 of 2.)

e. If the bona fide job offer is refused, advise the RTW Coordinator.

f. Once the employee has accepted or refused the bona fide job offer, contact the Health and Safety Section in the Human Resources Bureau immediately. Forward all documentation to be added to the employee's Workers' Compensation file.

### **13.12 Monitoring the Employee on Temporary Assignment**

1. The supervisor should monitor the employee's progress and communicate with the employee to determine if the temporary position is meeting their physical limitations.

2. When the employee returns to work in a full-duty capacity or resigns or is terminated, the supervisor should immediately inform the Health and Safety Section regarding the change in duty status.

3. No later than one month after initiation of temporary duty, and every month thereafter, a meeting will be set at which the employee and the supervisor shall discuss the status of the employee and the temporary duty placement. The meeting should determine if the supervisor should:

- a. continue the employee on temporary duty for up to six months;
- b. return the employee to regular duty, with a full medical release;
- c. place the employee on leave status using accrued leave and/or place the employee on leave without pay status with weekly reviews for determining return to full duty as soon as possible;
- d. have the employee begin the process to request an accommodation for a permanent disability under the ADA; or
- e. begin the process to remove the employee from the payroll under the provisions of Chapter 7A of the General Manual.

The supervisor should ensure that an updated "Evaluative Medical Status Report" is obtained for this meeting.

4. If an employee has participated for six months in the Department's RTW Program, the RTW Coordinator should be informed immediately. Only the RTW Coordinator may approve participation in the RTW Program for longer than six months.

**13.13 Monitoring the Off-Duty Employee.** If a temporary job is not available, the employee is not released to return to work in any capacity by the treating health care provider, or the employee refuses a bona fide job offer for a temporary duty, then this section applies.

1. The supervisor should monitor the employee's progress and communicate with the employee on a weekly basis.

2. The supervisor should require that the employee complete the "Evaluative Medical Status Report" every 30 days to reassess if a temporary assignment is feasible for the employee. The Evaluative Medical Status Report shall be forwarded to the Department's Health and Safety Section, with a copy forwarded to the employee's Major Division Return to Work Coordinator.

3. The supervisor should arrange to meet with the employee at least once a month to determine the status of the employee, ensure all appropriate paperwork is completed, and answer any questions the employee may have regarding DPS policies and procedures.

4. When the employee returns to work in any capacity or resigns or is terminated, the supervisor should immediately inform the Health and Safety Section, and the employee's Major Division Return to Work Coordinator regarding the change in duty status.

**13.14 Duties of the Temporary Assignment Supervisors.** If the injured or ill employee receives a temporary assignment in a supervisory section other than the permanent section, the permanent

supervisor should contact the temporary supervisor and provide the temporary supervisor with all information necessary for the temporary supervisor to monitor the employee during the temporary assignment. The temporary supervisor will be responsible for all supervisory duties concerning the injured or ill employee during the pendency of the temporary assignment. The temporary supervisor is responsible for informing the permanent supervisor of all personnel activities involving the employee and should forward a copy of all documents concerning the employee to the permanent supervisor for placement in the employee's file. The temporary supervisor will have full supervisory authority to enforce all policies and procedures of this Department regarding the employee temporarily assigned to them.

The temporary supervisor is responsible for leave records and supervision of the employee during the temporary assignment. The temporary supervisor will be involved in the performance evaluation process should the employee evaluation need to be completed during the temporary assignment. Both supervisors will provide input into the evaluation process; however, the permanent supervisor shall be ultimately responsible for the performance evaluation.

## **08.14.00 HEALTH AND PHYSICAL FITNESS POLICY**

### **14.01 Objective**

The Texas Department of Public Safety Health and Physical Fitness Policy is designed to address the issue of good health and physical fitness for commissioned officers and recognize the benefit to non-commissioned personnel.

The objective of the program is to support and assist officers in the maintenance of good health and fitness by providing a periodic evaluation and assessment of their general physical condition. In addition, the program will also provide valuable resources and incentives for non-commissioned personnel to promote and maintain healthy lifestyles.

The key to good health and fitness lies in lifestyle. There is not a great deal that others can do to improve an officer's level of health and fitness. Each officer has an individual responsibility to maintain a level of fitness that permits him/her to carry out job responsibilities and safely handle any situation that may arise. More importantly, officers have a responsibility to their families when it comes to day-to-day safety and longevity.

The acceptance of this responsibility involves a commitment from each officer. Unfortunately, good health and fitness does not "just happen"; therefore, personal goals must be established and effort must be put forth to achieve them. A fitness plan, which includes goals in the areas of nutrition, exercise, and weight control, will pay great dividends if carried out.

This policy is also designed to assist and support officers in establishing and carrying out a health and fitness plan. The positive results will benefit the Department and Texas' citizens by ensuring a physically fit and well-trained force that is ready to safely respond to any situation. Each officer will benefit from the additional officer-safety factor that is present when one is physically fit. In addition, officers will be better able to perform day-to-day duties with a reduction of stress. Families of officers will benefit from a continued level of health and fitness, which should contribute to a more positive and productive lifestyle, as well as a longer life.

The Regional Commander will identify appropriate personnel under their command to receive training and certification from the Education, Training, and Research Division (ETR) to conduct physical health screening and testing.

For purposes of this policy, PRT is the Physical Readiness Testing.

**14.02 Pre-Employment Physical Tests and Examination.** Applicants for the position of trooper will be subject to the following physical examinations:

1. **Physical Readiness Testing.** All applicants will be initially tested in the field. Those applicants that cannot pass the PRT will not be allowed to continue in the process. Applicants should be encouraged to put forth their best efforts and reminded that the application and selection process is competitive. Once accepted to the academy, all new recruits will be tested at the beginning of the recruit school. Those applicants that cannot pass the PRT will be rejected from attending the academy. All applicants must complete the Physical Readiness Testing.

The minimum standard for each applicant is based on age and gender. Using the percentage results for the test battery found on the chart in Annex #24 and the 2000 Meter row calculator; applicants must meet a minimum of 50% score for each test for their age and gender to be considered for employment.

The PRT test is offered in two formats:

**A. Run, Push-ups, and Abdominal Crunches.**

1. One and a half (1½) mile run
2. Push-ups, with no time limit
3. Abdominal crunches, maximum number within two minutes.

**B. 2000 Meter Row.**

2. **Physical Examination.** All applicants for employment as a commissioned officer will be required to undergo a physical examination. Applicants will be directed to a physician designated by the Department, at no cost to the applicant.

**14.03 Physical Condition Testing During Employment for Commissioned Personnel.** All full time, active commissioned officers will be subject to physical condition testing as follows:

**1. Testing Periods**

A. Between September 1st and November 30th, all commissioned employees must pass the PRT. All attempts at the PRT must be completed by November 30th.

B. Between March 1st and May 31st, all commissioned employees must pass the PRT. All attempts at the PRT must be completed by May 31st.

**2. Pre-Testing General Health Screening.** All commissioned employees are required to have a physical health screening conducted by a physician prior to participation in the PRT testing.

A. A copy of the ETR-162, Preventive General Health Screening Form must be on file, dated within 12 months from the date of the PRT attempt, and approved for participating by the employee's physician.

B. If the employee's physician does not recommend participation in the PRT, the employee will not be allowed to test during the testing period. If an employee is unable to test they are considered to have failed the PRT, unless they have obtained a medical waiver.

C. If the ETR-162, completed by a physician does not authorize participation in the PRT, the employee may be required to have an HR-87 completed to determine if there are physical limitations that prevent the performance of the employee's duties. The chain of command, in connection with HR, will initiate this process and determine the appropriate course of action.

**3. Physical Readiness Testing (PRT).** The PRT standard for each employee is based on their age and gender. Using the percentage results for the test battery found on the chart in Annex #24, the 2000 Meter row calculator, or the combat fitness calculator; all commissioned employees must meet a minimum of 50% score for their age and gender.

The PRT test is offered in three formats:

**A. 2000 Meter Row.**

**B. Run, Push-ups, and Abdominal Crunches.**

- 1) One and a half (1½) mile run
- 2) Push-ups, with no time limit.
- 3) Abdominal crunches, maximum number within two minutes.

**C. Combat Fitness Evaluation.**

- 1) Three rounds of:
  - a) One minute wall ball
  - b) One minute sumo deadlift high pull
  - c) One minute box jump
  - d) One minute push press
  - e) One minute row



f) One minute rest

D. The employee may elect to take the PRT testing option that best fits their needs. Employees will be allowed three attempts per testing period to pass the PRT. The employee may select to take any of the test formats offered. One of the three attempts must be the 2000 Meter Row. All attempts must be completed within the testing period.

E. An employee who fails to pass PRT is required to report that failure to the employee's immediate supervisor.

F. An AED and certified AED operator or Department approved equivalent must be present at all physical readiness tests or organized fitness training events.

G. At the end of each testing period, agency wide commissioned officer results will be reviewed by Education, Training and Research. The minimum percentage passing score may be adjusted with approval of the Director to address potentially disparate impact of the presumptive passing score on any class of individuals.

4. **Documentation.** The Department certified fitness tester conducting the physical condition testing will be required to document the results on a form approved by Education, Training, and Research. A copy of this form will be given to each employee's immediate supervisor and the employee. The original will be forwarded to Human Resources with a copy submitted to the Lieutenant, Fitness and Wellness Unit, ETR. Fall testing result forms must be submitted to HR and ETR by December 15 and spring testing result forms by June 15.

5. **Waivers.** All waivers must be requested on a form approved by ETR and the request approved by the Deputy Director of Law Enforcement or his designee. When the need for the waiver is foreseeable, the employee must submit the request 30 to 45 days prior to the beginning of the testing period so that the process is completed during the testing period.

A. **Medical Waivers.** An employee must report to his/her immediate supervisor any medical condition that could affect the employee's ability to perform all assigned tasks and responsibilities, including participating in PRT. All medical waiver requests must be accompanied by a letter from a physician describing the physical condition that prohibits participation in the PRT. Letters from physicians for temporary or extended waivers must be issued within three months of the testing period. Each physician letter must be accompanied by a memorandum from the employee detailing the physical condition that prevents participation in the PRT

Employees unable to perform some or all of the physical condition testing may apply for one of the following waivers:

1) **Temporary Waiver.** An employee with a temporary physical condition that prohibits them from participating in the PRT may request a temporary waiver. A temporary waiver is granted per testing period.

2) **Extended Waiver.** An employee with a permanent physical condition that prohibits them from participating in the PRT may request an extended waiver. An extended waiver may be granted for a period of time determined by the Deputy Director of Law Enforcement or his designee.

The Deputy Director of Law Enforcement may request additional information from the employee or their attending physician if needed to assist with determining whether to approve a request.

B. Employees who are unable to participate in PRT due to a physical condition may be required to have their physician complete an HR-87 to determine if there are physical limitations that prevent the performance of the employee's duties. The chain of command, in connection with HR, will initiate this process and determine the appropriate course of action.

C. **Military Waivers.** An employee who is absent during an entire testing period due to active military duty may apply for a waiver for the testing period. The employee, or supervisor if the employee is unavailable, should submit the required ETR waiver request form and a memorandum explaining the circumstances to the Deputy Director for Law Enforcement.

D. The approved waiver request form must be submitted to HR. Approved waiver request forms for the fall testing period should be submitted to HR by December 15. Approved waiver forms for the spring testing period should be submitted to HR by June 15.

E. An employee who has been granted a waiver is considered to be compliant with this policy.

#### **14.04 Consequences of Failing to Comply with PRT Requirements**

A. A commissioned officer who has not passed the PRT, received a waiver, or otherwise attained compliance with this policy will not be eligible to participate in any of the following until they attain compliance:

1. The promotional process; and
2. Secondary employment requiring the use of the officer's commission or wearing of the department uniform.

#### **B. Mandatory Fitness Education.**

1) Commissioned officers unsuccessful in passing the PRT during any testing period are required to successfully complete a health and fitness program established by the ETR. This education component may be conducted through video or web based training at the discretion of ETR.

2) Commissioned officers unsuccessful in passing the PRT in two consecutive testing periods are required to successfully complete a health and fitness program which includes a comprehensive fitness improvement plan (FIP).

a. **Fitness Improvement Plan (FIP).** The FIP will be established by ETR in coordination with the employee's supervisor and a Department certified fitness tester to ensure the appropriate goals, progress assessments, and time frame for improvement are adopted specific for each employee's deficiencies. The employee's immediate supervisor will be provided a copy of the fitness plan.

#### **14.05 Education**

Education, Training, and Research (ETR) is responsible for developing and implementing health and fitness education and training to assist commissioned and non-commissioned employees in their efforts to improve their overall health and achieve individual fitness goals.

Commissioned and non-commissioned employees desiring to improve their health and fitness are encouraged to participate in training and education offered by ETR. In addition, non-commissioned employees are encouraged to have preventive health screening by their personal physician prior to participating in the Department's health and fitness programs. Permission to participate in these activities on duty time and/or using state resources must be approved by their immediate supervisor prior to attendance/participation.

#### **14.06 Awards and Incentives**

The objective of the award and incentive program is to support and encourage commissioned and non-commissioned employees in the maintenance of good health and fitness. Service Commanders or their designees are responsible for administering the award program for the commissioned employees under their command. The Assistant Director of each division or their designee will determine the implementation of the awards program for non-commissioned employees in their division. Non-commissioned personnel may participate in the awards testing during duty time.

##### **A. Administrative Leave.**

1) The Department shall grant administrative leave on a progressive award scale of no more than 16 hours per testing period and of not more than four (4) days or 32 hours per fiscal year for commissioned and non-commissioned employees who exceed the minimum PRT fitness standards. (See Annex #24)

2) Administrative Leave shall be granted per testing period. Employees may only receive the maximum number of award hours eligible for the highest award achieved during that testing period, not to exceed 16 hours per testing period or 32 hours per fiscal year. All leave must be used within 12 months from the day that leave was earned.

##### **B. Fitness Star.**

1) Granting of a Fitness Star will be dependent upon the aggregate performance beyond the PRT minimum standards. The employee must attain a cumulative average to equal 90% or more.

For Example: A 32 year old male takes the PRT completing 80 sit-ups for a score of 96%, 68 push-ups for a score of 99%, and runs the one and a half mile in 11:24 for a score of 75%. The three percentage scores are added together and divided by three for an average score  $(96+99+75=270, 270/3=90.)$  The employee finishes with an average score of 90%, earning the Fitness Star.

2) Once awarded, the Fitness Star Award may be worn on the uniform as prescribed by the THP Manual. Non-uniformed commissioned officers will be guided by their Assistant Director if and

when the Fitness Star may be worn. The Fitness Star Award may be worn only if the officer continues to achieve 90% or more in each testing period.

3) All non-commissioned employees are required to have a physical health screening conducted by a physician prior to participation in the awards testing. A copy of the ETR-162, Preventive General Health Screening Form must be on file, dated within 12 months from the date of the awards testing, and approved for participating by the employee's physician.

**C. Recognition Awards.**

1) The Department may publicize the names of employees awarded the Fitness Star.

2) Competitive Fitness Activities – The Department may create regional fitness competitions designed to foster “esprit de corps.”

# PUBLICATIONS, CORRESPONDENCE, MAILING INSTRUCTIONS, AND COMMON REPORTS

## 01.09.00.00

### 09.05.00 DEPARTMENT PUBLICATIONS

**05.01** Designation and Definition of Publications. Department publications will consist of the following named publications which shall be defined as follows:

1. **General Orders.** Directives of lasting duration affecting Department operations generally, and of which a permanent record is required. Examples:

- a. Setting out policy decisions of the Public Safety Commission; and
- b. Establishing a new division.

2. **Administrative Manual Orders.** Issued with instructions to add to, delete, or make changes in manuals. These orders may be disposed of after the instructions have been complied with, except that the Office of General Counsel shall maintain a file of these orders.

3. **Special Announcements.** Directives affecting the status of individuals or special announcement of general interest. For example announcing the death of an employee.

4. **Periodic Summary-Type Publications.** Publications which originate in a staff agency for wide field distribution. Examples:

- a. Accident Records Bureau summaries
- b. Bulletins
- c. Disaster Emergency Management Digest

**05.02 Form and Content.** Each Administrative Manual publication and General Order will be numbered chronologically for each calendar year and the date of publication will appear on the front cover. The type of publication and the next succeeding number for each manual publication and General Order will be designated by the Office of General Counsel.

Each Special Announcement will be numbered chronologically for each calendar year and the date of publication will appear on the front cover. The next succeeding number for each announcement will be designated by Staff Support Services.

**05.03 Publication Procedure.** After complete staff coordination has been effected and appropriate approval secured, the responsible initiating office will submit the final draft to the General Services Bureau, which through various sections, will effect the reproduction, make distribution as specified on the Printing Service Work Order (GS-4), and maintain a file of extra copies should further distribution be required.

The Department recognizes the need to maintain or improve the quality of printed materials prepared and distributed to the general public. The objective is to produce an attractive, informative product that promotes DPS programs in a positive and professional manner. To accomplish this objective, the Department must comply with all applicable state laws and rules and initiate cost-saving measures when economically feasible. This policy is intended to address items

such as safety pamphlets, driver handbooks, and other types of informational literature. Statistical summaries, law books, and other similar routine publications are excluded.

Materials being developed for distribution to the general public (such as brochures, periodicals, and safety literature) will be submitted by the originator to Graphic Arts and the Public Information Office for review before printing. These materials must have final approval of the Public Information Office prior to publication.

**05.04 Distribution.** A letter symbol as contained and described in a distribution list will indicate the distribution that will be made of publications carrying that symbol. See Annex #1 for key to distribution symbol.

**05.05 Historical File.** Office of General Counsel Inspector will maintain a complete historical file on all General Orders and Administrative Manual Orders. The Staff Support Service will maintain a complete historical file on all Special Announcements.

**05.06 Effective Date.** Orders which are of general application are effective on the date of publication unless a different date is specified.

### **05.07 Responsibilities**

1. **Approval.** General Orders, Special Announcements, and Administrative Manual Orders must be approved by the Director's Office or the Director's designee. However, with the exception of General Orders, such publications may be approved by the Chief of Traffic Law Enforcement, Chief of Criminal Law Enforcement, Chief of Texas Rangers, Chief of Driver License, or Chief of Administration if the impact of such publication is limited to personnel under their command.

2. **Dissemination.** It is the duty of all supervisory personnel to insure that the contents of official publications are made known and explained to those subordinates for whom the orders are intended.

3. **Rescision.** It is the duty of the initiating office to rescind an order which is no longer in effect.

Rescision will require the same authorizations as required for the original order and may be separately issued or included as a separate paragraph in the new order to supersede the old one.

4. **Files.** Files of numbered Department orders and bulletins will be maintained chronologically by type of publication and subject matter appropriately cross-referenced in the general file systems in various divisions and field offices with the following exceptions:

Special announcements that announce the death of an employee or remind of an upcoming holiday may be destroyed after one year. The historical file shall be maintained as required in 05.05 of this chapter.

### **09.10.00 CORRESPONDENCE**

**10.01 Advantages of Written Communication.** Written correspondence provides a reliable record, a degree of privacy, and desirable economy. Use this method of communication whenever it is practicable to do so.

**10.02 Prompt Action.** Correspondence shall be acted upon as soon as practicable. If a reply is required and the desired information is not available within ten days, receipt of the communication shall be acknowledged within that time.

**10.03 Interoffice Memoranda.** Correspondence between members of the Department shall be written on departmental interoffice memorandum forms, unless for some special reason a formal letter would be more appropriate.

1. **Title.** In the heading of the interoffice memorandum, titles may be omitted if there is obviously no question of identity, such as a service commander to his major or a major or chief to the Director. However, a person writing to someone outside of his service or immediate area shall designate title and service of the writer and the person addressed.

2. **Subject.** The subject listed should include sufficient information to relate the correspondence to a problem, need, or activity. Example: Complaint against Trooper John Doe, re letter 1/5/76, Richard Roe, Austin. Replies to correspondence should bear the same subject.

3. **Signature.** A complimentary close to an interoffice memorandum is unnecessary. Simply sign in ink, or the writer's initials are sufficient.

**10.04 Letters.** Correspondence from members of the Department to persons or agencies outside the Department shall be written on an appropriate Department letterhead. Formal business letter form should be adhered to at all times. In both inside and outside address precede name with "Mr.," etc., unless another term is appropriate. The writer's name shall be signed in ink and accompanied by the writer's official designation.

**10.05 Stationery and Stamps.** Department stationery and stamps shall be used for official Department business only.

#### **10.06 Guides for the Preparation of Correspondence**

1. Determine first whether the correspondence is necessary. If you are requesting information, check the subject in your manual or in your files. A telephone call to a local firm, institution, or agency may get you the information.

2. Make sure you are writing the proper person about the business at hand.

3. Come to the point in the opening paragraph. If the subject is connected with preceding correspondence, mention the date, the subject matter, and the writer of the correspondence. These data will provide a background of essential information for the person addressed or in his absence for another person who may have to prepare an answer. Avoid unnecessary comments. State your business and stop.

4. Ordinarily, confine the contents to one major subject. Write another interoffice memorandum or letter to cover another distinctly unrelated subject, especially if the subjects will involve written answers from two persons, services, or divisions.

5. Confine your letter to one page if possible. This practice will conserve time and filing space.

6. Check the information you give or request with the words who, what, where, when, how, and why.

7. Include the following information in the last full paragraph above the signature only on correspondence which will require the recipient to respond: the business hours, Direct-Inward-Dial telephone number or extension if no DID number is available, and name or section to which inquiries can be made.

**10.07 Copies of Correspondence.** When official correspondence between members of the Department involves a subject about which the members' supervisors should be informed, the person initiating the correspondence shall send a copy to in-line supervisors.

#### **09.15.00 MAILING INSTRUCTIONS**

**15.01 Austin Headquarters Addresses.** Because of the large volume of mail received at the Austin headquarters a four (4) digit Mail Stop Code (MSC) has been assigned to all sections and must be included on mail sent to Austin, this includes intra-departmental mail and field office truck mail. Mail sent to PO Box 4087, Zip Code 78773, must include the MSC as the Zip Code extension while mail sent to any other PO Box and zip code must include the MSC on the top line of the address. A listing of headquarters addresses and the type of mail to be sent to that address is found in Annex #2. A list of Mail Stop Codes is found in Annex #4.

**15.02 First-Class Mail and Parcel Post.** If correspondence and parcel post are directly related, a letter which would be first-class mail may be enclosed in the parcel post package. When first-class mail is enclosed, write "Letter Enclosed" on the package below the postage and above the address. Postage for the first-class letter must be placed on the package or added to the postage for the parcel. Report shall be mailed in accordance with "Mailing Instructions." Include the DPS zip code in the address.

**15.03 Express and Motor Freight.** Address express and motor freight to the street address of the addressee. Do not use post office box numbers. If it is desired that related correspondence reach the addressee before the express or motor freight, a letter may be mailed and a copy of the letter enclosed or attached to the express shipment. Express and motor freight for Department headquarters must include the appropriate MSC. The Department headquarters street address in Austin is 5805 North Lamar Boulevard 78752.

**15.04 Unlawful Use of Internal Mail System for Political Advertising.**

1. An employee may not knowingly use or authorize the use of the Department's internal mail system for the distribution of political advertising, except this does not apply to:

a. the use of an internal mail system to distribute political advertising that is delivered to the premises of the Department through the United States Postal Service; or

b. The use of an internal mail system by the Department to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding.

2. In this section "internal mail system" means the Department's system to deliver written documents to employees of the Department.

3. A person who violates this section commits an offense under Section 255.0031 of the Election Code. An offense under this section is a Class A misdemeanor.

**09.20.00 REPORTS**

**20.01 Monthly Automobile Report**

1. **Responsibility.** Persons having state-owned automobiles or trucks regularly assigned to them for their official use will be responsible for the preparation and submission of the monthly automobile report SH-19 for each motor vehicle assigned to them.

2. **Occasional Use.** Persons who occasionally use state-owned automobiles or trucks assigned to the motor pool or to other persons will be responsible for the preparation of the monthly automobile report SH-19 for the days such vehicles were used by them. The person to whom said vehicles is regularly assigned will be responsible for submitting the completed report at the end of the month.



3. **Out of Service.** When vehicles are taken out of service permanently or for extended periods the manager, Fleet Operations, will make a notation to that effect on the last monthly automobile report SH-19 submitted for the vehicle and thereafter may dispense with the regular reports, unless returned to service.

4. **Vehicles Turned in to Fleet Operations.** Persons turning vehicles in to Fleet Operations for reassignment or as surplus must provide the blue cards and complete a Property Transfer Order Form (Act-16) for all equipment. Vehicles will include the original copy of the final car report. Fleet Operations will provide AIS with data entry information for the final report.

5. **Required.** Monthly automobile report SH-19 will be prepared and submitted monthly for each state-owned automobile or truck operated by the Department. The report shall be completed, processed, and channeled according to the following instructions:

a. The monthly automobile report SH-19 will be prepared in triplicate, with the various copies distributed as indicated below:

1) The ORIGINAL of monthly car report, after supervisory review, will be submitted to local AIS data entry who will forward direct to Manager, Fleet Operations, after data entry is accomplished.

2) The DUPLICATE copy will be filed in the regional headquarters (or company headquarters for Rangers and district headquarters for Narcotics, Motor Vehicle Theft, and Special Crimes) to which the vehicle is assigned, except that Highway Patrol "B" and "C" districts will maintain the duplicates of reports on vehicles assigned to them.

Division chiefs and managers in the Austin headquarters may use their own discretion regarding the need to maintain a file of duplicate reports for the vehicles assigned to personnel under their command.

3) The TRIPLICATE copy will be retained by the person to whom the vehicle is assigned as his file copy.

Upon the transfer of the vehicle to another person or station the triplicate copies will be transferred with the vehicle. Since the purpose of the report is to furnish a record of the vehicle, copies of as many of the previous reports as is reasonable under the circumstances will accompany the vehicle at the time of the transfer.

**b. Instructions for Executing Front of the Report**

1) **State Vehicle Operation Data For.** Enter month and year covered by the report.

2) **Property Code.** Enter the designated property code including district, station, and/or sergeant area to which the vehicle is assigned (i.e., 25A, 51H3, 52DA1, etc.).

3) **Make and Model.** Enter model of vehicle – i.e. Caprice

4) **Equipment Number.** Enter six digit property inventory number. (i.e.: C94-678 or 394350.)

5) **License.** Enter license plate number of vehicle.

6) **Station.** Enter name of town where person to whom vehicle is assigned is stationed.

7) **Odometer**

a) **Beginning Reading.** Show odometer reading at the beginning of the day on first day of the month. This reading must be the same as the daily ending reading on last day of the previous month.

b) **Daily Ending.** Enter odometer reading at end of day's activity. If vehicle is used on more than one shift or tour of duty, show reading at conclusion of last shift or tour of duty for that day.

c) **Daily Mileage.** Enter total number of miles vehicle was used that date. When the vehicle was not used during the day draw a line in this space or indicate by a 0. When the vehicle is not used for extended periods, draw a line through the dates involved and make a notation "not in use" in order to so indicate.

Should the odometer reading reach 99,999 and then return to zeros, continue to show the readings as over 100,000 miles. For example, when the odometer has gone around once and reads 5,220 miles, the odometer reading is entered as 105,220.

If the odometer should break, estimate the number of miles driven and enter on the monthly automobile report in the usual manner. When the odometer is repaired or replaced, have the reading set to include the estimated number of miles driven during the time it was inoperative in addition to the reading at the time the odometer stopped working.

In the event the odometer cannot be calibrated to the actual mileage, the replacement or repaired odometer should be set to read zero and a notice in writing attached to the left door frame of the vehicle specifying the mileage and date prior to replacement or repair. The reported mileage should continue to reflect the total actual vehicle miles.

8) **Fuel.** Fuel will be entered on the back of the SH-19 under the Fuel Transaction Report. See the instructions below for completing the reverse side of the SH-19.

9) **Oil.** Show total amount purchased or used and cost including bulk or stock as for gasoline.

NOTE: The quarts of oil used and their cost in an oil, filter, and grease service (Code 00-A) must be entered separately in the oil "Number of Quarts" and "Total Cost" columns. This entry must reflect oil quarts and cost only, not the entire charge for Code 00-A. The remainder of the cost for Code 00-A will be entered in the "Repair and Other Cost" column. Example: Total cost for service is \$19.95. Actual or estimated cost of oil is \$1.10 per quart. Front of Report: Oil, "Number of Quarts" - 5; Oil, "Total Cost" - \$5.50; "Repair and Other Cost" - \$14.45. Back of Report: "Repair Code" - 00-A; "Cost" - \$19.95.

10) **Repairs and Other Costs.** Enter the total amount encumbered for repairs and other operating costs of the vehicle on the date incurred. This includes the cost for tires, tubes, filters, belts, hoses, spark plugs, towing charges, etc. Vehicle supplies and parts from DPS parts department and regional or district stock must be included here. Also enter here the charges for repairs made by DPS shops, private firms, and warranty deductibles. Repairs under warranty, repairs for which no charges are made to DPS, repairs to communications and emergency lights, sirens equipment, new car make ready charges, communications equipment installation charges, wreck damage repairs, windshield replacement, vehicle storage, and toll road fees will not be entered here but will be listed on the back of the report in order to maintain a history of the vehicle.

11) **Purpose For Which Vehicle Was Used.** In the space provided, clearly and concisely, show daily the purpose for which the vehicle was used. Examples: routine patrol, driver examining, safety education, inspection station supervision, vehicle inspection, criminal investigation, executive security, authorized conference, employee supervision, etc. While the purpose of the travel should be identified, specific names and locations should not be shown. Examples: Do not show "Routine patrol in the vicinity of Austin," "Attended IACP Conference," or "Investigated George Smith for burglary." When the vehicle is used for more than one purpose in any duty day, show only the purpose for which it is most used. When the vehicle is used for the same purpose for several consecutive days, one stated purpose across all the lines for the days involved will be adequate.

12) **Number of Passengers.** In this section show the number of passengers carried. A passenger is defined as "any person carried in the vehicle other than Department of Public Safety employees and those in custody of a DPS employee.

13) **Signature of Operator.** The last person using the vehicle for the day or the person to whom the vehicle is assigned will place his signature and employee I.D. number or printed name in the column provided, signing on the line after each day on which he operated the vehicle.

When the vehicle is operated by the same person for several days or the same person is signing for its use for several days (or for an entire month), one signature and I.D. number or printed name across all the lines for the days involved will be adequate.

14) **Monthly Totals.** Enter in these spaces the total for that particular item for the month.

15) **Total Expense for Month.** Show total amount spent on vehicle for gas, oil, tires, tubes, repairs, and other costs for the month.

16) **Signed (Authorized Supervisor).** Except for final reports of vehicles turned in to Fleet Operations, the monthly automobile report will be signed by the immediate supervisor of the person to whom the vehicle is assigned, giving the title and employee I.D. number or printed name of the supervisor signing same. Prior to signing the report the supervisor will check the report for accuracy. The supervisor will use what resources are available to reconcile the gas purchases as billed to the agency with what is reported on the SH-19.

### c. Instructions for Executing Back of the Report

#### 1) Repair Report

a) All repairs, parts, and services to a motor vehicle including repairs to its radio equipment must be entered in this section of the report. This will include repairs made in DPS shops and any repairs made without cost to the Department. This will also include repairs made under any manufacturer's warranty as well as those paid for by outside firms or persons, such as an insurance company paying for damages.

b) This section of the report is intended to provide a record of the various repairs made to the vehicle in order that it's condition may be evaluated at any time through a study of the repairs made to it and expenses incurred. It is imperative that this history of repairs be complete, but detailed listing of parts used (by part number, etc.) is unnecessary.

c) Warranty repairs or other repairs made without cost to the Department must be noted in the same manner as other repairs, with the necessary comments in "Remarks" to explain that such is the case.

d) In the space provided: show vehicle mileage, repair reason (refer to Annex #6), firm name and city, firm code (refer to Annex #6), date and time the vehicle went in for repairs or service and returned to duty, the cost of parts and labor for services or repairs, and repair/service description and codes (refer to Annex #6). Repair/Service description should include sufficient details to convey a general idea of the extent of repairs or service. Statements such as "tire repair", "wash", "oil change", "alternator repairs", "engine overhaul" are adequate. When two different kinds of repairs or services are made at the same time, list each item separately. Appropriate descriptions are listed in Annex #6.

e) Repairs made in DPS shops (including radio repairs) must be entered in this section of the report just as any other repairs. Cost information will be made available at the time or sent to the proper supervisor within a few days.

f) Tires and batteries purchased under state contract will be listed in the same manner as repairs. Contract prices will be furnished by immediate supervisors to all DPS vehicle operators working under their supervision. Show the name of the manufacturer of the tires or battery as firm name instead of the name of the service station or dealer supplying same.

g) Contract items such as spark plugs, fan belts, and sealed-beam headlights must be shown on the report just as though they had been purchased, with "Code A in House" shown as the firm supplying. Contract prices for these items will be shown in the cost column.

h) When repairs are paid for by an Emergency Purchase Order, a notation must be made showing the number of the EPO issued to pay for same. As an illustration, the notation "Replace U-joints (EPO 6741)" would be adequate for this purpose.

i) When extensive repairs are made under a specific detailed bid (as in repairing a wreck), no detailed listing of work done or parts used is necessary, provided proper explanation is made, for example: "Repair wreck damage as per bid (EPO 1234)."

2) **Fuel Transaction Report** – Fuel will be tabulated in this section. Employees will enter the date, number of gallons and cost of each purchase. Next you will identify the fuel type gas or diesel and fuel source, i.e. DPS Bulk, TXDOT Bulk, Retail, etc. Lastly notate the fuel source location. For example if from a retail pump you will indicate the city, if from a DPS Bulk fuel location you will notate which one, i.e. Austin District Office.

3) **Oil Changes, Oil Filter, Grease, Transmission Serviced, Brakes Inspected, and Air Filter.** In the space provided, show date and odometer reading when service performed. When not serviced during the month, show date and odometer reading when service was last performed. Use remarks section if additional space is required.

4) **Tire Installed.** In the space provided, show date, quantity ( ), and odometer reading for tires installed. Use remarks section if additional space is required.

5) **Accident Data.** Record the date, location, and vehicle mileage of any accident the vehicle was involved in during the month. Also, record the number of days the vehicle was out of service due to the accident and the accident repair cost. If the vehicle is totaled, indicate so. If the vehicle has not been

repaired and returned to service by the end of the month but is to be repaired, so note and complete this information on the following month's report.

6) **Operating Efficiency.** Calculate and enter the fuel miles per gallon by dividing the total miles driven for the month by the total gallons of fuel for the month. Similarly, calculate and enter the cost per mile by dividing the total monthly expense by the total monthly miles driven.

7) **Remarks.** Make any appropriate remarks necessary to explain any purchase, repair, or service or to report any condition to the vehicle that would be appropriate. This includes fleet and other accidents, damages caused by acts of God, information concerning warranty, etc.

## **20.02 Information for Jail Register (HQ-25)**

1. **Use.** When any member of the Department places any person in jail for any reason, the officer will secure a receipt from the official taking charge of said prisoner. If the receiving agency does not furnish a receipt, the HQ-25 will be completed with the signature of the person who assumes custody of the prisoner.

2. Persons impounding livestock under the provisions of RCS 6971a will use the same form (HQ-25) as a receipt from the sheriff, striking out the portions that do not apply, and using the back thereof for additional space when needed. The various copies of HQ-25 will be disposed of in the manner prescribed when used in connection with human prisoners.

**20.03 Report of Investigation.** All CLE commissioned personnel will use the Report of Investigation (CLE-1) to record and report the details of their original investigation into any misdemeanor and/or felony offense reported to them in a complaint which they may be called upon to investigate. THP personnel will use the THP-1. THP and CLE personnel should refer to their respective service manual for instructions on completing these reports.

**20.04 Continuation Form.** All CLE commissioned personnel will utilize the Continuation Form (CLE-2) in conjunction with the CLE-1 when needed. THP commissioned personnel will refer to THP Manual-Part I, 10.03 for Continuation instructions on the THP-1.

## **20.05 Uniform Report of Assaults on Officers**

1. In order to collect information relating to offenses of assaults on officers, HQ-12, Incident Report, will be used by all DPS officers.

2. Discretion should be used in the completion of this form to ensure the validity of the reported assault and the accuracy of the information submitted. Certainly any assault serious enough to warrant the filing of charges should be reported, even if charges are not filed, in lieu of other more serious charges.

3. When an assault occurs, the assaulted officer or responsible supervisor will complete HQ-12 as soon as practicable as described in General Manual, Chapter 8, Annex #1.

4. The original of the form should be submitted to Uniform Crime Reporting, Box 4143, Austin, Texas 78773-4143.

**20.06 Supervisor Response Report.** Article V of the Appropriations Act states "The Department shall maintain for each fiscal year, the number of times supervisory officers above the rank of lieutenant respond to emergency calls requiring departure from the officer's private residence or from the office. This information shall contain specific references as to the nature of each emergency."

1. In order to comply with the above act, all Department supervisory officers above the rank of lieutenant will report responses monthly using form ACT-10. Division chiefs may designate additional personnel who are required to report responses on ACT-10.

2. Reporting persons should complete form ACT-10 as prescribed in the instructions on the back of the form. Copies may be made from Annex #5 for use as needed.

#### **09.25.00 DEPARTMENT FORMS**

The forms management system and the assignment of inventory numbers for Department forms are the responsibility of Reprographics and Distribution. All Department forms available to the public and/or used to collect or gather information from anyone outside of an immediate area shall be assigned an inventory number from Reprographics.

Please see Reprographics and Distribution for procedures to create, revise and/or delete numbered Department forms.

**25.01** Each Division and Special Staff in Austin headquarters shall appoint a representative as a contact person with Reprographics on Department forms matters. In addition, each Division and Special Staff having field operations shall appoint a forms committee chairman to represent the field operation on Department forms matters with Reprographics.

#### **09.30.00 PUBLICATION REQUEST FORMS**

Senate Bill 222, Article V, Section 65 appropriations, passed by the 71st Texas Legislature states "All units of state government and all local political subdivisions which expend appropriated state funds to publish periodicals on quarterly intervals or more frequently than quarterly intervals at no charge shall insert annually in such periodicals a notice, in three consecutive issues, indicating that anyone desiring to continue to receive the publication must so indicate in writing. The agency shall furnish future publications only to those persons requesting."

Budgetary units that maintain a publication distribution list should cause an updated publication list to be compiled after January 1 of each year from the forms and written requests received for that calendar year. A one-time request for a specific publication received orally or in writing is an exception and will not be included on the publication distribution list. The person in charge of a budgetary unit will be responsible for supervision of this activity.

#### **09.35.00 SIZE OF PAPER SUPPLIES AND FILE CABINETS**

In order to comply with legislation relating to a uniform size for certain supplies and equipment used by state agencies, Department personnel shall be guided by the following policy and procedure.

**35.01 Policy.** The Department will not purchase forms, bond paper, stationary, pads, or similar paper supplies that exceed 8-1/2" x 11" in size unless the paper supplies are perforated or otherwise designed to produce completed documents that do not exceed 8-1/2" x 11" in size after September 1, 1986. Purchase or use of forms or paper supplies after September 1, 1986, that exceed 8-1/2" x 11" in size is permitted if those forms or paper supplies are used for:

1. Documents prepared on forms developed by national organizations for use by the Department and those forms are designed to be compatible with such national documents.
2. Preparation of documents required by the Federal Government.
3. Maintaining accounting or bookkeeping records.

4. Preparation of financial reports.
5. Budget documents.
6. Nontext computer reports or documents, charts, graphs, tables, maps, diplomas, art work, or architectural or engineering graphs or documents.
7. Enlarging small print materials for the visually impaired.
8. Resale purposes.
9. Fanfold paper designed for use in computer peripheral devices.

Personnel affected by the change in policy will revise each form exceeding 8-1/2" x 11" in size that does not specifically fall into one of the nine above-listed categories. Revisions of forms to the required size shall be completed before September 1, 1986, thereby assuring full compliance when the legislation becomes effective.

**35.02 Procedure.** All stocks of paper supplies that exceed 8-1/2" x 11" in size which will be affected by this change in policy shall be used until those supplies are exhausted. Filing cabinets currently in use that are designed to store completed documents that exceed 8-1/2" x 11" in size will continue to be used after September 1, 1986. After September 1, 1986, replacement file cabinets designed to store completed documents that exceed 8-1/2" x 11" in size cannot be purchased.

#### **09.36.00. HQ-35 Highway Interdiction Report.**

This form will be completed any time a highway interdiction case is initiated. It is imperative all applicable blanks are completed. For disposition purposes, a copy of the report must be kept by the seizing officer in all seizures of currency and vehicles.

#### **Completing the Front of the Report**

1. **Type of Case.** Check the appropriate box or boxes to indicate if the reason for the form is a drug seizure, currency or asset seizure, felony criminal arrest (other than fugitive arrests), gang contact, human trafficking, or a disposition report.
2. **Identifier Information**
  - a. **Initiating Division / Service.** Enter the division / service that initiated the seizure, such as a request to another division to make a traffic stop.
  - b. **Executing Division / Service.** Enter the division / service that executed the seizure by making an arrest and/or seizure. This area is not an indication of the division responsible for tracking any asset disposition.
  - c. **RDSA.** Assigned region, district, and sergeant area of officer executing the case.
  - d. **Officer.** Last name, first name, middle initial of officer executing the case.
  - e. **ID.** Identification number of officer executing case.

f. **Time.** Time of incident.

g. **Date.** Month, day, and year of incident, using eight digits.

3. **Arrest Seizure Information.** Mark only one box that best identifies the incident that led to the discovery of evidence.

4. **Canine.** Indicate if a canine team was used during the incident. If utilized, indicate the canine team agency, handler's name, and name of the canine.

## 5. Location

a. **County.** Name of county where the incident occurred.

b. **Highway.** Describe in detail the highway of travel at time of traffic stop or law enforcement intervention, such as: IH35, US59, SH6, FM1969, etc.

c. **Travel.** Check appropriate box, for direction of travel at time of traffic stop or law enforcement intervention.

d. **Nearest City.** Identify closest town that can be located on a map on the highway traveled.

e. **Probable Cause for Traffic Stop.** Identify the reason or original violation of the law, by arrest title, that initiated the traffic stop or law enforcement intervention. If violation is speed, show posted speed and alleged speed. If the incident is a result of investigating a traffic crash, show "motor vehicle crash."

f. **Latitude / Longitude.** Enter the decimal degree latitude and longitude of the location of the incident, if executing officer has the equipment to determine.

g. **Origin of Drugs or Currency.** Provide the origin of drugs or currency by city and state or county.

h. **Destination of Drugs or Currency.** Utilizing at scene evidence or after interview of suspects, give intended destination of items seized by city and state.

## 6. Drug Seizures

a. **Prior Knowledge Before Traffic Stop?** If the officer executing the arrest and/or seizure had prior knowledge of the incident before the law enforcement contact was made, mark "yes." If there was no prior knowledge, mark "no."

b. **Drugs Seized.** If drugs were seized, mark "yes." If not seized, mark "no," explaining in case report.

c. **Drugs.** Indicate the type of drug seized. If "Other" is shown, describe the type of drugs seized in the narrative.

d. **Quantity.** Indicate the amount of drugs seized for each type.

e. **Measure.** Indicate the unit of measurement used for the amount shown. For Marijuana seizures, use pounds for the unit of measurement. For drugs seized in the form of a tablet, show tab or dosage as the unit of measurement. For all other drugs, show the unit of measurement in grams. Use the following conversion tables to assist:



Conversion tables:

- to change grams to pounds multiply by .002
- to change ounces to grams multiply by 28.3495
- to change ounces to pounds multiply by .0625
- to change pounds to grams multiply by 454
- to change kilograms to pounds multiply by 2.2

f. **Concealment Location / False Compartment.** Each drug listed has three boxes in which the concealment location and false compartment information can be shown.

1) **Concealment Location.** Use the concealment location codes to indicate where the drugs were found. If number 49 is shown, indicate the other location in the area below.

2) **False Compartment.** If the location where the drugs were found was an after market false compartment, show "yes." If the location where the drugs were found was in a natural void or holding area, show "no."

For example:

35A	Yes
12	No

g. **Markings on Seized Item.** Indicate any markings found on the drugs or packaging, including names, initials, shapes, etc.

h. **Other Concealment Location (49).** If number 49 was shown for a concealment location, indicate the location in the space provided.

i. **False Compartment Notes.** Document any unusual information about the false compartment in the space provided.

## 7. Currency Seizures

a. **Prior Knowledge Before Traffic Stop?** If the executing officer had prior knowledge the suspects were transporting illegal currency before the traffic stop was made, mark "yes." If not, mark "no."

b. **Currency Seized?** If currency seized, mark "yes." If not, mark "no."

c. **Amount.** List exact amount of currency seized. The HQ-83, Certificate of Seizure, must accompany the case report. When this blank is completed, a disposition report must be forwarded through channels when the disposition of the currency is determined. Mark the appropriate box for the court system responsible for initiating forfeiture, "Federal Court" or "State Court." If Federal Court, the appropriate federal seizure form must be forwarded to the executing officer division's office within 20 days and must accompany the HQ-35 report.

d. **Concealment Location / False Compartment.** There are three boxes in which the concealment location and false compartment information can be shown.

1) **Concealment Location.** Use the concealment location codes to indicate where the currency was found. If number 49 is shown, indicate the other location in the area below.

2) **False Compartment.** If the location where the currency was found was an after market false compartment, show "yes." If the location where the currency was found was in a natural void or holding area, show "no."

e. **Markings on Seized Item.** Indicate any markings found on the currency or packaging, including names, initials, shapes, etc.

f. **Other Concealment Location (49).** If number 49 was shown for a concealment location, indicate the location in the space provided.

g. **False Compartment Notes.** Document any unusual information about the false compartment in the space provided.

## 8. Weapons

a. **Make.** Show the manufacturer's name, such as: Sig Sauer, Smith & Wesson, Glock, etc.

b. **Model.** Indicate the model number, such as: P226, SD9, G30, etc.

c. **Type.** Show the type of weapon, such as: pistol, revolver, rifle, shotgun, other, etc.

d. **Caliber.** Indicate the caliber of the weapon, such as: .357, .22, 7.62mm, etc.

e. **Serial #.** Show the serial number on the weapon.

f. **Forfeiture Initiated.** If the weapon is seized with the intention of initiating asset forfeiture proceedings, show "yes." If the weapon is not seized, or is only held as evidence, show "no."

g. **Recovered Stolen.** If the weapon was reported as stolen, mark the box for recovered stolen.

## 9. Vehicle

a. **License Plate.** Vehicle license plate number.

b. **License Year.** Year of registration displayed.

c. **License State.** State of vehicle registration.

d. **Forfeiture Initiated.** If the vehicle is seized with the intention of initiating asset forfeiture proceedings, show "yes." If the vehicle is not seized, or is only held as evidence, show "no." When "yes" is marked, a disposition report must be forwarded through channels when the disposition of the vehicle's forfeiture is complete. Mark the appropriate box for the court system responsible for initiating forfeiture, "Federal Court" or "State Court." If Federal Court, the appropriate federal seizure forms must accompany report.

e. **Recovered Stolen.** If the vehicle was reported as stolen, mark the box for recovered stolen.

f. **VIN.** Vehicle Identification Number.

g. **Vehicle Year.** Vehicle's year of manufacture.

- h. **Make.** Describe vehicle make, such as: Ford, Chevrolet, Nissan, Toyota, etc.
- i. **Model.** Describe vehicle model, such as: Camaro, Corolla, Sentra, Mustang, etc.
- j. **Type.** Describe vehicle type using a two character code from the following list:

- BU – Bus
- DC – Dolly Converter
- EM – Emergency Vehicle (Police, Fire, EMS)
- FT – Full-Trailer, Refrigerator
- IN – Intermodal, No Owner
- IO – Intermodal Owner
- JP – Jeep
- LM – Limousine
- MC – Motorcycle
- MS – Motor Scooter / Moped
- OT – Other
- PA – Passenger Car
- PT – Pole Trailer, Log
- PU – Pickup Truck / El Camino
- PV – Passenger Van
- RT – Road Tractor
- RV – Recreational Vehicle
- SB – School Bus
- ST – Semi-Trailer, Livestock
- SV – SUV
- TK – Tank
- TN – Train
- TR – Straight Truck, Dump Truck, Flatbed, Cement Mixer
- TS – Truck Tractor/Semi-Trailer
- TT – Truck Tractor
- UV – Utility Van (UPS, Bread Truck, etc.)
- VN – Van

k. **Owner Information.** List the owner's name, address, phone number, and DOT #(if applicable.)

l. **Rental.** Mark appropriate box “yes” or “no.”

m. **Lessee Information.** List the lessee’s name, address, phone number, and DOT #(if applicable.)

#### 10. Trailer / Other Vehicle

a. **License Plate.** Trailer/Other Vehicle license plate number.

b. **License Year.** Year of registration displayed.

c. **License State.** State of vehicle registration.

d. **Forfeiture Initiated.** If the trailer/other vehicle is seized with the intention of initiating asset forfeiture proceedings, show “yes.” If the trailer/other vehicle is not seized, or is only held as evidence, show “no.” When “yes” is marked, a disposition report must be forwarded through channels when the disposition of the vehicle's

forfeiture is complete. Mark the appropriate box for the court system responsible for initiating forfeiture, "Federal Court" or "State Court." If Federal Court, the appropriate federal seizure forms must accompany report.

e. **Recovered Stolen.** If the trailer / other vehicle was reported as stolen, mark the box for recovered stolen.

f. **VIN.** Vehicle Identification Number.

g. **Vehicle Year.** Trailer / Other Vehicle's year of manufacture.

h. **Make.** Describe the trailer / other vehicle make, such as: Vanguard, Great Dane, CIMC, etc.

i. **Model.** Describe trailer / other vehicle model, if applicable.

j. **Type.** Describe trailer / other vehicle type, such as: semi-trailer, flatbed, tanker, car hauler, etc.

k. **Owner Information.** List the owner's name, address, phone number, and DOT #(if applicable.)

l. **Rental.** Mark appropriate box "yes" or "no."

m. **Lessee Information.** List the lessee's name, address, phone number, and DOT #(if applicable.)

### Completing the Back of the Report

11. **Driver/Passenger Information.** List the driver and passenger information. When there are more than two people in vehicle, show additional passengers on the passenger continuation pages.

a. **Name.** Last name, first name, middle name of driver and/or passengers. Juvenile names will be marked out so as to be illegible.

b. **AKA.** Any other names the individual is also known as.

c. **Sex.** Mark appropriate box, "male" or "female," for the individual.

d. **DOB.** Individual's month, day, and year of birth, using eight (8) digits.

e. **Height.** Individual's height in feet and inches.

f. **Weight.** Individual's weight in pounds.

g. **Eyes.** Individual's eye color.

h. **Hair.** Individual's hair color.

i. **POB.** Individual's place of birth, as city and state, or if not in the United States show country.

j. **Race.** Mark appropriate box, white, black, Hispanic, other.

k. **Telephone.** Individual's home phone number and all mobile phone numbers available from evidence collected. Show a description of the phone number under Telephone Detail, such as: known gang associate, brother's mobile number, known drug courier, etc.

l. **Address.** Individual's home address. Do not use post office boxes if at all possible.

m. **DL#.** Individual's driver's license number.

n. **State.** The state the driver's license was issued.

o. **SSN.** Individual's Social Security Number.

p. **Other Identifier.** Give other identifiers, such as: DPS numbers, FBI numbers, etc.

q. **Charges Filed.** List all charges filed for this individual.

r. **Gang Affiliation.** Indicate the name of the gang the individual is associated with, if any.

s. **Gang Tier.** Indicate the tier that the Department has assigned to the associated gang. This information should be obtained from Intelligence and Counterterrorism Division.

[http://www.txdps.state.tx.us/director\\_staff/media\\_and\\_communications/TXGangThreatAssessment.pdf](http://www.txdps.state.tx.us/director_staff/media_and_communications/TXGangThreatAssessment.pdf)  
(See page 9-12 for 2011 and 2012 rankings and criteria)

t. **Gang Tattoos.** Check "Yes" or "No" to document if gang tattoos are evident on the individual.

u. **Photos Included.** Check "Yes" or "No" if photos of the gang tattoos were taken and included.

v. **Pocket Contents.** List any relevant pocket contents, such as: receipts, names, phone numbers, etc... Do not show the actual details of the contents. List specific details of relevant pocket contents in the case report.

## 12. Human Trafficking.

a. If the case involved human trafficking, indicate the assisting agency, if any.

b. If the case involved adult human trafficking, indicate the total number of adult victims. Do not include accomplices to the criminal case.

c. If the case involved child trafficking, indicate the total number of child victims. Do not document the identity of children on this report.

13. **Narrative.** Write a brief synopsis of the incident including any "Other" drugs found. Do not attach additional pages for this section. A detailed description of the incident will be documented on an attached case report.

## 14. Other Seizures

a. **Real Estate.** Mark appropriate box. "Yes" should only be marked when the arresting officer has personal knowledge that the real estate was seized as a result of the law enforcement contact and asset forfeiture action is initiated. Supplemental reports are not required unless the arresting officer was responsible for the actual seizure of real estate. Briefly describe real estate seized.

b. **Other Evidence, Documents, or Photographs.** Mark the appropriate box “yes” or “no.” Submit copies of other evidence to the DPS Post Seizure Analysis section. Briefly describe other documents seized, such as: pictures, address books, route maps, etc.

**Disposition Report.** The remaining portion of the Interdiction Seizure Notification (HQ-35) is intended to be a disposition report and should only be completed when final disposition of seized currency or vehicles is accomplished. This will require the reporting officer, sergeant area, and district to maintain a pending file of seizures. Once a disposition is obtained, the officer charged with tracking such disposition should complete the disposition portion of the report, mark the front top of the report as a disposition report, and forward the entire copy, front and back, through channels to the headquarters division office. If the report reflects currency forfeited to the Department, a check in the amount forfeited and appropriate court documents should be attached, or an explanation as to where the forfeited funds are located should be detailed in the comments section. Likewise, documents related to court orders on vehicle forfeitures, when the vehicle is forfeited to the Department, should accompany vehicle dispositions. All currency and vehicles seized and originally reported on the HQ-35 must be accounted for. Pending dispositions should not be submitted to the headquarters division office unless part of the seizure is forfeited and the remaining portions are still pending. In these cases, explanations should be given in the comments section and additional disposition reports will be necessary.

### 15. Currency Disposition

a. **Forfeiture Action Initiated.** Mark appropriate box, “yes” or “no.” If currency was seized and the prosecuting officials decline to forfeit same, “no” should be marked, appropriate explanation made in the comments section, and a disposition report forwarded as completed.

b. **Disposition Tracked By.** Mark the DPS law enforcement division assigned responsibility to track the currency disposition. Mark only one.

c. **Date Initiated.** Month, day, and year the forfeiture action was initiated, using eight (8) digits.

d. **Court.** Mark state or federal court to describe which court system actually filed forfeiture procedures.

e. **Disposition Date.** Month, day, and year the forfeiture action was complete, using eight (8) digits.

f. **Attorney/Agent/Officer and Telephone Number.** Identify by name and give business telephone number of the state court official or federal officer responsible for forfeiture actions in this case.

g. **Receiving Party/Amount.** Provide a breakdown of the distribution of forfeited funds. Court costs, attorneys fees, and other miscellaneous expenses should be added to the prosecuting attorney's share of the forfeiture. Receiving parties must be identified by agency, such as: Brazoria County S.O., Vernon P.D., I.R.S., U.S. Marshal, 123rd District Attorney's office, etc.

h. **Comments.** Any pertinent comments concerning the currency disposition.

16. **Vehicle Disposition.** Complete in the same manner described for currency seizures. If more than one vehicle is forfeited in this case, describe the additional vehicles in the comments section. If DPS has no interest in the vehicle, and seizure is initiated by another agency, mark “No.” Provide appropriate explanation in the comments section.

17. **Disposition Review.** This section is only used when submitting a disposition report. Each level in the chain of command review of the disposition will affix their signature and date of their review.

## **FISCAL AND PROPERTY PROCEDURES**

### **01.10.00.00**

#### **10.05.00 MISCELLANEOUS PROVISIONS**

**05.06 Purchase Vouchers or a Vendor's Invoice.** Purchase Vouchers or Vendor's Invoices must be submitted directly to Accounting and Budget Control for payment in accordance with the following:

1. Claims for all payments except those submitted on the travel expense account.
2. When cash is paid for an item requiring a Purchase Voucher, the Purchase Voucher is properly made payable to oneself. In such cases, a bona fide receipt of payment must be attached.
3. Purchase Vouchers or Vendors' Invoices should be submitted by the vendor directly to Accounting and Budget Control.
4. Departmental employees making purchases are responsible for instructing the vendor as to the proper method of submitting claims for state purchases.
5. Article 601f, VCS, requires state agencies to pay all obligations within thirty (30) days from date of receipt of goods or services, or invoice, whichever is later. In reference to the invoice, the 30-day period begins when the invoice is received at any DPS location, not when the invoice reaches Accounting and Budget Control. It is therefore imperative that all invoices, receiving reports, and Purchase Orders be forwarded to Accounting and Budget Control as quickly as possible to ensure that this agency meets the 30-day prompt payment obligation. Any interest payable on payments not meeting the 30-day payment obligation will be charged to the budgetary unit that received the goods of services.

**05.07 Credit Cards.** Oil company credit cards are issued to all employees who have a state-owned vehicle assigned to them. These credit cards may be used for the retail purchase of gasoline, oil, grease, car wash, lubrication, vehicle inspections, tire repairs, mounting and balancing, rotating tires, or minor repairs which do not exceed \$50.

#### **05.08 Contract Automotive Items**

1. **Tires and Tubes.** Purchase of contract tires and tubes is to be made by Purchase Order in accordance with the provisions of the contract in effect, and instructions contained in Annex #1 to this chapter.

2. **Gasoline, Oil, Diesel, Butane/Propane, and Transmission Fluid.** Purchase of gasoline, oil, diesel, butane/propane, and transmission fluid is to be made in accordance with instructions contained in Annex #2 to this chapter.

3. **Batteries.** Purchase of six batteries or less may be accomplished by using the "Spot Purchase" procedure. Requirements for more than six batteries shall be ordered through Accounting and Budget Control.

**05.09 Postage Stamps.** Stamps will be ordered from the regional or district office, as applicable, by completing the information on the Stamp Request form (HQ-21). Acknowledgement for stamps will be made on form HQ-20 when stamps are received. Employees may be reimbursed for the emergency purchase of postage and post office box rent. A bona fide receipt from the post office is required.

**05.10 Retail (Wholesale Club) Membership Fees.** It is the policy of this agency to prohibit the payment of any membership and/or account processing fees to a retail (wholesale club) establishment.

**05.11 Procedures for Vendor Protests of Procurements (37 TAC §1.231)** Title 37, Texas Administrative Code, Section 1.231 governs the procedures for a protest by a bidder, offeror or contractor regarding a solicitation, evaluation or award of a contract. The text of administrative rules is available at <http://www.sos.state.tx.us>.

## **10.10.00 SUPPLY STORES**

**10.01** There are three supply stores in the Department. The items issued by these stores are divided into two categories as follows:

1. Expendable supplies (items without an inventory number)
2. Capital items (items with inventory numbers, such as revolvers, automobiles, radios, etc.)

**10.02** The three supply stores and the items available from them are as follows:

1. The General Stores carries in stock such items as uniforms and equipment, photo supplies, first aid supplies, janitorial supplies, ammunition, firearms, batteries, flashlights, breath testing supplies, and miscellaneous items.

2. The Office Supply Store carries in stock such items as paper, printed forms, envelopes, and many general office supply items.

3. The Automotive-Radio Shop Store has available such automotive items as spark plugs, air filters, oil filters, sealed beam lamps, fan belts, automobiles, sirens, revolving emergency lights, radio repair parts, radar repair parts, transceivers, communications equipment, etc.

**10.03 Requisitions for Supplies.** All requisitions for supplies from General Stores or Automotive-Radio Shop Store will be made on Supply Order form (GS-1) and signed by the major, captain, lieutenant, adjutant, Texas Ranger lieutenant, Special Crimes lieutenant, Narcotics lieutenant, Motor Vehicle Theft lieutenant, Vehicle Inspection sergeant, regional supervisor of Police Communications, division chief, or manager of budgetary units. All requests for supplies from the Office Supply Store will be made on Supply Order form (GS-1) and will require the signature of personnel listed above and/or first-line supervisor.

1. **Separate Form to Each Supplying Store.** A separate form (GS-1) is required for ordering supplies from each supply area.

2. **Separate Forms for Different Districts or Services in One Region.** If supplies are requested for two different districts or services in one region, separate supply orders must be submitted for each district or service.

3. **Number of Copies Required.** Form GS-1 will be completed and submitted in triplicate when ordering supplies.

4. **Completion of Form GS-1 (See Annex #5.)**

**ACTION** - Place check mark in appropriate block to indicate "ISSUE" or "RETURN."

**UNIT** - Place a check mark in the appropriate block to indicate the store from which the supplies are to be requisitioned.



**BUDGET UNIT** - Write your budget code in space marked "BUDGET UNIT." Place check mark in appropriate block to indicate whether supplies are to be picked up in Austin or if they are to be sent by "MAIL," "FREIGHT," or "MAIL PLANE."

**STOCK NO.** - List stock number for the correct item you wish to order.

**ITEM DESCRIPTION** - List item description as it is listed in the supply catalog corresponding with the correct stock number.

**QUANTITY** - List quantity as needed.

**10.04 Receipt for Supplies.** When a supply order is filled, the pink copy of the Supply Order, bearing the signature of the person receiving the supplies, is returned with the supplies to the person initiating the request along with a computer printout showing prices and total amount of transaction when possible.

**10.05 Issue to New Employees.** When a new employee enters the service of the Department by graduation from the Recruit Training School, he will be equipped with uniform, badge, identification card, gun, and such other equipment as is normally assigned to such an individual. If the employee enters the service by a direct appointment, he will be equipped at General Stores and Automotive Shops as the nature of his appointment may indicate.

**10.06 Exchange.** General Stores will exchange used equipment for used equipment only. New equipment will be exchanged for new equipment. When exchanging new equipment, one size for another size, issues and returns can be made using the same GS-1 form, showing the size being returned and the size being issued. If new uniforms have been altered in any way, if a shoulder patch has been sewn on a shirt, such shirt will be considered a used shirt and exchanged as such.

**10.07 Turning in Equipment.** The rules for turning in equipment are as follows:

1. When an employee leaves the Department, all state property assigned to him must be surrendered to his commanding officer, who will give such departing employee a receipt for such property. The Commanding officer is in turn responsible for turning appropriate inventoried items in to General Stores.

2. When an employee transfers from one service to another service within the Department, he will surrender to his commanding officer all state property assigned to him which is not applicable to such new service. Additional equipment required in such new service will be requisitioned by the commanding officer of the new service to which the employee is transferring.

3. Guns and other inventoriable items must be in good repair when they are turned in.

4. Uniforms turned in must be cleaned and pressed in order that they can be reissued. (This does not apply to uniforms that are so badly worn they cannot be reissued.)

5. When an officer retires under honorable circumstances from a uniformed position in the Department (as reported to TCOLE on the form F-5), the appropriate division assistant director may allow the officer to keep one (1) uniform trouser and one (1) uniform shirt.

## **10.15.00 PROPERTY ACCOUNTING**

**15.01 Responsibility.** The Department is charged with the responsibility of maintaining a current and accurate record of all inventoriable property acquired from any source. This will be accomplished through Regional Inventory Asset

Specialists, assisted by property custodians ensuring accurate inventory verification and timely property transfers through designated local property custodians. The service commander, bureau or section manager, or division chief's designee will be the property custodian accountable for all property assigned to their respective area of responsibility. A formal written transfer of responsibility (Property Custodian Form) for inventoriable property will be completed when a person leaves and another assumes a position designated as a property custodian. (Annex #17)

A Local Property Custodian is the person assigned local responsibility for property within a designated location code. (THP Sergeant, CID Lieutenant, or other designated individual(s), etc.).

**15.02 Method of Keeping Records.** A permanent record and history of inventoriable property is kept in the automated capital inventory system. At the time property is transferred between department codes an on-line transfer is to be completed through the automated capital inventory system.

**15.03 Property Transfer.** A property transfer will be completed on-line through the automated capital inventory system by the local property custodian sending the property to another department (location code). The property transfer will be acknowledged by the receiving local property custodian who will be notified of a property transfer via e-mail from the automated capital inventory system.

There should be two (2) property custodians assigned to each department so the transfer process will operate efficiently. If one property custodian is not in a position to access the online transfer system to initiate or approve transfers, the other one may.

**15.04 Inventory Number.** Each piece of property subject to inventory will be assigned a DPS inventory number by the Asset Management Office. Generally, items less than \$5,000 will not be maintained in the automated capital inventory system. For purposes of inventory control, exceptions will be made for certain items.

Some examples of Capital Assets are: vehicles, boats, helicopters, security systems, computer hardware and microscopes.

The following items will be maintained in the automated capital inventory system regardless of cost.

- Firearms
- Tasers
- Radios
- Radars

The following items will be maintained in the automated capital inventory system provided their cost is \$500 - \$4,999.99.

- Stereo Systems
- Cameras, Video Cameras
- Televisions, VCRs and Camcorders
- Computers
- Servers
- Projectors
- Tablets, Smart Phones, and other Handheld Devices

**15.05 Inventory Numbers of Property Received from Austin.** On all inventoriable property received from Austin headquarters, inventory labels will have been affixed to the item before delivery is made on the property to the assigned location.

**15.06 Inventory Numbers on Property Received from Contract Suppliers.** The following procedure will be followed in such instances:

1. When property is ordered to be delivered to the field offices by the contract supplier, the person requesting such property will receive a notice of such awarded contract describing the specifications of the property to be delivered. When the property is received, it will be examined to ascertain that it meets the specifications set out by the requestor and vendor in its bid specifications.
2. Upon receipt of the property, a receipt in e-Procurement describing the property received, listing serial and inventory department numbers must be completed.
3. The Asset Management Office will process this information, assign inventory numbers, and enter property into the automated capital inventory system. The decal bearing the property inventory number will be forwarded to the office where the property was received. Upon receipt, the decal will be placed on the property for which it was issued.
4. If a decal is lost, defaced, or destroyed, a request for a duplicate shall be made to the Asset Management Office. When it is received, it shall be placed on the item for which it was issued.

**15.07 Placement of Inventory Label.** The inventory label provided by the Asset Management Office will be affixed to the item it is assigned after verifying a serial number or product number. The label should be placed on the exterior surface of the item in the lower right hand corner of a flat surface most visible during normal use. Where possible, labels should not be placed behind covers or on interior surfaces of items. Labels on marked and non-covert motor vehicles should be placed on the frame in front of the driver's door.

**15.08 Annual Inventory Procedures.** An inventory of property will be performed throughout the fiscal year via the automated capital inventory system. Each item will be visually inspected and verified by scanning using RFID technology or the bar coded inventory label. Handguns will be not labeled but will be entered into the automated capital inventory system by the DPS inventory number and serial number.

The verification of inventory will be throughout the fiscal year. The inventory will be conducted by Regional Inventory Specialists and a Property Custodian or their designee. This inventory will be conducted at a time arranged between the Specialist and the Custodian.

During the assigned inventory period it will be the responsibility of property custodians to ensure that all items are accounted for. The Inventory Specialist will provide a list of property that must be located, and subsequent lists will be created showing assets that were not available during the inventory visit. Once the inventory has been conducted, 30 days are allowed to either locate assets or submit a Missing Inventory report (Form ACT-6).

## **15.09 Disposition of Property**

### **1. Definitions**

- a. Surplus property is any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable need. Surplus property may be new or used but must have additional useful life.
- b. Salvage Property-Any state property (inventory/non-inventory), which through use, time, or accident is so depleted, worn-out, damaged, used, or consumed to the point that it has no value for the purpose for which it was originally intended.

### **2. Policy**

State agencies **not exempted** from the general provisions for surplus and salvage property (Texas Government Code Annotated Section 2175) must follow the TFC and Comptroller's office policies and procedures for transfer, sale or disposal of surplus property. When applicable, agencies must adhere to the federal guidelines and regulations for disposal of surplus property.

Agencies officially notify the TFC and the Comptroller's office (using disposal method 05 in SPA) when surplus property is available for sale or other disposition (see [Chapter 6](#) for more information about disposal method 05). Property with this disposal method is advertised on the Comptroller's office Web site for 10 days beginning on the advertisement date indicated by the agency. During these 10 days, a state agency has a priority option-to-buy property with disposal method 05 over any other entity.

**Note:** Although state agencies have priority to buy items advertised on the Comptroller's office Web site during the 10-day period, bids from political subdivisions or assistance organizations may be submitted for consideration during these 10 days. These bids must remain **pending** until the entire 10-day period has passed.

The agency advertising the surplus property determines the selling price and the first state agency, political subdivision\* or assistance organization\* agreeing to the price is entitled to the property. Once sold, the transfer is coordinated directly by the agency that owned the surplus property.

\*During the initial 10-day advertising period, a state agency has a priority option-to-buy over political subdivisions or assistance organizations. However, these entities may submit a pending bid for consideration.

**If the property is not acquired, the agency must change the disposal method 05 in SPA to another disposal method and indicate the next course of action to be taken by TFC (sealed bid, TFC storefront, live auction or Internet auction). This should be done immediately after the 10-day advertisement period. The agency may also choose to advertise the property again on the Comptroller's office web site.**

However, if the property is data processing equipment, all state agencies *must transfer all* data processing equipment to a school district, open enrollment charter school or the Texas Department of Criminal Justice. The agency transferring the data processing equipment *may not* collect a fee or other reimbursement for the transfer. Data processing equipment cannot be sold to the general public.

**Note:** Statute allows political subdivisions to send data processing equipment to the Texas Department of Criminal Justice.

The TFC may authorize a state agency to dispose of surplus or salvage property (bypassing the procedures above) if the agency demonstrates that it can dispose of the property in another way that saves the state money. For example, if the property is not acquired by an eligible entity, TFC may authorize the agency to sell the property by competitive bid, auction or direct sale to the public, including a sale using an Internet auction site. TFC determines which method of sale shall be used depending on what is most economically advantageous to the state under the circumstances

**15.10 Loss of Property.** When any member of the Department loses any property belonging to the Department and entrusted to his care, he shall immediately report such loss to his commanding officer or supervisor, giving complete details and circumstances surrounding the loss, by memo and a "Missing & Stolen Report" (ACT-6 rev. 6/14). In the event of stolen property, the local police authority shall also be notified and an offense report and form ACT-6 shall be completed and forwarded through the proper channels to the Asset Management Office. It is the responsibility of the property custodian to ensure that all lost and stolen items are entered in TCIC and/or NCIC. After 30 days, if the lost or stolen property has not been recovered, reimbursement will be made to the Department for such loss, unless it can be shown that due care and diligence were exercised in protecting such property and that such loss was not caused by negligence. The property custodian will make a determination of negligence subject to final approval of the division chief. Failure to follow Department policy, State Regulations, and sound judgment in handling Capital Assets constitutes

“negligence.” (Negligence - when the employee fails to exercise reasonable care to secure the possession and usefulness of the asset, whether the asset is used by or in the custody of the employee. Reasonable care would include actions a reasonable person would have known or should have known when taking custody of the asset(s).) When an asset is reported “Stolen”, a report must be made to the Attorney General within 72 hours. This report must include the ACT-6, memos in reference to the theft (from the person in possession of the asset at the time of its theft, along with a concurrence from the employee’s supervisor, a police report, determination of negligence, and any other pertinent information.

A written statement regarding negligence is required in the “Report in Detail” area of the “Missing or Stolen Report” (ACT-6). This written statement must represent the judgment of the property custodian and/or the division chief signing the form.

## **10.20.00 TRAVEL EXPENSE**

**20.01** Travel expense instructions are contained in Annex #4 of this chapter.

**20.02 Out-of-State Travel Requests and Authorizations.** To expedite out-of-state travel requests and authorizations, the following procedures are to be followed:

1. Out-of-State Travel Request form Act-5 shall be stocked and available from the Supply Room to appropriate personnel.
2. An employee who has justifiable out-of-state travel will complete form Act-5, sign same, and secure the approval of his appropriate supervisor.
3. The completed copies of form Act-5 will be submitted to the Director. Upon approval, the Director will return one copy of Act-5 to the applicant and one copy to the appropriate supervisor. Applicant must attach an approved copy of form Act-5 to the expense account covering the authorized travel. The Director’s approval must be obtained prior to commencing out-of-state travel.
4. When form Act-5 is not immediately available, memos giving all of the required information may be used.
5. In emergency cases only, an out-of state travel authorization may be requested by telephone or FAX.

**20.03 Travel Outside the United States.** Requests for travel outside the United States, except to Canada or Mexico, must be approved in writing by the Public Safety Commission prior to commencing such travel.

## **10.25.00 CLOTHING ALLOWANCE**

Effective 09-01-97, both uniformed officers and officers promoting to nonuniformed commissioned positions are entitled to a \$500 clothing and cleaning allowance per year. Nonuniformed commissioned officers receiving a clothing and cleaning allowance of \$1,200 per year prior to 09-01-97 will continue to receive \$1,200 per year. All eligible officers will have the appropriate amount added to their monthly payroll check. The Internal Revenue Service has ruled that this amount is taxable income.

## **10.27.00 MOVEMENT OF HOUSEHOLD GOODS — TRAVEL ALLOWANCE**

**27.01** Reasonable and necessary costs for moving household goods, mobile homes included, by commercial carrier or truck rental agency, will be at Department expense when transfer of employee is directed by the Department and distance between the old designated headquarters and the new designated headquarters is at least 35 miles. However, Department funds will not be authorized to move new employees or recruit trainees reporting to their initial duty assignment(s) or for transfer of employees when such transfer is requested by the employee.

**27.02** The Director, Assistant Director, or major division chief must approve each move in advance.

**27.03** The Department of Public Safety maintains a contract with a commercial mover. This contractor must be used for all moves that will be paid for by the Department. After receiving prior approval for the movement of household goods at Department expense, the employee must contact the Purchasing Section in Accounting and Budget Control for instructions and authorization to contact the contract mover. It is the employee's responsibility to contact the contract mover, make arrangements for the move, and to submit a Purchase Memorandum, with the written estimate from the mover through channels to the Purchasing Section. The Purchasing Section should be informed immediately of any problems or difficulties the employee encounters. It is the responsibility of the Purchasing Section to ensure that all provisions of the contract are honored by the contractor.

**27.04** The commercial contract mover will invoice the agency for the completed move. The invoice must include the employee's name and authorization number. Attached to the invoice must be a bill of lading, agent's packing list, and certified weight tickets. The contractor will submit his invoice directly to Accounting and Budget Control for payment.

**27.05** An employee may elect to move his own household goods using a truck rental agency. In the event this method is used and the anticipated cost will exceed \$2,000, the employee must first obtain bids for the truck rental. For rentals costing between \$2,000 and \$5,000, bids must be obtained from bidders listed on the CMBL. Contact the Purchasing Section in Accounting and Budget Control for a current listing of bidders. Local non-CMBL bidders may be used after the required three bidders from the CMBL are contacted. For rentals of \$2,000 or less, the employee is authorized to proceed to issue a Purchase Order upon receipt of authorization that the Department will pay for the move. For moves in excess of \$2,000, a Purchase Memorandum must be submitted through channels to the Purchasing Section. Upon receipt of a properly approved Purchase Memorandum, the Purchasing Section will issue a Purchase Order for the truck rental. All bidding for truck rental in excess of \$5,000 must be handled by the Purchasing Section in Accounting and Budget Control.

**27.06** Purchase Memorandums (for commercial moves or truck rentals) or Purchase Orders (for truck rentals under \$1,000) must show the address from and to which the employee moved and the number of miles moved. In addition, the Purchase Memorandum or the Purchase Order must include statements that the individual moved is not a new employee and that state-owned equipment was not available for the move.

**27.07** The expense of the move will be borne by the budgetary unit to which the employee is reporting.

**27.08** The contract for commercial movement of household goods contains a clause that includes insurance coverage for the employee's household goods up to a value of \$50,000 at no cost to the Department. Any excess coverage required will be the responsibility of the employee.

**27.09** Employees eligible for a Department-paid move may be reimbursed for meals, lodging, and personal car mileage, at the rates set in Annex #4, for the purpose of securing housing. Mileage will be calculated from the present city of residence or assigned headquarters to the new city of residence or assigned headquarters, whichever is less. Reimbursement for meals, lodging, and mileage may not exceed two (2) round trips to secure housing. Employee may also be reimbursed for personal car mileage for one vehicle one way when the move is actually made. Time allowed to secure housing may not exceed a total of five (5) days plus required travel time.

## 10.30.00 SALARY ADMINISTRATION

**30.01 Salary Administration.** Funds appropriated for salaries of classified positions may be expended to employ personnel in only classified position titles or in such other positions established and approved by the State Classification Officer or in positions exempted from the classification plan by the Governor for use by the Department.

**1. Salary Rates for Classified Positions.** For each fiscal year, within the limitation of funds available for salaries of classified positions, annual salary rates for classified positions shall be in accordance with classification salary schedules A, B or C, except as specifically provided by other provisions of the Appropriations Act. Rules governing the Position Classification Plan are more completely described in Chapter 7.

**2. Part-Time and Hourly Employees.** Regular full-time classified positions paid out of funds appropriated may also be filled by part-time and/or hourly employees. In computing the salaries of these employees, the rates of pay shall be proportional to the rates authorized for full-time classified employment.

It is the intent of the legislature that part-time and hourly employees shall receive rate increases proportionate to those provided for full-time salaried classified employees.

**3. Partial Salary Percentage Table.** This table indicates the percentage of pay as would be calculated by the number of days worked per month. To arrive at this calculation, select the appropriate column indicating the number of workdays in that month; then select the number of days in question and multiply the indicated percentage as listed on the table against the monthly base pay.

Days	23-day month percent	22-day month percent	21-day month percent	20-day month percent
1	0.04347	0.04545	0.04761	0.05000
2	0.08695	0.09090	0.09523	0.10000
3	0.13043	0.13636	0.14285	0.15000
4	0.17391	0.18181	0.19047	0.20000
5	0.21739	0.22727	0.23809	0.25000
6	0.26086	0.27272	0.28571	0.30000
7	0.30434	0.31818	0.33333	0.35000
8	0.34782	0.36363	0.38095	0.40000
9	0.39130	0.40909	0.42857	0.45000
10	0.43478	0.45454	0.47619	0.50000
11	0.47826	0.50000	0.52380	0.55000
12	0.52173	0.54545	0.57142	0.60000
13	0.56521	0.59090	0.61904	0.65000
14	0.60869	0.63636	0.66666	0.70000
15	0.65217	0.68181	0.71428	0.75000
16	0.69565	0.72727	0.76190	0.80000
17	0.73913	0.77272	0.80952	0.85000
18	0.78260	0.81818	0.85714	0.90000
19	0.82608	0.86363	0.90476	0.95000
20	0.86956	0.90909	0.95238	1.00000
21	0.91304	0.95454	1.00000	
22	0.95652	1.00000		
23	1.00000			

## 10.35.00 SALARY DEDUCTIONS, ADJUSTMENTS, AND AUTHORIZATION

**35.01 Deductions.** There are several payroll deductions authorized by law that fall into three different categories: mandatory, court-ordered, and optional. These items are:

**1. Mandatory:**

a. **State Employees Retirement System.** The 78th Legislative Session passed House Bill 2359 imposing a 90-day waiting period before state employees may become a regular service member. Employees hired on or after 9-1-2003 will become an ERS member on the 91st day of employment, and mandatory retirement contribution deductions begin the first of the month following the 90th day. All salaried employees, including those in temporary or part-time employment are required to become contributing members of the Retirement System. Contributions amount to six percent (6%) of the actual gross pay.

b. **Social Security.** Deductions for Social Security are also mandatory and will be made in accordance with Social Security schedules and the appropriation bill.

c. **Income Tax.** Another mandatory deduction is made for the Internal Revenue Service by withholding a scheduled rate of monthly income tax, according to the salary being paid and the number of dependents claimed by the employee as exemptions.

**2. Court-Ordered**

- a. Bankruptcy Payments
- b. Child Support
- c. Internal Revenue Service Tax Levies
- d. Spousal Support
- e. Student Loans

**3. Optional Deductions**

- a. Charitable Contributions
- b. ERS Service Purchases
- c. Group Insurance Premiums
- d. TexaSaver Program (401k/457)
- e. 401k/457 Loan Repayments
- f. Texas Tomorrow Funds
- g. U. S. Savings Bonds
- h. Membership Fees



**35.02 Salary Adjustments.** Adjustments may be made to an employee's salary (docking of pay) because of unearned time off for any reason and are not considered as salary deductions or disciplinary actions. Such adjustments will be made in the month they occur when possible. If not possible due to the date of the action, such adjustments will be made the following month. Reimbursements to avoid being placed on a supplemental payroll will not be allowed. Such adjustments for less than a full calendar month will be submitted on the ACT-12 - Pay Dock form and submitted through channels in triplicate to the Payroll Office.

## **10.40.00 HAZARDOUS DUTY AND LONGEVITY PAY**

### **40.01 Authority**

1. By authority of SB1, 79th Legislature, RS, Article IX, Sec 13.17(h), effective 09-01-05, all commissioned law enforcement personnel of the Department of Public Safety are entitled to hazardous duty pay of \$10 per month for each 12-month period of lifetime service credit in a hazardous duty position.

2. By authority of SB1, 79th Legislature, RS, Article IX, Sec 13.17(h), effective 09-01-05, except for positions entitled to hazardous duty pay, each state employee covered by the Position Classification Act of 1961 and each line item or exempt employee is entitled to longevity pay of \$20 per month for each two year increment of service as an employee of the state up to and including 42 years of service. Such longevity pay is to commence at the end of the second year and to be increased at the end of each two years thereafter.

Return-to-Work-Retirees who retired prior to 06-01-05 and returned to work prior to 09-01-05 are entitled to longevity pay limited to the amount received immediately prior to 09-01-05.

3. The following are statutory excerpts as amended by S.B. 84:

"A state employee who has received longevity pay under Chapter 718, Acts of the 66th Legislature, Regular Session, 1979 (Article 6813d, Vernon's Texas Civil Statutes), for services performed in a position that does not require the performance of hazardous duty and who transfers to a position for which the employee is eligible to receive hazardous duty pay is entitled to continue to receive longevity pay for the years of service to the state performed in the prior position. The employee is not entitled to additional longevity pay for the period in which the employee receives hazardous duty pay, but that period is included in computing the employee's total years of service as a employee of the state.

"A state employee who, after performance in a position that requires the performance of hazardous duty, transfers to a position that does not require the performance of hazardous duty is not entitled to a continuation of the hazardous duty pay earned in the prior position but is entitled to longevity pay based on each year of service as an employee of the state, including years of service in positions for which the employee was entitled to hazardous duty pay.

If the employee is a return-to-work retiree receiving only hazardous duty pay immediately before September 1, 2005, the return-to-work retiree would be considered ineligible for longevity pay after September 1, 2005, even though he or she might move to a position that is ineligible for hazardous duty pay.

"Except as otherwise provided by this section, this Act applies to eligibility for hazardous duty pay or longevity pay based on services performed by a state employee on or after May 29, 1987.

"A state employee who received hazardous duty pay based on total state service performed before May 29, 1987, is entitled to continue to receive hazardous duty pay based on those services if, on or after

May 29, 1987, the employee holds a position that requires the performance of hazardous duty. Any other state employee who before May 29, 1987, received hazardous duty pay based on the terms of any law enacted by the legislature of this state is entitled to continue to receive hazardous duty pay for services performed on or after May 29, 1987, in any position designated under that law as eligible for the pay.”

**40.02 Policy.** Department of Public Safety commissioned law enforcement personnel designated by the Public Safety Commission are eligible for hazardous duty pay based on years of service with the state. All full-time employees covered by the Position Classification Act of 1961 and full-time or exempt employees, except law enforcement personnel eligible for hazardous duty pay, are eligible for longevity pay based on years of service with the state. The following rules govern both hazardous duty and longevity pay:

1. Creditable service will begin with the first day of the month of employment.

2. Years of service includes all service to the state including part-time, faculty, or legislative service. Time need not be continuous.

3. The rate of pay and time of pay - hazardous duty or longevity - are determined by the employee’s status on the first day of each month. Upon termination, pay is not prorated.

4. In case of transfer between agencies, the agency employing the individual on the first day of the month will pay longevity.

5. Military leave is creditable service, provided the employee was employed by the state and military leave was granted. The employee must return from military service to DPS employment as established by guidelines contained in section 07.07.04 of the General Manual.

#### **10.41.00 BENEFIT REPLACEMENT PAY (BRP)**

##### **41.01 Authority**

1. By authority of Government Code 659.122, beginning with wages paid 01-01-96, State-Paid Social Security ceased and “Benefit Replacement Pay” is paid to eligible employees to offset for the loss of State-Paid Social Security. Employees hired on 09-01-95, or later are not eligible for State-Paid Social Security or for Benefit Replacement Pay.

2. SB 1863, 79th Legislature, RS, Article 13, Sec. 13.07 changes Sec. 659.126, Government code. An eligible state employee who leaves state employment on or after 09-01-95 for at least 30 consecutive days, on returning to state employment, is not eligible to receive BRP. Return-to-Work Retirees who retired prior to 06-01-2005 and returned to work prior to 09-30-05 are entitled to Benefit Replacement Pay.

#### **10.42.00 STIPEND PAY**

##### **42.01 Authority**

1. By authority of SB1, 79th Legislature, RS, Article IX, Sec. 3.01(h), effective 09-01-05, commissioned peace officers in Salary Schedule C of the Department of Public Safety are entitled to salary stipend pay who achieve certain levels of skill or certifications as approved by the department. Such skills and certifications shall include:

a. **Education Level** - \$50 per month for an associate degree, \$100 per month for a bachelor degree, and \$150 per month for a master degree.

b. **Commission on Law Enforcement Officer Standards and Education Certification Level** - \$50 per month for intermediate, \$100 per month for advanced, and \$150 per month for masters.

c. **Bilingual Capabilities** - \$50 per month for the ability to speak a language other than English.

2. Commissioned peace officers may receive a stipend for education level or certification level, but not both.

#### **10.45.00 CORPORAL PAY**

Effective 09-01-97 the Department of Public Safety is authorized to pay its employees classified as Corporal I, II, III, IV or V, Texas Highway Patrol, at rates that exceed the maximum rates designated in Salary Schedule C by up to \$600 per fiscal year.

#### **10.50.00 PURCHASE OF FIREARM FROM THE STATE BY RETIRING STATE PEACE OFFICERS OR SURVIVORS OF STATE PEACE OFFICERS**

**50.01 Authority.** Government Code §614.051 and §614.052 authorizes retiring state officers or survivors of state peace officers to purchase a firearm which was issued to the officer under the following conditions and in accordance with the following procedures.

##### **50.02 Eligibility**

1. A peace officer, commissioned by the Department, who is honorably retired from his commission by the state may purchase a firearm previously issued to the officer by the agency and not listed as a prohibited weapon under Section 46.05a, Penal Code. The purchase must be made before the second anniversary of the date of the officer's retirement, except the agency may delay the sale until it can replace the firearm from its stock. Retiring peace officers and eligible survivors who desire to exercise their right to purchase a firearm must notify the Department in writing of the intent to purchase within 6 months from the last day of service and are encouraged to purchase the weapon at the earliest possible date in order not to hamper the agency's ability to otherwise dispose of the firearm. Failure to timely notify the Department of the intent to purchase may result in the disposition of the weapon and loss of opportunity to purchase the weapon.

2. If a peace officer commissioned by the Department dies while commissioned, due to circumstances other than "line of duty" as defined in Government Code §615.021, the following classes of persons, in descending order of precedence, may purchase a firearm issued to the officer under the same conditions imposed on a purchase by a retiring officer:

a. The surviving spouse of the officer;

\*b. Any children of the officer; or

c. The parents of the officer.

\*In the event there is a conflict between this section and federal regulations regarding the purchase of certain firearms by minors, the federal regulations shall prevail.

**50.03 Pricing.** The purchase price of the weapon may not exceed fair market value as determined by the Asset Management Office (AMO). The price set shall be determined by the manager of the AMO using a current commercial firearm valuation guide. If a price cannot be determined from a guide, the price set shall be the lowest retail price for that weapon from a market survey of no less than three (3) used gun dealers. The AMO shall maintain a listing of the most frequent model weapons sold within the Department with a price guide review conducted annually in August. The resulting prices will become effective on September 1 of each year.

**50.04 Purchase Procedure.** Eligible peace officers and/or survivors of peace officers must apply to purchase the firearm on form Act-4. This form is available from Accounting and Budget Control. All applications must be approved by the major division Assistant Director. Upon receipt of the application to purchase a firearm, Accounting and Budget Control will establish the purchase price and advise the retiring peace officer or survivor of the amount due. Upon receipt of payment, the major division Assistant Director or his designee shall release the firearm to the retiring peace officer or the peace officer's survivor and obtain his signature on form Act-4 acknowledging receipt of the firearm. The firearm may not be released to the retiring peace officer or peace officer's survivor until form Act-4 is completed in its entirety and properly executed for submission to Accounting and Budget Control.

**50.05 Records.** Accounting and Budget Control is designated as custodian of all records and correspondence associated with these transactions.

#### **10.51.00 FIREARM FROM THE STATE TO BE PROVIDED AT NO COST TO ELIGIBLE SURVIVORS OF STATE PEACE OFFICERS**

**51.01 Authority.** Government Code §615.102 authorizes eligible survivors to be provided the deceased officer's duty weapon at no cost.

**51.02 Eligibility.** If a peace officer commissioned by the Department dies from circumstances in the "line of duty" as defined by Government Code §615.021, the following shall be provided the officer's duty weapon at no cost.

1. the officer's designated beneficiary; or
2. the officer's estate, if the officer did not designate a beneficiary.

#### **10.52.00 PURCHASE OF RETIRED FIREARM BY STATE PEACE OFFICER**

**52.01 Authority.** Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.020.

**52.02 Eligibility.** A peace officer, commissioned by the Department, may purchase a firearm issued to the officer by the Department if the firearm is not listed as a prohibited weapon under Section 46.05a, Penal Code, and if the firearm is retired by the Department for replacement purposes. A retired weapon is one which the major division Assistant Director has determined will not be reissued. The officer to whom the weapon was assigned last has the first option to purchase the retired weapon. If he opts not to purchase the weapon, the officer to whom the weapon was assigned immediately prior to the last officer has the second option, etc.

**52.03 Pricing.** The purchase price of the weapon may not exceed fair market value as determined by the AMO. The price set shall be determined by the manager of the AMO using a current commercial firearm valuation guide. If a price cannot be determined from a guide, the price set shall be the lowest retail price for that weapon from a market survey of no less than three (3) used gun dealers. The AMO shall maintain a listing of the most frequent model weapons sold within the Department with a price guide review conducted annually in August. The resulting prices will become effective on September 1 of each year.

**52.04 Procedure.** Eligible peace officers must apply to purchase the retired firearm on form Act-4. This form is available from Accounting and Budget Control. All applications must be approved by the major division Assistant Director. Accounting and Budget Control will establish the purchase price and advise the eligible peace officer the amount due. Upon receipt of payment, the major division chief or his designee shall release the firearm to the peace officer and obtain his signature on form Act-4 acknowledging receipt of the firearm. The firearm may not be released to the peace officer until Act-4 is completed in its entirety and properly executed. The completed form must be submitted to Accounting and Budget Control.

**52.05 Records.** Accounting and Budget Control is designated as custodian of all records and correspondence associated with these transactions.

#### **10.55.00 PURCHASE OF DPS EQUIPMENT BY EMPLOYEES**

**55.01** Employees may not knowingly purchase, either directly or indirectly through a third party, vehicles or other property being sold by the Department.

Exception: State law provides that honorably retired peace officers or eligible survivors may purchase a firearm (see 10.50.00). Active peace officers may also purchase a retired weapon (see 10.52.00).

**55.02** The provisions of the foregoing (Section 55.01) do not apply in a situation where the DPS vehicle or property is disposed of through public auction.

#### **10.60.00 GRANTS/CONTRACTS**

**60.01 Purpose.** To provide rules for the effective administration of all grants and contracts negotiated or received by the Texas Department of Public Safety.

**60.02 Definitions.** The term grants as used hereinafter shall mean all grants in aid from both public and private sources.

The term federal funds as used hereinafter shall mean "...all assistance provided or potentially available to state agencies from the federal government in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, direct appropriations, or any other method of disbursement." (Government Code 772.009)

The term contracts as used hereinafter shall mean interagency contracts or interlocal agreements.

**60.03 Grant Coordinator.** The position of Grant Coordinator is hereby established for the purpose of supervising the grant/contract process for the Department of Public Safety. The Chief of Finance, Accounting and Budget Control, is designated as "federal funds coordinator" for the agency as required by Government Code 772.009 and serves as the Grant/Contract Coordinator.

##### **1. Position Description**

a. Maintains liaison and consults with federal, state, and private agencies to develop potential resources for DPS.

b. Develops potential resources and follows through with consultation, coordination, and assistance in preparation of grant and contract proposals for DPS programs.

c. Contacts personnel within the DPS to determine the Department's needs before the grant process begins. The information obtained from this informal contact will provide the grant coordinator with the knowledge to develop potential resources for DPS.

d. Serves as a reservoir of information by reviewing and analyzing appropriate publications and correspondence concerning grants. This information shall then be disseminated throughout the DPS.

e. Ensures uniformity in grant administration.

f. Prepares required reports to the Legislative Budget Board, the Governor's Office of Budget and Planning, and the Director pertaining to federal, state, and private grants and contracts.

g. Maintains files and records on grants and contracts reviewed.

h. Identifies any problems seen in the grant process and directs them to the attention of the participants involved.

i. Coordinates with other staff members in Accounting and Budget Control during the budget cycle.

#### **60.04 Grant/Contracts Process**

##### **1. Development - New Grants/Contracts**

a. When an employee desires to apply for a grant/contract, it is the responsibility of the employee to complete appropriate applications as required by the potential granting/contracting entity. In addition, the Grant/Contract Track Sheet (HQ-33, Gen. Man. Chap. 10, Annex #7) must be completed and used as a cover page for the package. The employee must then submit the package through their chain of command for approval of the major division chief initiating the first step in the formal Department review/approval process.

b. In the case of a contract being written for a grant, the grant coordinator will not be responsible for negotiating or writing the grant. The grant coordinator will be available for assistance but it will be the program manager's responsibility to negotiate with the grant source.

c. Once a grant has been negotiated, it should be implemented only after written approval from the Director. Oral approval from the grant source shall not be the basis for implementing any stage of a grant/contract.

##### **2. Development - Renewals/Continuations**

a. It is the project director's responsibility to renew any expiring grant/contract by preparing the revised document to begin the Internal Review Process. If the grant/contract is not to be renewed, notification should be sent to the grant coordinator and the final report for the grant/contract should be submitted to the grantor agency or contracting party.

b. Federal grants received from the Federal Emergency Management Agency (FEMA) are generally renewed each year. The Emergency Management Service (EMS) will receive the Comprehensive Cooperative Agreement (CCA) package directly from FEMA and complete the application for request according to the instructions accompanying it. After EMS has completed the application, they should forward copies of the agreement to the grant coordinator, in Accounting and Budget Control, and Office of General Counsel.

c. Organized Crime Drug Enforcement Task Force (OCDETF) agreements are entered into annually between a sponsoring federal law enforcement agency and the Criminal Law Enforcement Division of the Department. These agreements are designed to reimburse the Department for a limited amount of overtime and travel expense incurred by investigators while assigned to an OCDETF investigation. OCDETF agreements are coordinated through the Narcotics Service.

An exception to the utilization of the Grant/Contract Track Sheet (HQ-33) and the review process described below has been granted by the Director for OCDETF agreements. Proposed OCDETF agreements will be accompanied by an interoffice memo directed to the Director with in-line review by the Commander of Narcotics and the Chief of Criminal Law Enforcement. Upon approval, copies of the memo and the agreement will be forwarded to the grant supervisor and grant coordinator in Accounting and Budget Control.

3. **Review Process.** All applications for federal funds, for grants originating from any source, for any continuations, revisions, renewals and/or adjustments of existing federal funds or grants and any contracts being considered for adoption by DPS, with the exception of EMS and the exception of Narcotics Service OCDETF agreements, shall be submitted through a formal review process. This review process should be initiated early enough to allow the grant application or contract to be received in Office of General Counsel at least one week before the due date of the grant application or contract. The purpose of this time element is to provide reasonable assurance that the grant application or contract has been reviewed sufficiently to ensure that:

- guidelines are followed in the preparation of the grant application;
- the budget information on the grant application is accurate; and
- the grant is in conformance with all DPS policies.

With the three above-mentioned objectives in mind, the standard review process for the Department is as follows:

**a. Grant Coordinator**

1) The original completed grant application or contract and Grant/Contract Track Sheet (HQ-33), Annex #7, should be forwarded to the grant coordinator by the project director after it has been approved by the major division chief.

2) The grant/contract shall be reviewed for completeness and uniformity.

3) If the grant application or contract is complete and in compliance with applicable policy and guidelines, the grant coordinator will assign a unique tracking number to any application for federal funds or application for a grant, retain a copy of the grant/contract, sign off on the HQ-33, and forward to Accounting and Budget Control. If the grant/contract is not complete, it will be returned to the project director or proposed project director with appropriate comments.

4) After the grant application or contract has been approved by the grant coordinator and entered into the review process, the grant coordinator shall be available to aid anyone requesting assistance with the grant application or contract.

5) The grant coordinator shall be responsible for monitoring all grants/contracts submitted through the formal review process to ensure that all grants/contracts are being processed in a timely manner. Project directors should communicate directly with the grant coordinator when problems or delays are encountered.

6) The project director or proposed project director shall have the option to hand-carry the grant application or contract through the review process once it has been approved by the grant coordinator. Ample time shall still be given to each review process to adequately review the grant/contract.

**b. Accounting and Budget Control**

1) The grant supervisor or grant accountant will review the grant/contract to verify that guidelines for preparation have been followed and that the budget information is accurate. If additions or corrections are necessary, the application or contract will be returned to the project director or proposed project director with the appropriate comments.

2) If the grant supervisor or grant accountant approves the grant/contract, the HQ-33 will be initialed and forwarded to the Chief Financial Officer who will review and sign off if approved and forward to the Office of General Counsel.

3) In addition, after the grant/contract is finally approved and implemented, the grant supervisor and/or grant accountant will maintain contact with grant managers/project directors to ensure that they are adhering to all guidelines and policies set forth in the grant/contract.

**c. Office of General Counsel.** The Office of General Counsel will:

1) Review the grant/contract, if legal review is necessary. A list of agreement types that require legal review will be posted on DPSnet on the Office of General Counsel web page.

2) Make any necessary comments.

3) Sign off on the HQ-33 and forward to Accounting and Budget Control.

**d. Assistant Director.** The Assistant Director or the Assistant Director's designee will:

1) Review the grant/contract.

2) Sign off on the HQ-33 and forward to the Director.

**e. Director.** The Director or the Director's designee will:

1) Review the grant/contract.

2) Assign priorities when appropriate.

3) If acceptable, sign and return it to Accounting and Budget Control.

**f. Final Approval**

1) Accounting and Budget Control will forward signed grant or contract to grantor or contracting party. Note: If grant needs to be sent to the Texas Review and Comments System (TRACS), it will be forwarded to them at this time.



2) Original fully executed grant or contract, accompanied by the HQ-33, will be sent to and retained in Accounting.

3) A copy of each finally approved grant/contract including the HQ-33 will be sent to the grant coordinator and project director of each grant/contract.

### **60.05 Interagency Contracts**

1. The Interagency Cooperation Act gives state agencies authority to provide various “special” or “technical” services to another state agency and be reimbursed for the actual cost of these services. Therefore, when the need arises for services or materials which may be obtained most economically from another state agency, and the cost of which exceeds \$2500, an interagency contract must be entered into. It is the performing agency’s responsibility, in cooperation with the receiving agency, to prepare the interagency contract. After the interagency contract has been negotiated and prepared, it must be submitted through the formal grant review process. (See 60.04-3).

2. The performing agency must bill the receiving agency on State of Texas Purchase Voucher forms if receiving agency makes payment from local funds. If payment is to be made from funds held in the State Treasury, the performing agency must bill the receiving agency on a Recurring Transaction Invoice. When the conditions of the contract have been met to the satisfaction of the budgetary unit concerned, they must approve the Purchase Voucher and forward it to Accounting and Budget Control for payment.

3. **Renewal of Interagency Contracts.** If an interagency contract, which has been previously reviewed, is to be renewed and no material changes are to be made to the contract, then the interagency contract will not have to be submitted through the formal review process.

### **60.06 Administration of Grants/Contracts**

#### **1. Applicable Laws and Standards**

a. All grants/contracts administered by the Department should adhere to those standards as set forth by Government Code, Chapter 783, Uniform Grant and Contract Management.

b. The grant/contract shall be governed by the laws of the State of Texas except where otherwise provided.

c. Grants/contracts used to employ private consultants which exceed \$10,000 per year must comply with Government Code, Chapter 2254, Professional and Consulting Services.

d. The grant/contract travel regulations shall be as uniform as possible within DPS divisions by adhering to the State Employee Travel Allowance Guide as interpreted by the State Comptroller of Public Accounts. Copies of this guide may be obtained from either the Comptroller’s Office or Accounting and Budget Control.

#### **2. Reporting Requirements**

a. Project directors shall ensure that required reports are submitted to the grantor agency in a timely manner in accordance with the terms and conditions of the grant/contract.

b. Project directors shall, in a timely manner, provide the grant coordinator complete information related to each grant on forms provided by the grant coordinator. This is necessary for the grant coordinator to be able to provide required reports to the Legislative Budget Board, the Governor’s Office of Budget and Planning, the Director, and others.

c. An annual report shall be submitted by the grant coordinator to the Director which contains the results and benefits realized by the Department from each grant/contract active during the preceding fiscal year. This report should include a summary of grant/contract funds for the fiscal year and a brief Grant/Contract Activity Report (HQ-34), Annex #8, for each grant or contract.

### **3. Grant Adjustments**

a. Grant adjustments should be initiated by the project director or his designee and submitted through the formal review process for approval. Once the grant adjustment has been approved by the grantor agency, all affected parties in the grant review process should be notified immediately.

b. Grant adjustments shall not be implemented until written approval from the grantor agency has been received.

## **10.65.00 Cash Handling and Controls Policy**

### **65.01 Introduction**

Cash is the most liquid of assets and is susceptible to loss if not properly controlled. It is extremely important that all services handling cash implement and adhere to strong internal controls and separation of duties.

This policy provides general guidelines for the handling of cash throughout the agency. This guide should be used to develop specific cash handling procedures in your division and service operations.

### **65.02 Internal Controls**

Internal Controls are mechanisms, policies, and procedures used to minimize and monitor operational risks. However, internal controls by themselves are not enough. They will be effective only if they are reinforced by the department's culture, policies and procedures, information systems, training, and supervision of staff.

The primary objectives of Internal Controls are to:

- Safeguard assets and state funds
- Verify the efficiency and effectiveness of the operations
- Prevent mistakes
- Minimize risks
- Ensure compliance with applicable laws and regulations

Internal Controls can be broken down into two categories – accounting and administrative controls. These two categories are not mutually exclusive. Some of the procedures and records involved in accounting controls also apply to administrative controls.

Accounting Controls – Accounting Controls should provide reasonable assurance that staff performs transactions according to management's direction and authorization level. In addition, transactions should be recorded and financial statements prepared according to accepted accounting principles.

Administrative Controls – Administrative Controls are a managerial responsibility that directly affects the success or failure of the agency. These controls establish lines of authority and responsibility, segregate the operating and recording functions, and provide for the hiring of qualified employees.

### **65.03 Segregation of Duties**

Adequate segregation of duties is an important consideration in determining if the agency's control activities are effective in achieving the objectives of internal control. A fundamental element of internal control is the segregation of certain key duties. The basic idea underlying segregation of duties is no employee or group should be in a position, both, to perpetrate and to conceal errors in the normal course of their duties. In general, the principle duties to be segregated are:

- Custody of assets
- Authorization of approval of related transactions affecting those assets
- Recording or reporting of related transactions

An essential feature of segregation of duties/responsibilities within an organization is no one employee or group of employees has exclusive control over a transaction or group of transactions. In addition, a control over the processing of a transaction should not be performed by the same individual who is responsible for recording or reporting the transaction.

Best practice is to have different people:

- Receive and deposit cash
- Record cash payments to receivable records
- Reconcile cash receipts to deposits and the ledger

The key to effective cash control while separating duties is to minimize the number of people who actually handle cash before it is deposited.

### **65.04 Cash Control Guidelines**

The term "cash" includes currency, coin, checks, money orders, debit card receipts and credit card receipts. These are acceptable forms of payment.

Individual accountability for all cash, including cash receipts, change funds, and petty cash funds should be maintained at all times.

Access to cash should be restricted at all times to the person accountable for the funds. The person should be provided a locked, secure storage facility to which only he/she has access. This could be lockable cash drawer, safe, safe compartment, or filing cabinet. The degree of security provided by the storage facility should be commensurate with the amounts being stored.

All transfers of cash accountability should be documented. Documentation should include amount transferred, date, and signatures of both persons involved in the transfer. The documentation should be kept in a location separate from the cash funds.

Divisions and services should ensure employees assigned cash handling responsibilities receive appropriate training and are familiar with department policy guidelines and department procedures.

Written procedures for receiving, recording, reconciling, safeguarding, and depositing cash should be prepared by the division and/or service and provided to employees with cash handling responsibilities. Responsibilities for handling cash should be documented within office procedures.

All cash should be recorded immediately upon receipt. The recordings may be made on a cash register, a computer system, on pre-numbered receipt forms, or on a handwritten log. Each individual cash receipt should be identified and controlled by a unique, sequential transaction number, such as a cash register number or cash receipt number. The cash receipt records should provide the following:

- Name of service/division receiving cash
- Name of person or organization cash was received from
- Amount received and cash or check indicator
- Check Amount and check number
- Date and signature of receiver

Funds held overnight should be minimized to change funds and imprest funds only. Cash should be kept in a locked safe or other secure area. The degree of security provided should be commensurate with the amounts stored.

Combinations or keys to safes and other storage facilities should be restricted to the custodian of the cash and designated backup. Combinations or locks should be changed as necessary and whenever a person with the combination or key is separated. Persons responsible for cash should be instructed to maintain confidentiality of safe combinations.

#### **65.05 Depositing Money at Local Banks**

Appropriate precautions should be taken when transporting cash to and from department offices and the bank(s).

The following reconciliation procedures should be performed or reviewed by a supervisor not directly involved in receiving and recording cash:

1. Cash receipts should be counted and balanced to the cash recordings at the end of each business day.
2. A receipt for each cash deposit should be obtained from the bank and compared with the department's record of the deposit amount.
3. The cash deposits listed in monthly ledger reports should be reconciled to the department's records of cash receipts. Any differences should be investigated and explained.
4. A dated and signed record of the reconciliations should be prepared and retained.

#### **65.06 Creating Cash Handling Procedures**

Each division and service handling cash should consider the following guidelines when creating cash handling procedures:

##### **Receiving Funds:**

- Include information about generating cash receipts including the method used by the department (cash registers, computers systems, manual cash receipts)
- Include process for handling voids and refunds
- Include process of receiving funds face to face or via mail
- Include policy of acceptable payment method
- Include information required on checks
- Include endorsement policy

Include information about sales tax  
Include the notation of NSF fees charges

### **Custody of Funds:**

Include the department's safekeeping policy  
Location of where funds are kept after receipt until deposited  
Lock combinations and keys must be kept by the person, never in a desk drawer  
Lock combinations and keys should be changed periodically and always when custody changes  
Specify locations of cash handling areas  
Establish secure cash handling areas  
Include responsibilities of fund custodian  
Include shift change policy if applicable  
Include policy on emergencies or absences

### **Depositing Funds:**

Include process for depositing funds  
Include process of preparing deposit for bank  
Include process for getting deposit to bank  
Include daily deposit of funds  
Include policy on overages and shortages  
Include policy on how personnel can identify, respond to, and alleviate situations that increase exposure to risk while getting deposit to and from bank  
Define potential cash handling security risks, impending or existing threats (direct, indirect, or implied), and any circumstance that could lead to the concession of overall safety

The primary concern of DPS is the safety of our personnel as employees are our most important asset. Therefore, it is our policy that employee safety should never be compromised merely to safeguard cash assets.

### **Reconciling Funds:**

Include timing of reconciliations (daily, weekly, or monthly)

Each division should ensure implementation of procedures that recognize, correct, and mitigate inadequate cash handling controls.

### **65.07 Change Funds**

Department Change Funds are designated to provide a way for the department to make change for a cash transaction. Change Funds may not be used for cash advances, check cashing, personal loans, personal expenses, or miscellaneous office supplies. Change Funds should only be used for the designated purpose.

Departmental Change Funds must be maintained in a locked box, held in a secure location, when the custodian is not present. Departmental Change Funds must be kept in a safe, vault, or secure locked box.

No other funds will be commingled with the Change Funds. At all times, the sum of cash and receipts on hand in the fund must equal the authorized amount. The Change Fund account must be reconciled monthly following office procedures.

Requests for establishing Departmental Change Funds should be issued via memo to the Finance Division. Notice should include amount requested, location, custodians responsible, and justification for the fund. Once established, any adjustments to Departmental Change Funds outside of the designated function, including increases, decreases, transference of funds, and closure, must be pre-approved by the Finance Division and documented by custodians.

Departmental Change Funds are subject to audit by internal or external auditors. They must be maintained in the form of cash stored on department property at all times. Custodians may not, under any circumstances, deposit the funds into an account at any financial institution or remove the funds from the assigned department facility.

### **65.08 Imprest Funds**

Imprest Funds are a financial resource utilized to assist in criminal investigations. Imprest Funds, also referred to as investigate funds, should be safeguarded and handled in accordance with the Criminal Investigations Division Investigative Funds Manual.

### **65.09 Security of Cash**

Be sure to keep all cash and receipts physically protected. Follow these practices to promote a safe work environment when working with cash.

- Establish sound physical layout standards
- Restrict access of cash to as few people as possible
- Lock cash in a secure location like a safe or locked storage container
- Provide combinations, passwords only to authorized personnel
- Combinations and passwords must be changed when custody changes
- Minimize the amount of funds held overnight
- Count cash in a non-public area not easily visible to others

### **65.10 Bank Accounts and Deposits**

Department employees assigned bank deposit duties must verify all cash and cash items at the end of each business day. Cash must be deposited in the department bank account or placed in a night depository based on arrangements that may have been made between the department office and the bank. Process for endorsing checks and money orders must be established within office balancing procedures.

Cash handlers should prepare adding machine tapes that reflect cash, personal checks, credit card payments, debit card payments, and money orders each day. The tapes must include the date, name and signature of employee. Tapes should be placed with the cash collected. If there are multiple cash handlers in an office, a summary tape should be prepared for each cash item. This summary tape should be signed and dated by the preparer.

A second employee should verify all tapes and transactions. Any discrepancies should be noted and returned to the cash handler for corrections. The person preparing the deposit should prepare a copy of the deposit slip to be kept in the office. This copy should be matched to the deposit slip from the bank after depositing all collected cash.

## **10.66.00 DONATIONS TO THE DEPARTMENT**

**66.01. Authority.** The Department may accept donations of gifts of money or property only as provided under Government Code Chapter 575 and this policy.

**66.011. Solicitation of a Donation to the Department.** DPS employees are prohibited from soliciting donations for the use of the Department. This prohibition does not include coordination between the Department and non-governmental entities to provide resources during relief efforts.

**66.02. Receipt of a Gift or Unsolicited Donation to the Department.** An offer or an actual donation to the Department shall be forwarded through the chain of command to Procurement & Contract Services on a New Request form (PPP-1). The forwarding division will also provide information on the Donation Request Form (PPP-4), which includes:

1. identification of the donor;
2. estimated fair market value of the gift;
3. cost-benefit analysis of acceptance of the gift;
4. summary of any requests by the donor in consideration for giving the gift and attachment of any legal documentation provided by the donor; and
5. identification of the purpose of the gift and statement of how the gift would advance a statutory mission or function of the Department.

**66.03. Review Process.** Procurement & Contract Services shall review a donation to determine if the gift may be accepted by the Department under State law by taking the following steps:

1. coordinate with the Office of General Counsel to determine if there is legal authority to accept the gift and research whether the donor of the gift is a party to a contested case before the agency;
2. determine the fair market value of the gift, and then take the following action:
  - a. if the fair market value of the gift of money or property is worth less than \$500 and is legally eligible for acceptance by the Department, the proposal will be returned to the requesting assistant director, who may accept the gift on behalf of the Department and shall also be responsible for creating an appropriate record of acceptance;
  - b. if the fair market value of the gift of money or property is worth \$500 or more, the matter will be referred to the Contract Review Board; or
  - c. if there is a problem or need for more information, return the donation request to the assistant director for further review or return to the donor.

**66.04. Submission to Director and Public Safety Commission.** The Contract Review Board will review any donations of gifts to the Department that have a fair market value of \$500 or more. A state agency may accept a gift of \$500 or more only if the agency has the authority to accept the gift and the governing board acknowledges the acceptance. The Contract Review Board will evaluate whether the matter should be presented to the Director or Public Safety Commission for acceptance. If the Director accepts the gift, the matter must still be submitted to the Public Safety Commission for acknowledgement in a public meeting within 90 days after acceptance. State law requires the Commission minutes include a record of the name of the donor, a description of the gift, and a statement of the purpose of the gift.

## **10.70.01 AUTHORIZED SEIZED FUND EXPENDITURES POLICY**

### **Overview**

United States Code Title 21, Section 881 authorizes federal agencies to share seized assets with state government. The US Department of Justice Criminal Division Asset Forfeiture and Money Laundering Section (DOJ) provides rules and guidance via the Guide of Equitable Sharing for State and Local Law Enforcement Agencies. Additionally, advice and guidance may be solicited from the DOJ, as needed.

Texas Government Code Section 411.0131 governs the Texas Department of Public Safety use of seized and forfeited assets.

Texas Code of Criminal Procedure Section 59.06 governs the disposition and use of state seized and forfeited assets by state agencies.

### **Governance**

The Department established a Seized Funds Committee to make recommendations on fund expenditures. The Seized Fund Committee meets quarterly, or more frequently if needed, to review, consider, and recommend proposed expenditure of state and federal seized funds.

The Seized Fund Committee includes the following members:

Chairman: Assistant Director, Criminal Investigations Division

Members: Assistant Director, Administration Division  
Assistant Director, Information Technology Division  
Assistant Director, Texas Ranger Division  
Assistant Director, Texas Highway Patrol  
Assistant Director, Finance  
Assistant Director, Law Enforcement Support

These members, as well as the Directors, have signature authority regarding the recommendations of the committee. One signature from a committee member (or a Director) is required to approve a document. The Chairman, Deputy Directors, and the Assistant Director of Finance have signature authority for expenditures from the forfeited funds.

- I. The Chairman ensures that all seized fund committee recommendations are allowable per the Guide to Equitable Sharing for State and Local Law Enforcement Agencies. The committee also will be guided by state and federal laws as well as the Department's overall strategic plan.
- II. The Assistant Director of Finance validates that the funds are available for the seized fund committee recommendations.
- III. The Seized Fund Committee recommendations are presented for approval to the Public Safety Commission.



# COMMUNICATIONS AND MOTOR VEHICLE FLEET OPERATIONS

## 01.11.00.00

### 11.05.00 INTRODUCTION

The communications system is a statewide network designed to serve the communications requirements of all criminal justice agencies. The system provides for the rapid interchange and dissemination of information between Department of Public Safety mobile units, field offices, and headquarters and between the Department of Public Safety and other law enforcement agencies. The system utilizes radio, telephone, satellite, and landline telecommunications.

The Department, in compliance with Rider 45 to SB 1 (the General Appropriations Act) of the 77th Legislature created the Radio Frequency (RF)/Technical Services Unit to coordinate radio communications issues between federal, state, regional and local agencies and to address first responder radio interoperability throughout the state. This bill also introduced the Stranded Motorist Assist toll free number and assigned DPS as the lead state agency to help motorists whose vehicles are disabled on state and federal roads. Austin Communications is the primary answering point for this toll free number.

**05.01** The RF/Technical Services Section provides coordination, education, engineering and planning support to the Department and to federal, state, regional and local public safety entities to establish immediate-, short-, and long-term goals and deliverables for a statewide radio interoperability system based on regional solutions. DPS serves as the designated Statewide Interoperability Coordinator.

**05.02** The Operations Section provides communications between Department units, Department and other law enforcement agencies, information and assistance to the public in emergency and other Department related matters, and warning and communications necessary for the protection of lives and property of the public.

### 11.10.00 TELECOMMUNICATIONS SYSTEM

The Department operates an electronic message switching system controlling the Texas Law Enforcement Telecommunications System (TLETS) which provides communications and exchanges information with law enforcement/criminal justice agencies on a timely basis. The system also interfaces through high-speed lines to various databases for criminal justice purposes and to the International Justice and Public Safety Network (formerly the National Law Enforcement Telecommunications System/NLETS) which provides communications service between law enforcement/criminal justice agencies in other states.

**10.01 Telecommunications Terminals.** TLETS interacts with computing systems throughout the state. Dedicated transmission networks used for these terminals are maintained on a full-time basis.

1. **System Economy.** System rules and operating procedures are designed to provide for economy and efficiency of operation for the greatest benefit for all law enforcement agencies. Only law enforcement/criminal justice information may be transmitted through the system.

### 11.15.00 RADIO COMMUNICATIONS NETWORK

The Department operates a network of radio base stations primarily to serve enforcement mobile units and field offices. A secondary function of the system is to provide communications between field offices and other agencies. To ensure

continuity within the system and promote safety during emergencies, voice communications on this network shall be conducted in the English language except in highly unusual circumstances. Additional responsibilities during emergency and disaster conditions are covered in 13.00.00.

**15.01 Description of System.** Radio base stations are located in DPS communications facilities as shown in Annex #1. Automatic relay stations are located in certain areas to extend the range of mobile units in remote areas.

**1. Use of Base Station Repeaters.** Department base stations are equipped with an operator enabled repeat capability.

The repeat capability is always enabled.

**15.02 Mobile Unit Identification System.** The following system is used in allocating DPS Mobile Unit Identifiers:

1. Units 1-9899 are assigned as follows:

1-199 Management, state officials, and headquarters personnel

50-73 OIG

74-86 Reserved

100-199 Aviation

200-299 Criminal Investigation Division

300-399 Texas Highway Patrol Division

400-499 TDEM

500-599 Administration / Fleet / Training / HR

600-669 LESD/ PSCS/ CRS / Crime Labs

670-699 S.W.A.T

700-799 Executive Protection Bureau

800-999 Rangers

1000-6999 THP / Field Personnel

7000-7499 Capitol Deputy Director's Special Staff

7500-7699 Intelligence and Counter Terrorism Field Personnel

7700-7799 Reserved

7800-7899 Regulatory Licensing / Vehicle Safety Bureau Field Personnel

7900-7999 Driver License

8000-8999 CID field personnel

9000-9799 PSCS

9800-9899 In-Car

2. Units 1000-6999 are field Texas Highway Patrol Division assignments. In this series, the first number indicates the THP Region (1-6).
3. Units LA100–LA199, LA200-LA299, LA300-LA399, LB300-LB399, LC300-LC399, LA400-LA499, LA500-LA599, LA600-LA699 are CMV Inspectors. In this series, the first number indicates the region. For Region 3, the second alpha character indicates the district.
4. Alpha characters preceding a numeric character usually identify other agencies, except as stated above for CMV Inspectors.

(Example - TABC unit #1200 would be AB1200 or Union Pacific Railroad Unit #125 would be UPR125)

Alpha characters following a numeric character identify other DPS units. (Example - PS Commissioner John Doe Unit #1 would be 1PSC)

5. Alpha character K in the second digit of the radio number indicates a K9 unit. The first number indicates the THP Region.

**15.03 Field Maintenance of Radio Equipment.** The effectiveness of the radio system is directly dependent upon the operating condition of the equipment used in the system. Maintenance of mobile units is performed by the DPS Shop in Austin, DPS regional shops, and by commercial shops in the field. All transmitters, including mobile transmitters, should have a frequency and modulation measurement as often as may be necessary to ensure that the equipment is operating within tolerance. It is the responsibility of the operator of the station or mobile unit to arrange for these checks as they may be required. An account of all maintenance and repair to transmitting equipment must be entered in the maintenance record book, in accordance with FCC Rules and Regulations.

**15.04 Authorizations, Modifications, and Agreements.** Most local law enforcement radio systems operate on high-band radio frequencies (150-170 MHz) designed under the statewide plan for law enforcement communications. The primary frequencies used by DPS are 155.460, 155.4675, 155.445, and 155.4525 MHz (base) and 154.680 and 154.695 MHz (mobile). The interoperable frequencies of 155.7525 (VCALL10) MHz and 154.950 (TXCALL1D) and 155.370 (TXCALL2D) are used for necessary coordination between DPS and other agencies. The mobile transceiver channels and designated frequencies licensed for DPS use are:

Channels 11 to 18 are individually tone controlled mobile repeaters.

The odd numbered repeater channels, up through channel 17, operate on the same transmit and receive frequency; however each channel has its own network access code. The even numbered repeater channels, up through 18; operate on the same frequency; however each channel has its own network access code. CID units use CID Repeater A and CID Repeater B to operate mobile repeaters.

Some areas have local repeaters that are only licensed for that area, such as the Huntsville 800 MHz repeater and the Ft. Bend County repeater.

#### 1. Interoperable Communications.

The Federal Communications Commission has designated channels and frequencies for interoperable communications. DPS uses these frequencies for coordination with other agencies. Those channel names and

frequencies are: TXCALL1D 154.950, TXCALL2D 155.370. Special Rangers, commissioned by the Department and certain others may be granted authorization for use of the interoperable frequencies under the DPS license where a valid public safety requirement is shown. A Memorandum of Understanding will be used for such requests and may be found at the following link:

<http://www.txdps.state.tx.us/LawEnforcementSupport/communications/interop/documents/tsicpMOU.pdf>

**2. Use of DPS Frequencies.** Other agencies or individuals requesting cooperative agreements to operate on DPS high-band frequencies under the DPS license should contact the Public Safety Communications Service either through the Communications Area Manager or email to [DPSTechnical.Assistance@dps.texas.gov](mailto:DPSTechnical.Assistance@dps.texas.gov) and sign a Frequency Use Agreement. Agencies meeting the FCC qualifications for use of the interoperable frequencies should refer to the Texas Statewide Interoperability Channel Plan (TSICP) and contact the Texas Statewide Communications Interoperability Coordinator (SWIC) Office via the following link: <http://www.txdps.state.tx.us/LawEnforcementSupport/communications/interop/index.htm>. Agencies not meeting the FCC qualifications apply for a license through the FCC. DPS radio equipment installed in mobile communications vehicles owned by local agencies will be operated only by DPS personnel whether being tested or in actual service. The decision on whether to man the DPS radio frequency will be made by the Highway Patrol captain or his designee in the area of activation, who will then notify the nearest DPS radio communications supervisor with details of the activation.

**3. Local Agency Frequencies.** Extra channels in DPS mobile transceivers are provided for future expansion. When necessary, frequencies of local agency systems may be added to the DPS equipment under the following conditions:

- a. Approval for such additions to the DPS equipment must be granted by the CID or THP service commander of the service to which the unit is assigned.
- b. Authorization to operate on the frequency must be secured from the licensee through an Interlocal Agreement (ILA).

**4. Unauthorized Modifications.** Modifications to DPS equipment are not authorized and should not be made.

Repairs or restorations made necessary by unauthorized or illegal alterations of installations may become a personal expense of the individual responsible for the equipment.

**15.05 Radio Operating Procedures for Mobile Units.** All DPS radio frequencies are shared by other Department stations and mobile units. Agencies in other states are also assigned use of these same frequencies. Federal regulations require that (1) licensees take reasonable precaution to prevent unnecessary interference, (2) an efficient operating procedure shall be employed by each licensee, and (3) all communications, regardless of their nature, shall be restricted to the minimum, practical transmission time.

**1. Personal Communications Prohibited.** The DPS system cannot be used for personal communications. Only messages pertaining to Department business and public safety matters may be transmitted through the system.

**2. System Procedure Signals and Alert Tone Use.** The phonetic alphabet and the DPS ten-dash signal codes, form CO-40, are the only signals approved for use on the DPS system. Copies are available through DPS office supply. These codes are found at: <http://dpsnet/intranetforms/default/Forms/CO-40.pdf>. Responses to mobile unit inquiries resulting in a positive response (hit) from the Texas Crime Information Center (TCIC) or the National Crime Information Center (NCIC) will be preceded by the broadcast of an alert tone. The alert tone will be followed by the transmitting facility's location, the number of the unit being called, the signal 10-99, an abbreviated identification of the subject of the hit, and the signal 10-20 (unless the location is already known) and any other 10-signal that may apply such as 10-30 or 10-44. Any caution indicator should be given

immediately following 10-99. Examples: Alert tone, Tyler - 1261 10-99 Jones, 10-20; Alert tone, Tyler - 1261 10-99 ABD123, 10-20; Alert tone, Tyler - 1261 10-99, 10-30 Jones, 10-20. Alert tone will also be used when initiating Emergency Communications Procedures (10-33) including but not limited to pursuits. See 11.20.00.

**3. Operation of Mobile Radio Equipment.** Ensure the proper channel is displayed. In fringe areas, better range may be realized by selecting high points along the highway. Units stationed in weak signal areas should seek out and make a note of the spots where radio transmissions are most reliable. This knowledge may be useful during emergency situations. Additional information may be located in the Radio Handbook, CO-21 and can be found using the following link: <http://dpsnet/intranetforms/default/FormDetail.aspx?Id=1714&FormNumber=CO-21.pdf>.

#### 4. Calling Procedure

a. **Unit to Station.** The station operator will answer calls received from mobile units regardless of the channel used. However, when calling a base station, the designated mobile channel is preferred. This eliminates the interference normally encountered from transmitting base stations when a base station channel is used. Units calling base stations will identify by using the complete radio call number assigned and will identify the base station being called by the geographical location, for example, "2341 Houston."

b. **Unit Answering Base Station.** The mobile unit operator will acknowledge calls by identifying with the complete assigned call number; for example, "1261 Tyler" or simply "1261."

c. **Unit to Unit, DPS.** Select the appropriate channel and call the desired unit by use of the assigned radio call numbers of the calling unit followed by the call number for the called unit; for example, "2970 – 2971".

d. **Interagency Procedures.** When a mobile unit is making a call to a city or county station on the interagency Channel 4, specific agency names should be used in the initial call-up; for example, "DPS unit 2368 - SO Conroe." Calls to units of other agencies should also use the agency names in the initial call-up; for example, "DPS 203 - SO Corpus Christi 24." Subsequent transmissions may be made using only the unit number and station location until the exchange of communications has been completed.

e. **Identification.** After contact has been established and identification made, it is not necessary to make complete identification of the mobile unit for each subsequent transmission required to complete the exchange of information. At the end of the series of transmissions, identify by signing with the unit number and the word "clear"; for example, "1261 Clear." Incomplete or altered identification is a violation of the FCC Rules and Regulations.

**5. Message Composition.** Eliminate unnecessary words and phrases and use only brief statements to clearly express the meaning intended. Phrases that convey no information such as "mode and direction of travel unknown" and "no further description" should not be used. Descriptions of persons and vehicles should be given in the standard order (eliminating any item not available) as follows:

##### a. Persons

- 1) Name
- 2) Race and sex
- 3) Age and/or date of birth
- 4) Height (in feet and inches to nearest inch)
- 5) Weight (in pounds)

- 6) Color of hair
- 7) Color of eyes
- 8) Complexion
- 9) Visible marks, scars, or tattoos
- 10) Clothing (describe from top to bottom)

**b. Vehicles**

- 1) Color of vehicle
- 2) Year of vehicle
- 3) Make of vehicle
- 4) Model of vehicle
- 5) Style of vehicle
- 6) License year
- 7) License state
- 8) License number
- 9) Vehicle identification number (only in written messages)
- 10) Other identifying information (signs, damage, unusual markings, etc.)

**6. Message Classification.** Messages in police communications generally fall within three groups: priority, routine, or deferred. Although a strict rule cannot apply to all situations, an order of precedence is established to aid the operator in processing traffic. As a general rule the following sequence is observed:

**a. Priority.** That traffic which is considered of utmost importance including:

- 1) Disasters
- 2) In-progress crimes or incidents endangering public safety
- 3) Major crimes
- 4) Urgent unit and station traffic

**b. Routine**

- 1) Routine unit and station traffic
- 2) Routine criminal broadcasts
- 3) Attempt to locate for emergency messages

**c. Deferred**

- 1) Runaways
- 2) Missing persons
- 3) Cancellations
- 4) Announcements and general information

**7. Information for Broadcast.** The term “broadcast” refers to both voice and telecommunications distribution. Broadcasts are used to rapidly disseminate pertinent information concerning criminal, police, or any other activity affecting the public safety and law enforcement. Broadcasts fall into either criminal or noncriminal classifications. Information of a priority nature is broadcast immediately in the area where the offense or event occurred or is about to occur. As more detailed information becomes available, a message composed in proper format may be broadcast locally, regionally, statewide, and/or entered into TCIC/NCIC, as applicable.

**8. Blind Transmissions.** Blind transmissions are used when giving information that might be of interest to a group in an immediate geographic area and when the matter is of such a nature that it requires no acknowledgement. Blind transmissions may be used when it is believed that the station or unit is able to receive a transmission without being able to acknowledge the transmission at that immediate time. Acknowledgement should always be given at a later time if blind transmissions are used in such a case. A unit receiving a blind return is required to advise the station as soon as possible of receipt of the broadcast information.

## **11.20.00 EMERGENCY COMMUNICATIONS PROCEDURES (10-33)**

**20.01 Emergency Conditions.** When a condition exists that endangers the life or safety of officers or citizens to the extent that uninterrupted communications with a mobile unit, other mobile units, another station or stations is required, other stations and units within the radiating pattern may be required to transmit only emergency communications.

**20.02 Responsibility.** The responsibility for initiation of emergency operations for any given incident rests with the officer or supervisor involved in the emergency situation. The Communications operator may initiate the procedure when it becomes apparent that an officer is too deeply involved in the incident to make the request or when contact has been lost with an officer who has indicated involvement or the possibility of involvement in an emergency situation.

**20.03 Initiation of Procedure.** When such emergency conditions arise, the Communications operator at the Communications facility involved should at the earliest possible moment, utilize the alert tone and make a general broadcast to units and stations within the area served advising of the emergency limitations. If interference occurs from units or stations not aware of the emergency conditions, they should be directly, briefly, and courteously acquainted with the situation to avoid further interruptions.

**20.04 Termination Procedure.** In every event, condition 10-33 will be terminated at the earliest practical time. It is the responsibility of the operator to determine from the officers involved in the incident when condition 10-33 is to be terminated. When the decision has been made to terminate, the operator will make a general broadcast to stations and units involved advising of the termination so that normal communications may be resumed.

**20.05 Notification of In-Line Supervisors.** The immediate supervisors of Department services involved in an emergency situation will be notified of the existing conditions. Supervisors are responsible for keeping abreast of the situation in case the situation worsens or major decisions become necessary.

**20.06 Log Requirements.** All incidents requiring condition 10-33 will be recorded in the station log showing the time of initiation and the time of termination. Details of the emergency incident will be recorded in the operator's report to his supervisor.

## **11.25.00 SPECIAL COMMUNICATIONS PROCEDURES**

**30.01 Introduction.** The reporting of certain incidents and/or situations to headquarters and the field command is necessary in order to keep the chain of command informed of events of which they are likely to receive inquiries or in which DPS personnel are likely to participate. Templates for written notification reports may be found at <http://dpsnet/intranetforms/default/SectionDetail.aspx?ID=6&SpecSection=Communications&Abbreviation> beginning with form CO-70. These reports are uploaded to a repository on SharePoint at <http://portal/sites/rc/SitePages/Notification%20Reports.aspx>.

1. It is the responsibility of supervisory and operating personnel to ensure that there is no delay in transmission of the following types of reports:

- a. All fatal accidents investigated by DPS personnel
- b. Accidents involving Department property or personnel
- c. Accidents or incidents occurring on Department property
- d. Accidents or incidents involving prominent persons
- e. Accidents or incidents involving radioactive or other hazardous material
- f. Accidents involving perishable goods and/or drugs
- g. Aircraft crashes
- h. Explosions and fires of major nature
- i. Riots or civil disturbances
- j. Tornadoes, hurricanes, floods, and other severe weather
- k. Road conditions, when affected by ice, flood, snow, etc.
- l. Train derailments
- m. Major crimes which command the attention of Department personnel
- n. Reports of Department personnel participating in the apprehension of criminals
- o. Incidents which are outstandingly freakish or humorous
- p. Any other incidents which should be brought to the attention of the headquarters office or the regional command
- q. Any pursuit incident involving Department personnel

NOTE: See State of Texas Emergency Management Plan and Annexes A,- Warning, B - Communications, G – Law Enforcement, and U - Terrorism to the plan at the following link:

<http://www.txdps.state.tx.us/dem/downloadableforms.htm>.

2. All such reports should be transmitted as quickly as possible consistent with accuracy. If complete details are unknown, the initial report should be transmitted without them.

## 25.02 Disasters

1. **Disaster - Man-Made or Natural.** The Department has the responsibility of gathering information on any actual or threatened emergency or disaster situation and transmitting such information through channels to state headquarters. It is important that this information be sent as soon as practical and by the most expeditious means available. This information should be addressed to the following:

- a. Director



- b. Media and Communications Office, Austin
- c. Division Assistant Director of personnel involved
- d. Assistant Director TDEM
- e. Regional commander
- f. THP Major
- g. THP captain in whose district incident occurred
- h. District Coordinators, TDEM
- i. Others as local policy dictates

**2. Information on Threatened Emergency.** When there is a threat of disaster in a specific location or area, a message will be sent containing the following minimum information:

- a. Type of emergency
- b. Area likely to be affected
- c. Officials in charge of emergency management and disaster preparations
- d. Method and point of contact with these officials
- e. Anticipated assistance

**3. Emergency and Postemergency Information.** While an emergency or disaster is in progress or immediately thereafter, a message will be sent reporting the following information as soon as possible:

- a. Type of disaster
- b. Estimate of damage
- c. Estimate of injured and/or dead

**4. Full Reconnaissance Report.** As rapidly as a full reconnaissance can be made of the disaster area, a message containing the following information will be transmitted through channels to state headquarters:

- a. Extent of the area affected
- b. Condition of public utilities and communications
- c. Estimate of property damage
- d. Confirmation of the injured and/or dead
- e. Location, phone number, or method of contact with the local control center

f. Outside assistance required, if any

5. **Progress Reports.** During the course of a disaster situation, progress reports will be made as often as necessary to keep Department personnel fully informed of existing conditions. Periodic reports are necessary even though conditions and activities remain unchanged.

**25.03 Tornado and Severe Weather Warnings.** The National Weather Service and the Department of Public Safety have entered into a cooperative program of tornado and severe weather warnings.

1. **National Weather Service.** National Weather Service forecasts for general areas where severe weather and/or tornados may develop are transmitted to Department offices in the forecast area and to the State Operations Center (SOC) in the state headquarters. Department personnel, local police agencies, and local officials are notified to be on the alert should conditions become threatening. When suspicious cloud formations appear on the National Weather Service radar, the National Weather Service will request the Department to make visual observations at the location indicated and report the findings of the observer to the National Weather Service through established communications channels. This request for visual observations will be made to the nearest communications facility. When the visual observation confirms the radar finding that severe weather exists, an appropriate warning is issued by the National Weather Service to local officials in all communities in the affected area.

2. **Department of Public Safety.** When the National Weather Service requests visual observation of a suspected severe weather area, Department of Public Safety personnel involved will comply with the request and report their findings. On occasions when no severe weather forecast has been issued nor a sighting made on radar and locally severe storms, damaging hail, high winds, flash floods, or a tornado hits an area or community, it is the responsibility of the Department of Public Safety personnel to report such occurrences to state headquarters and the nearest National Weather Service office as soon as practicable through proper channels and by the most expeditious means. Address this information to the regional commander, Highway Patrol captain, and regional liaison officer in whose region and district such severe weather is located. The message reporting severe weather shall, as a minimum, contain the following information where such information is known or is readily obtainable:

- a. Type of storm
- b. Locations
- c. Deaths and injuries, if any
- d. Extent of damage with special reference to schools, hospitals, public utilities, and public property
- e. Action being taken
- f. Any request for assistance

**25.04 Death of an Employee or Employee's Immediate Family.** The reporting of deaths of employees or members of an employee's immediate family to headquarters and field command is necessary in order to keep the chain of command informed of events of which they are likely to receive inquiries or in which DPS personnel are involved.

1. **Responsibility.** The responsibility for initiation of messages to notify the chain of command of the death of an employee or a member of an employee's immediate family rests with the employee's immediate or in-line supervisors.

2. **Reporting Deaths.** The death of an employee or a member of an employee's immediate family should be reported to headquarters and field commanders immediately upon receipt of information that the death has occurred. A second report should be submitted after funeral arrangements have been completed.

3. **Definition of Immediate Family.** Members of an employee's immediate family are defined as the employee's husband, wife, father, mother, son, daughter, sister, brother, stepfather, stepmother, or foster parents.

**30.05 Other Death Messages.** The reporting of deaths of persons other than employees or members of an employee's immediate family, particularly that of a Department retiree or their spouse, may be necessary in order to keep the field command and headquarters informed of events affecting Department personnel. Supervisory approval is required before any message covered under this section can be broadcast.

1. Generally, messages should be directed only to the headquarters and to field units in the affected chain of command.
2. Service commanders may determine that the event is of departmentwide interest and authorize the message to be broadcast to all DPS Communications facilities.
3. Death messages should not be transmitted until the funeral arrangements are complete.
4. This does not prohibit or restrict messages from being directed to individual Department members on a need-to-know basis.
5. Personal messages such as employee illnesses, birth announcements, or similar events do not qualify for broadcast on the Department's communications system.

**25.06 Requests for Information.** Employees of the Department will receive personal and telephone requests for criminal justice information from citizens and persons identifying themselves as members of criminal justice agencies.

1. **Requests from Citizens.** Citizens requesting criminal justice information should be courteously referred to the agency that is the official repository of the information they seek. If the Department is the official repository, employees should explain the procedure required to obtain the information.
2. **Requests from Persons Identifying Themselves as Members of Criminal Justice Agencies.** Persons requesting criminal justice information and identifying themselves as members of a criminal justice agency, if not known to the employee they contact, should be required to produce official identification from the agency they represent prior to being furnished the information requested. If information is requested by telephone, Department employees should make every effort to identify the caller by name, badge number, and their originating agency identification number prior to honoring the request. If there is any doubt concerning the authenticity of the caller, Department employees should advise the caller that their request will be honored through the Texas Law Enforcement Telecommunications System (TLETS) or the International Justice and Public Safety Network (NLETS) or by calling the party back at their agency. Supervisory personnel should be advised when an employee suspects someone is trying to improperly obtain criminal justice information.

**25.07 Procedures for TCIC Entry of Persons Classified as "Threat to Peace Officer." (Rule §5.34).** The threat must be made against a Peace Officer as defined by Penal Code §1.07. The threat must not be from an anonymous source and must consist of an expression of intent to inflict serious bodily injury on, or death of a peace officer. The threat may be verbal, written or electronic (e-mail). Requests for entry shall be submitted to a DPS Communications Facility by interoffice memorandum. The interoffice memorandum shall have the approval signature of the officer's service captain and shall contain the following information:

1. The full name of the person making the threat;
2. The sex, race, and any other available identifiers (date of birth, driver license number, social security number, etc.) of the person making the threat;
3. Vehicle information if available; and,
4. The type of threat made, i.e., verbal, written, or electronic (e-mail).

An individual who is the subject of an entry may request that the director, the director's designee, or a court review the information to determine compliance with established rules.

## **25.08 Vehicles Stolen In Mexico Policy and Procedure**

### **Purpose:**

This process is established for the purpose of developing a department standard operating procedure for entering the information on Texas vehicles which are stolen from Texas citizens in Mexico, while visiting that country. The entry of said vehicles into the NCIC/ TCIC database will provide a safeguard for Texas and U.S. officers who may come in contact with these stolen vehicles if they return to the United States, as they often do for their utilization in criminal enterprises. This will also provide the owners or victims of these stolen vehicles with a document they can utilize as proof that said offense was committed in Mexico.

### **NCIC/TCIC Entry of Vehicles Stolen in Mexico:**

#### **Entry Criteria:**

In order for a Texas vehicle which was reported stolen in Mexico to be entered into the NCIC/TCIC criminal database, the following criteria shall be met and all required documentation must be completed by the registered owner of the vehicle.

- The registered owner of the vehicle must be a legal resident of Texas.
- The request to enter the vehicle into NCIC/TCIC must be presented to the authorized department personnel within 30 days from the date of theft.
- The vehicle to be entered must have been reported stolen or carjacked to Mexican authorities having proper jurisdiction where the offense took place and a certified offense report must be obtained by the victim or owner of the vehicle.
- The registered owner of the vehicle to be entered into the database shall provide a completed Vehicle Stolen in Mexico Incident Report form (CID-99) to an authorized Criminal Investigation Division administrative personnel, who will notarize the registered owner's signature on the above mentioned form.
- The registered owner shall provide proper documentation verifying the ownership of the stolen vehicle to be entered into NCIC/TCIC along with the certified offense report obtained from the Mexican Law Enforcement authority, which can be verified and validated by the DPS-CID/SIS Agent assigned to the case.
- The registered owner shall provide a valid state issued picture driver's license verifying his/her identity and current address where he/she can be contacted.

Other requirements may be added or adopted as the need arises or determined by revisions to applicable Department (TCIC) and FBI (NCIC) Database policies and procedures. As of today, the policy requirements for entries into TCIC/NCIC of vehicles and vehicle parts stolen in Mexico are as follows:

- The person making the theft report in the U.S. must be the registered owner of the vehicle.
- The registered owner must present to the Texas entering agency a theft report from the Mexican law enforcement agency where the theft occurred, showing that the theft was reported to the jurisdiction of the incident in Mexico.
- The Texas entering agency must create a theft report on the vehicle or vehicle part.
- The Texas entering agency must follow Validation, Hit Confirmation, and all TCIC/NCIC policies for the record.
- The record is entered as a stolen vehicle or stolen vehicle part (MKE/EV or MKE/EP), and must state "Stolen in Mexico" in the Miscellaneous Field.

#### **Intake process:**

Criminal Investigation Division personnel assigned to the Special Investigations Section commissioned and non-commissioned are hereby designated as authorized to initiate the intake process on Texas vehicles which have been stolen in Mexico and are being requested to be entered into the NCIC/TCIC criminal database by the registered owner of said vehicles.

The authorized intake employee shall provide the registered owner a copy of the Vehicle Stolen in Mexico Incident Report form (CID-99) and a copy of the required documentation list that he/she would need to provide in order to comply with the entry requirements into the NCIC/TCIC criminal database.

Upon the receipt of the completed (CID-99) and the required documents listed on the checklist, the intake employee will provide the documentation to an assigned Special Investigations Section agent for validation of all documentation and investigation.

#### **Investigation Process:**

The agent shall verify the authenticity of all documents by utilizing all available resources including the Border Auto Theft Information Center ("B.A.T.I.C."). If B.A.T.I.C. is contacted, the center's personnel shall verify the provided Mexican offense report with the Mexican authorities. Upon confirmation from the Mexican authorities, B.A.T.I.C. specialist will obtain a CLERIS File number from the agent to enter into the center's CID-99 log and file a copy as prescribed by B.A.T.I.C. supervisor or chain of command.

The agent will then complete a CLERIS report approved by his/her supervisor and cause the stolen vehicle to be entered into the NCIC/TCIC database by the communications personnel. The CLERIS File will be designated as a Stolen in Mexico file by entering the code "SIM + Region + District". Example; Laredo agent would use "SIMR3C" and El Paso agent would use "SIMR4A".

The agent shall provide a hardcopy of the CLERIS report face page and all attachments to the DPS Communications Center for entry and filing in their prescribed system for hit confirmation. Entry process shall be determined by NCIC/TCIC established policy and communication service personnel.

#### **Entry Validation, Verification, and Purge File Process:**

In complying with established NCIC/TCIC rules regarding validation of all Stolen Vehicle active files, the stolen vehicle entry will remain in the active files for a period of four years plus the year of entry. The validation request shall be directed to the Special Investigations Section lieutenant over the area from where the file originated from and also to the Special Investigation Section headquarters supervisor over the unit opening the CLERIS file. This requirement will be necessary in an attempt to track the validation process and verify its completion.

Upon receipt of an entry validation assignment, the agent shall attempt to contact the registered owner (or insurance company) to determine if there is a need for the vehicle to continue to remain in the active stolen vehicle file or if it will be cancelled or cleared and thereby automatically placed in the NCIC/TCIC purged files.

The agent shall create a follow up CLERIS report on the same CLERIS file indicating if the vehicle was validated and remained in the active file or indicate the reason why the vehicle was removed and therefore automatically placed in the purged files.

If the entered stolen vehicle is recovered in Texas or the United States, the communications station that entered the vehicle will confirm the hit to the recovering agency and contact the B.A.T.I.C., advising them of the recovery. B.A.T.I.C. personnel will contact the Mexican authorities that received the original theft report to advise them that the vehicle has been recovered in the U.S. and obtain documentation from the Mexican agency acknowledging the communication and/or the clearing of the Mexican stolen record to avoid legal issues if the vehicle later returns to Mexico. Copies of these communicating documents will be forwarded to the case's investigating agent.

### **11.30.00 CITIZENS BAND RADIOS IN DPS VEHICLES**

**30.01 Installation.** Citizens Band transceivers may be installed in DPS vehicles under the following conditions:

1. Department of Public Safety funds will not be used to install, maintain, remove, or transfer personally owned mobile CB radios.
2. There will be no visible holes left in the vehicle when it is turned in at the DPS Shop.
3. Installation of the radio and antenna must be neat, safe, and compatible with other equipment.

### **30.02 Policy on Use**

1. Citizens Band transceivers installed in DPS vehicles will normally monitor Channel 9 or other emergency channel designated by the Federal Communications Commission.
2. Transmissions on channels other than an emergency channel will normally be limited to instructions for the caller to move to Channel 9 for completion of the message.
3. DPS employees will respond to CB requests for assistance if possible, keeping in mind that directions received via the police communications system have priority. If a CB request for assistance must be refused, the reason for the refusal will be given to the caller.
4. All CB conversations will be in compliance with Federal Communications Commission regulations.
5. DPS employees will not assume the responsibility for the enforcement of Federal Communications Commission rules.

6. Use of the CB radio will be limited to enhancing the law enforcement function; therefore, communications of a personal nature are forbidden.

7. Communications shall be procedurally correct, free of CB jargon, courteous, and pertinent to the mission of the Department.

8. The Federal Communications Commission call sign (KAAW 6744) assigned to the Department of Public Safety must be given at the beginning and end of each transmission or series of transmissions. After initial contact, you may use your assigned DPS radio call number; however, no other identifier shall be used at any time.

### **11.35.00 FCC LICENSES**

All radio transmitting equipment (base stations, mobile transceivers, walkie-talkies, radar sets, etc.) must be licensed by the Federal Communications Commission. License applications for DPS-owned equipment shall be made only through Fleet Operations. Equipment owned by others, but used by DPS personnel, must be licensed by the equipment owner.

### **11.40.00 BREAK POLICY FOR COMMUNICATIONS SERVICE PERSONNEL**

**40.01 Communications employees should be provided two breaks per operating shift.** The break will not exceed 15 minutes in duration. Breaks will be two separate periods, normally one in each half of the work shift; they will not be taken as a combined total period nor at the beginning or end of a shift. Communications personnel will not leave DPS premises during break periods.

**40.02** When more than one operator is on duty at a facility, they will coordinate the breaks among themselves and may take the breaks whenever traffic load permits, provided that one operator remains on duty at all times during the duty shift.

**40.03** When only one operator is on duty, he/she will check their station "10-7" at the beginning of the break and "10-8" when the break has been completed and make the proper entry into the radio log. The beginning and ending times of all breaks taken by Communications personnel working a duty shift in the Communications Center will be entered in the radio log by the employee taking the break. The initial log entry will reflect "scheduled break" and the employee's signature. The entry at completion of the break will reflect "end of scheduled break" and signature.

**40.04** Adjoining facilities, when staffed with only one operator, will not take breaks at the same time.

**40.05** At those times when only one operator is on duty, the following measures should be taken when taking breaks.

1. Other Department personnel should be asked to answer incoming telephone calls if telephone equipment arrangements and configuration permit. If calls taken require specific action by Communications personnel, calling parties should be advised their calls will be returned as soon as possible.

2. When other Department personnel are NOT available, telephone answering devices should be utilized, when possible. Phone calls received by either method during a break period will be returned as soon as possible.

**40.06** In the event circumstances do not allow a break for operating personnel, break time worked will not be accruable or compensable.

**40.07** Prior to beginning a break, operating personnel will place the data terminal in "reroute mode" through the TLETS II screen to the printer of their assigned reroute station. In the event the assigned reroute station receives a hit

confirmation request for the station on break, that facility will immediately respond to the requesting agency acknowledging receipt of the confirmation request and that a response to their request will be provided within 15 minutes. The receiving station will notify the break station of the confirmation request as soon as that station returns in service. The break station, upon returning in service, will then cancel the reroute mode and respond to the hit confirmation request. The receiving station will inform the break station of the contents of all rerouted traffic and forward any critical traffic to the break station. The assigned reroute facility will also respond to TEWAS/NAWAS traffic for the facility on break.

**40.08** Facility supervisors will coordinate/advise other service supervisors and appropriate local agencies of the above policy.

## **11.50.00 DPS AUTOMOBILE ASSIGNMENTS**

### **50.01 Policy**

1. A DPS vehicle may be assigned to a driver for use on state business and parked at the driver's residence when not in use if the driver's duties require immediate response to situations affecting the safety or well-being of the citizens of this state or the effective administration of the Department's business; or, the driver's duties do not require immediate response but there is no practical and safe place to store the vehicle and/or there is no DPS-owned or operated facility available.

Non-commissioned personnel assigned a take home vehicle must complete the Non-Commissioned Individual Vehicle Assignment Form (ACT-9) and submit a copy to Accounting and to Fleet Operations.

2. DPS personnel who are assigned a DPS vehicle shall reside within a thirty (30) statute mile\* radius (straight line) of their assigned duty station if they drive a DPS vehicle to and from their residence. The thirty (30) statute mile radius will be measured from the DPS office or in case there is no DPS office at the assigned duty station, the measurement will be taken from the center of the town where the individual is stationed.

\*Nautical miles will not be used for this measurement. A statute mile is defined as 5,280 feet. Where there is disagreement on the distance between a residence and the DPS office or duty station, the definitive measurement will be made utilizing DPS aircraft and a global positioning system.

3. In order for a DPS employee, who is assigned a vehicle, to comply with section 05.06.03, Reporting for Duty, of this manual, each affected employee must establish a residence within a reasonable distance of their duty station. The failure of any affected employee to establish a residence in compliance with this policy will result in that employee's failure to report for duty. An employee who fails to report for duty may be subject to disciplinary action and/or reassignment to a position within the DPS whose duties do not include having immediate availability of a vehicle and equipment. Typically, an exception to this requirement is only made when an employee has been displaced to a new duty station no longer within the 30 mile radius. Exceptions to this requirement can only be approved by the Director.

4. Supervisors are responsible for ensuring that vehicles are adequately utilized to warrant the vehicle assignment. The State Office of Vehicle Fleet Management has set the minimum use criteria for vehicles at 10,000 miles per year. Law enforcement and emergency vehicles are exempt from this requirement; however, all supervisors should make every effort to assure that vehicles are adequately utilized. Supervisors are also responsible for the oversight of vehicle operation and maintenance.

5. Fleet Operations will determine the vehicle replacement goal annually based on funding and other criteria. Additionally, vehicles may be evaluated for replacement if they reach 10 years of age or if a cost/benefit analysis indicates that replacement is warranted. In certain instances, vehicles reaching the replacement criteria may be replaced



by reassigning vehicles from other areas within the fleet. The division reassigning the vehicle is responsible for any costs involved to assure that the vehicle is in good working condition prior to the exchange. Service commanders may relocate vehicles to other areas within their command. If the vehicle is reassigned to a location with a different property code than originally assigned, a transfer of the property shall be completed and Fleet Operations shall be notified so that the fleet database can be updated.

6. Drivers of vehicles identified for replacement shall be notified through the chain of command. Vehicles will be returned to the Fleet Operations Headquarters facility. A completed SH-5 form and a copy of the last two carbooks (or the approved online equivalent) shall be presented with the vehicle at the time of transfer. Any equipment not originally installed by Fleet Operations shall be removed prior to vehicle turn in. Disposition of surplus vehicles will be accomplished through methods approved by the State of Texas.

7. Fleet Operations will be responsible for all vehicle, boat, and trailer registrations and renewals. Exempt plates are permanent and do not require renewal as long as the Department owns the equipment.

## **50.02 Application of Policy**

1. All commissioned employees of the DPS primarily assigned police traffic management and criminal law enforcement duties and their supervisors would be eligible to be assigned vehicles on a full-time basis and may store these vehicles at their residence when not in service.

2. All other DPS employees would not be assigned vehicles on a full-time basis except as indicated below in 3.

3. Employees in certain key positions or with special duties requiring their immediate availability as determined by the Director may be assigned vehicles on a full-time basis.

### **4. Physical Fitness Training**

a. Commissioned employees may drive their state vehicles to a public gym/physical fitness facility prior to or immediately after the conclusion of their shifts to work out under the following conditions:

1) Commissioned employees must notify their supervisor of the workout location prior to the beginning of the workouts. (Notification is only required one time for any one location.)

2) The workout facility must be in close proximity to the commissioned employee's assigned work area. (The determination whether a facility is in close proximity shall be determined by the supervisor).

3) Commissioned employees must be going to the workout facility immediately prior to or immediately after the conclusion of their shifts.

4) The commissioned employee must adhere to the policy regarding uniforms when traveling in a marked black and white patrol vehicle.

b. Commissioned employees who opt to work out under the circumstances prescribed in the above Physical Fitness Training policy will NOT be considered to be in the course and scope of employment with the Department during the time period they are in the gym or fitness facility for the purpose of coverage under the Texas Workers' Compensation Act or the Tort Claims Act.

**5. Distractions While Operating a Department Vehicle.** Due to the nature of the duties, many potential distractions can occur within a Department vehicle. Drivers will strive to minimize those distractions in order to safely operate Department vehicles.

a. A Department Driver may not use a wireless communication device or computer to read, write, or send a text message or email while operating a Department motor vehicle unless the vehicle is stopped.

b. This policy does not prohibit the use of a hands free communication system or the use of a device for GPS purposes alone.

c. **Exception.** In the event of exigent circumstances, texting while driving may be permissible.

6. Non-commissioned personnel, unless assigned to the Division of Emergency Management, may not operate a Department vehicle equipped with lighting that defines the vehicle as an authorized emergency vehicle. Exceptions to this policy include:

a. Test driving the vehicle for the purposes of routine maintenance and repair by Department fleet personnel.

b. During exigent circumstances when operating the vehicle classifies as an emergency and no other vehicle is available.

### **50.03 Motor Pool Operations**

Motor pools may be established to provide transportation for employees on official business. Areas shall coordinate the use of motor vehicles to ensure maximum utilization. Carpooling should be used whenever possible.

#### **1. Unit Motor Pools**

a. Each budgetary unit may establish a unit motor pool where needed for intracity and routine intercity travel. (Vehicles needed for extended trips may be checked out of the central motor pool.)

b. The supervisor of each budgetary unit will be responsible for:

1) ensuring proper vehicle maintenance

2) submitting monthly automobile reports (SH-19 , or the approved online equivalent)

3) routinely reviewing assigned vehicles to ensure efficient utilization and compliance with all applicable statutes and policies

#### **2. Central Motor Pool**

a. The Fleet Operations Bureau will operate a central motor pool to supplement the unit motor pools and to provide transportation for agency employees.

1) Drivers requesting to use a vehicle from the central motor pool will be required to complete form SH-27, which will be provided prior to the vehicle being issued.

2) When a vehicle is issued from the central motor pool, the driver's budgetary index will be charged for fuel, oil, repairs, and any glass or body damage sustained.

3) Periodic review will be made of the needs and use of vehicles in the central motor pool and recommendations for increases or decreases in the number of vehicles assigned will be forwarded through channels to the Assistant Director of Administration.

#### **50.04 Use of Personal Vehicles for Official Business**

Provided funds are available, employees may be authorized to use their personal vehicles for official travel and be reimbursed for mileage at the rate authorized in the Appropriations Act. Such authorizations will be on an individual basis after a review of the merits of the request and then approved by service commanders, Assistant Directors, or the Director's Office.

### **11.55.00 LAWS PERTAINING TO OPERATION OF STATE VEHICLES**

#### **55.01 Penal Code**

"Sec. 31.07. Unauthorized Use of a Vehicle. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

"(b) An offense under this section is a State Jail Felony"

NOTE: "Effective consent" includes consent by a person legally authorized to act for the owner.

Use of a vehicle for any purpose for which effective consent was not given would constitute an offense under this section.

#### **55.02 Government Code, Title 10, Chapter 2203. Use of State Property**

##### **Reporting Use of State Vehicle Penalties**

(a) A person who uses a state-owned automobile or truck shall, for each day that the vehicle is used, submit a separate written report of the use to the head of the state agency, including a department, institution, board or commission of the state, in charge of the vehicle.

(b) The report must be made daily on a form prescribed by the State Comptroller.

(c) A report filed under this section must show:

- (1) the purpose for which the vehicle was used;
- (2) the mileage traveled;
- (3) the amounts of gasoline and oil consumed;
- (4) the passengers carried; and
- (5) other information necessary to a proper record of the use of the vehicle.

(d) A report filed under this section is an official state record and is subject to inspection by a state official who is authorized to audit or inspect claims, accounts, or records of a state agency.

(e) A person commits an offense if the person does not file a report as required by this section on or before the 10th day after the date on which the person uses the vehicle. An offense under this subsection is punishable by a fine of not less than \$5 nor more than \$100.

### **55.03 Penal Code, Section 37.10. Tampering with Governmental Record**

(a) A person commits an offense if he:

- (1) knowingly makes a false entry in, or false alteration of, a governmental record;
- (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
- (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
- (4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;
- (5) makes, presents, or uses a governmental record with knowledge of its falsity; or
- (6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government code.

(c)(1) Except as provided by Subdivision (2), (3), and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a public school record, report, or assessment instrument required under Chapter 39, Education Code, or was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

- (1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;
- (2) a felony of the third degree if the offense is committed under:
  - (A) Subsection (a)(1), (3), (4), or (6); or
  - (B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and
- (3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

#### **55.04 Governmental Code, Section 2113.013. Use of Motor Vehicle**

(a) Except as provided by Subsection (b), an officer or employee of a state agency may not use a state-owned or state-leased motor vehicle except on official state business.

(b) The administrative head of a state agency may authorize an officer or employee to use a state-owned or state-leased motor vehicle to commute to and from work when the administrative head determines that the use may be necessary to ensure that vital agency functions are performed. The name and job title of each individual authorized under this subsection, and the reasons for the authorization, must be included in the report required by Section 2101.0115.

(c) A state agency may not use appropriated money to compensate an individual who violates Subsection (a).

#### **11.60.00 CARE AND MAINTENANCE OF DPS VEHICLES**

**60.01 New Car Care.** The employee to whom a new car is assigned or any employee who may accept delivery of a new car at Fleet Operations shall read carefully and follow explicitly the written instructions pertaining to the break-in and operation of the new car. These instructions will be issued along with each new car by the Manager of Fleet Operations. (See Annex #4.) The employee shall also be responsible for reading and complying with all of the instructions contained in the car operator's handbook supplied with each new car by the manufacturer, except those handbook instructions which conflict with the instructions issued by the Manager of Fleet Operations.

**60.02 Routine Service and Care.** Employees shall be responsible for the proper care and maintenance of Department vehicles. In the event that an employee is operating a Department vehicle which is assigned to another, the operator shall be responsible for the proper care and maintenance of such vehicle. The operator of a Department vehicle shall be responsible for the proper care and maintenance of all tools, accessories, and other equipment assigned to that vehicle. Vehicles shall be kept reasonably clean and washed.

Routine service and maintenance shall be performed at the intervals prescribed in the vehicle owner's manual, unless otherwise stated in Annex #4. Vehicles shall be maintained in such condition that they will be ready for use at all times and capable of safe and reliable operation. (See Annex #4.)

The operator(s) of a Department vehicle shall also be responsible for:

1. Insuring that all headlights, taillights, brake lights, signal lights, marker lights, license plate light, horn, and all emergency equipment are operational.
2. Maintaining all fluid levels in accordance with factory recommended specifications.
3. Maintaining tire pressure as specified on the vehicle certification label normally located on the left front door or door post.

4. Periodically inspecting tires for wear, misalignment, cuts, ply separations, or other factors that could lead to tire failure. Do not operate any vehicle with a tire tread depth of 2/32 of an inch or less. Have front-end aligned as necessary.

5. Periodically inspecting all belts and hoses for cuts, breaks, or separations which might result in engine malfunction or failure.

6. Periodically checking that all windshield wipers and windshield washer systems are operational.

7. Periodically checking that the vehicle's battery is properly secured to its fastener and that the battery terminals are free from corrosion.

8. Periodically inspecting the radiator and air conditioner condenser to ensure grass and debris do not inhibit proper air flow from properly cooling the engine.

9. Securing loose objects that could be used as weapons or cause injuries by becoming airborne during an occurrence.

In the event that misuse of a Department vehicle or neglect to perform specified routine maintenance results in damage to such vehicle, the operators of the vehicle may be held accountable for such damage.

### **60.03 Securing Department Vehicles**

1. **Locking Ignition and Vehicle.** Except in emergency situations, Department vehicles will be properly parked and in a safe position. The parking brake will be set prior to exiting a Department vehicle for any reason or when the vehicle is occupied and left standing for an extended period of time. When a Department vehicle is left parked and unoccupied, the parking brake must be set, the key removed from the ignition switch, and the doors locked.

2. **Responsibility if Stolen.** If any Department vehicle or if Department property is stolen from a vehicle and it can be determined that the vehicle was not properly secured or the key was left in the vehicle, the operators may be held accountable for such loss.

**60.04 Transporting Vehicles.** Disabled vehicles that are to be transported any distance will be moved by a wrecker. Under no circumstances will Department motor vehicles be transported by the tow bar method. Employees will not attempt to drive a damaged vehicle unless the damage is minor in nature and does not affect the safe operation of the vehicle.

## **11.65.00 OPERATION OF DEPARTMENT VEHICLES**

**65.01** Department vehicles shall be operated in accordance with all current state and local traffic laws and regulations.

**65.02** Motor vehicle operation will be reduced to the minimal amount necessary to carry out the responsibilities of the Department.

### **65.03 Defensive Driving**

1. **Definition.** Defensive driving is the operation of a motor vehicle in a manner that enables the driver to avoid hazardous situations which may result in a collision or which may create mental hazards for other drivers who might in turn cause a collision.

2. **Requisites.** To drive defensively a driver must be able to recognize a developing or potential hazard, must know a defensive procedure applicable to the situation, and must possess sufficient self-discipline to start preventative action early. A defensive driver expects and makes allowances for reckless, careless, or unsafe actions on the part of others. The driver keeps constantly on the alert and thinks far enough ahead to take preventative action to remove the vehicle from the traffic situations that can cause a collision. The defensive driver adjusts to hazards of weather, road, and traffic.

3. **Required.** All employees shall develop and practice defensive driving skills and habits.

**65.04** Department vehicles may utilize toll roads and are exempt from toll fees. Drivers must utilize toll tag lanes. Do not use cash lanes to access tollway.

## **11.75.00 AUTOMOTIVE AUXILIARY EQUIPMENT**

### **75.01 Extra Equipment on DPS Vehicles**

All vehicles, prior to assignment, will be equipped at the DPS shops with the equipment applicable to the requirements and job duties of the driver of the unit. Adequate switches to control these components will also be installed (equipment includes but is not limited to emergency lights, siren, outside speaker, radar jack, and communications). Equipment that has not been approved as part of the standard upfit package may not be installed unless authorized by a service commander or Major (commissioned) or Assistant Director or their designee (non-commissioned).

### **75.02 Record of Radio Equipment and Other Accessories with DPS Inventory Number that are Provided through Fleet Operations**

Fleet Operations is charged with the responsibility of maintaining accurate records of state-owned mobile radio equipment and other accessories with DPS inventory numbers that are installed or otherwise provided in the units operated by this Department. These records will be maintained by the vehicle unit number and DPS inventory numbers of the radio equipment and/or accessories, which have been installed by Fleet Operations.

In the event a capital asset with an inventory number is transferred into or out of the vehicle the supervisor responsible for that vehicle must update the DPS capital asset inventory system.

## **11.80.00 GREEN VEHICLES**

**80.01** Fleet vehicles may be equipped to operate on alternative fuels in addition to gasoline. When so equipped, fleet vehicles will only be operated on gasoline when the vehicle's alternative fuel supply is exhausted and additional alternative fuel is unavailable.

# **AIRCRAFT OPERATIONS**

## **01.12.00.00**

### **12.05.00 ORGANIZATION**

**05.01** The chief pilot will be responsible for all departmental aircraft operations. Helicopters and fixed-wing aircraft will be stationed at strategic locations throughout the state as designated by the Director and Assistant Director.

**05.02** The chief pilot will be responsible to the Assistant Director for the supervision, direction, and coordination of all departmental Aircraft Section activities.

**05.03** The chief pilot shall be responsible for the liaison and coordination of aerial support activities through the Chief of Administration, the Chief of Criminal Law Enforcement, and the Chief of Traffic Law Enforcement.

**05.04** The chief pilot shall exercise administrative control of Aircraft Section activities through the following chain of command:

1. The assistant chief pilot is directly responsible to the chief pilot and aids and assists the chief pilot in the total administration of the section and acts for the chief pilot in his absence.

2. A senior pilot investigator is directly responsible to the assistant chief pilot for the supervision, direction, and coordination of Aircraft Section activities within his assigned district. He shall coordinate these support activities through liaison with the local Traffic Law Enforcement major, Texas Ranger captain, Narcotics captain, Intelligence captain, Motor Vehicle Theft captain, and regional police Communications supervisor.

3. The maintenance officer is directly responsible to the assistant chief pilot for the coordination and scheduling of aircraft maintenance activities such as overhauls, modifications, maintenance and repair of aircraft structure, engine and accessories repairs, etc.

4. The safety officer is directly responsible to the assistant chief pilot for all of the Aircraft Section's aviation safety objectives. By creating a safety conscious attitude in DPS pilots, he shall keep them aware of the need to be constantly alert concerning the elements of aviation safety.

5. The training officer is directly responsible to the assistant chief pilot for all Aircraft Section training and standardization. He shall ensure the thorough initial training of all entry level pilots, the attainment of a high level of proficiency of command pilots, and the maintenance of proficiency through currency requirements and training programs for all pilots.

6. A pilot investigator is directly responsible to the appropriate senior pilot investigator for piloting a departmental aircraft for the purpose of providing aerial assistance in law enforcement activities; to search for and to rescue lost, stranded, and/or injured persons; to transport patients on an emergency basis; to transport emergency supplies to disaster areas; and to provide transportation for law enforcement officers, departmental personnel, the Governor and other state officials, and other persons requiring the use of departmental aircraft.

**05.05** The chief pilot shall administer all funds appropriated for the operation of departmental aircraft. If it should become necessary to curtail any aircraft activities, the chief pilot shall so advise the Assistant Director and make appropriate recommendations.



**05.06** All departmental pilots are part of the Aircraft Section and will work under the direction and supervision of the chief pilot.

## **12.10.00 COMPLIANCE WITH LAWS AND REGULATIONS**

All departmental aircraft shall be operated in compliance with all state and federal laws and all applicable federal, state, and departmental regulations, except where the Aircraft Section's Operations Manual is more restrictive or a waiver exists.

**10.01** All Department of Public Safety pilots are required to hold a current second-class medical certificate.

**10.02** It shall be the responsibility of the senior pilot investigators to ensure that aircraft assigned to their respective districts are operated the necessary time to maintain proper aircraft reliability and pilot proficiency.

**10.03** Pilots shall report any accident or incident involving any Department aircraft to the chief pilot and appropriate senior pilot investigator immediately.

**10.04** Senior pilot investigators shall be responsible for the compliance of all of their respective aircraft's operational maintenance checks and inspections as required by the Federal Aviation Administration, aircraft and/or engine manufacturers, and the Department of Public Safety. Senior pilot investigators shall be responsible for keeping their assigned aircraft clean and in good operating condition. For all major repairs, engine overhaul or replacement, accident damage, or any condition not classified as minor, the appropriate senior pilot investigator shall confer with the assistant chief pilot.

## **12.15.00 PILOT AUTHORITY**

The pilot-in-command shall have the sole responsibility for determining whether a flight is safe or not in terms of weather, conditions of aircraft, and other relevant criteria known by the pilot at the time the decision is made. The pilot-in-command may, in an emergency requiring immediate action, deviate from this manual, the Aircraft Section's Operations Manual, and Federal Air Regulations to the extent required to meet such an emergency. Such deviations shall require notification of the appropriate senior pilot investigator, assistant chief pilot, and the chief pilot as soon as is practical.

## **12.20.00 AUTHORIZED DPS PILOTS**

No pilot shall operate any Department of Public Safety aircraft unless he has been approved by the Director and Assistant Director. No pilot shall act as pilot-in-command of any DPS aircraft unless he has been certified by the chief pilot.

**20.01** The pilot-in-command is that pilot who is certified by the chief pilot as a qualified pilot-in-command of a specific make and model aircraft and assigned by appropriate authority to be responsible for a specific flight or mission.

1. The designation of pilot-in-command for a specific flight shall be determined prior to engines being started.
2. The authority and responsibility of the pilot-in-command begins when he enters the aircraft preparatory to flight and does not end until he exits the aircraft at the completion of the flight mission.
3. Unless required by emergency, the designation of pilot-in-command shall not be transferred while in flight.

**20.02** The pilot-in-command shall determine which pilot occupies the command pilot seat and which pilot operates the controls for each phase of flight. The fact that the designated pilot-in-command is not occupying the command pilot seat or is not operating the controls does not relieve him of the authority and responsibility of acting as pilot-in-command.

### **12.25.00 USE OF DEPARTMENTAL AIRCRAFT**

Department of Public Safety aircraft shall be used only for official state business.

It is intended that all Department aircraft be utilized effectively and economically in the furtherance of the missions of the Department of Public Safety and for the attainment of its objectives.

It is not intended for aircraft to be assigned duties for the sole purpose of saving departmental funds at the expense of the Aircraft Section budget unless the savings of funds exceed the operational expenses.

### **12.30.00 AUTHORIZED FLIGHTS**

Only authorized flights will be made utilizing DPS aircraft. Authorized flights are:

**30.01 Law Enforcement Flights.** Flights conducted in support of but not limited to the following activities:

1. **Criminal** - Search, surveillance, undercover investigations, photography, providing security, prisoner and witness transfer, investigations, court testimony, and transportation of specialized personnel and/or equipment.

2. **Traffic** - Enforcement patrol, surveillance, engineering, photography, and transportation of specialized personnel and/or equipment.

3. **Search and Rescue** - Lost person, downed aircraft, drowning victim, and rescue missions.

4. **Medical and Disaster** - Medical transfer, delivering supplies, and disaster area reconnaissance.

5. **Civil Disturbances** - Area reconnaissance, rescue, antisniper platform, and transportation of specialized personnel and/or equipment.

**30.02 Administrative Flights.** Flights, other than law enforcement flights, where the expeditious and economical movement of personnel and/or equipment is in the state's best interest. Such flights are as follows:

1. **Mail and Passenger Flights** - Mail delivery, passenger transfer, evidence submission, and equipment movement.

2. **Flight Training** - Entry level training, proficiency check ride, transition training, additional rating training, upgrade training, biennial flight review, and general pilot currency.

3. **Aircraft Maintenance** - Test flights, movement to and from maintenance facilities, and the transfer of parts and/or pilots.

4. **Aircraft Pooling Board Flights** - Transfer of "other state agency personnel.

**5. General Transportation Flights** - These flights must meet the following criteria in accordance with legislative directive:

- a. All passengers are state officers or employees, or are persons in the care or custody of state officers or employees, or are persons whose transportation furthers the official state business purpose of that flight;
- b. The destination is not served by commercial carriers, or the time required to use such a carrier interferes with other obligations, or the number of state officers and employees traveling makes the use of state aircraft cost effective;
- c. Any speeches to be given by passengers are related to official state business;
- d. Events attended by passengers are not sponsored by a political party or for its promotion;
- e. No fees or honorariums are received by passengers, unless travel costs are reimbursed to the state;
- f. No money is raised for private or political purposes; and
- g. Audiences are not charged to see or hear any of the passengers.

#### **12.35.00 AUTHORIZED PASSENGERS**

Only authorized passengers will be transported aboard DPS aircraft. Authorized passengers are:

**35.01** Department of Public Safety personnel.

**35.02** Persons specifically authorized by the Director, Assistant Director, major division chief, regional commander, chief pilot, assistant chief pilot, or the appropriate senior pilot investigator.

**35.03** Any police officer or person needed to assist in an official activity.

**35.04** Victims of disasters, accidents, or crimes and persons in need of transportation to safety or medical aid.

**35.05** Passengers approved by the Aircraft Pooling Board.

#### **12.40.00 REQUESTS FOR FLIGHTS**

Requests for aerial support may originate from any source; however, all such requests shall be directed to persons specifically authorized to approve flights.

#### **12.45.00 APPROVAL OF FLIGHTS**

Requests for flights by DPS aircraft shall be approved by the Director, Assistant Director, major division chief, regional commander, chief pilot, assistant chief pilot, or the appropriate senior pilot investigator. Exceptions to this rule are as follows:

**45.01** DPS pilots have blanket authorization to proceed immediately, if appropriate, to the scenes of major crimes, searches, jailbreaks, or disasters; to establish surveillance and communication; and to provide aerial support as the situation dictates.

**45.02** All law enforcement flights may be approved and conducted by any DPS pilot that has been certified by the chief pilot to act as pilot-in-command of the specific aircraft to be utilized.

**45.03** DPS pilots, conducting such flights, will notify the appropriate duty officer, senior pilot investigator, assistant chief pilot, or the chief pilot as soon as practical thereafter.

## **12.50.00 FLIGHT PRIORITY SCHEDULING**

All flights that are authorized, approved, and can be made within budget constraints will be completed to the extent that pilots and aircraft are available. The priority scheduling system is to be utilized as a guideline and its application must be combined with good judgment, common sense, and diplomacy on the part of all involved.

**50.01** The basic guidelines for mission priority scheduling are as follows:

1. Life threatening conditions where an aircraft could be used to remove individuals from such a situation or the transportation of specialized personnel and/or equipment to a site to participate in the rescue mission.

2. Criminal law enforcement operations where an aircraft's capabilities would substantially enhance, expedite, and/or make safer the investigation, detection, and apprehension of individuals involved in suspected criminal activities.

3. Traffic law enforcement operations where an aircraft's capabilities would substantially enhance, expedite, and/or make safer any activities dedicated to ensuring the safe utilization of our highway systems.

4. General transportation of departmental personnel from one area of operation to another.

5. General transportation of "other state agency personnel" at the request of the State Aircraft Pooling Board.

6. Specialized police training exercises such as surveillance, tracking, rappeling, water rescues, etc.

7. Flight proficiency/training as covered in the Aircraft Section Operations Manual (Chapter 6).

**50.02** The basic guidelines for resolution of any conflicts between passenger's requested schedules and/or mission priority are as follows:

1. Mission priority should be the first factor utilized in determining solutions to scheduling conflicts.

2. The Department's law enforcement endeavors will take precedence over other law enforcement agency requests.

3. The Department's rank/pay grade structure will determine an individual's priority position.

4. A flight requested by individuals of the same rank/pay grade will be resolved by a coordinated effort between the appropriate senior pilot investigator and the individuals making the requests.

5. If a satisfactory resolution cannot be reached, the senior pilot investigator will forward the request to the chief pilot or the assistant chief pilot for immediate solution.

6. If the conflicting missions dictate making both flights during the same time frame, an aircraft from an adjoining region will be utilized.

## **12.55.00 AERIAL SUPPORT PROGRAMS**

The principal missions for the aircraft currently available are as follows:

### **55.01 Criminal Law Enforcement**

1. **Manhunt.** The use of an aircraft for an aerial search over an area where a wanted subject or subjects are believed to be hiding or moving across country. Such a search could also be used to detect an abandoned, hidden, or wanted vehicle or other objects.

2. **Criminal Search.** The use of an aircraft to conduct an aerial search for crime victims, fruits of crime, criminal activities, etc., for the purpose of gathering evidence, furthering an investigation, or other activities related to criminal law enforcement.

3. **Criminal Surveillance.** The use of an aircraft to observe or attempt to observe the activities of known or suspected criminals and their associates in the furtherance of a criminal investigation.

4. **Undercover Investigation.** The use of an aircraft in the furtherance of a criminal investigation where the intent is to create a deception in the mind of a suspect or suspects with reference to the activity in which the aircraft is involved.

5. **Criminal Photography.** The use of an aircraft as a platform from which photographs are made of crime scenes, fruits of crimes, etc., for the purpose of gathering evidence, furthering an investigation, or other activities related to criminal law enforcement.

6. **Providing Security.** The use of an aircraft to conduct a surveillance of motorcade routes, observe and evaluate activities around a security area, or in other ways assist in providing security for dignitaries, public officials, witnesses, valuable property, or evidence.

7. **Prisoner and Witness Transfer.** The use of an aircraft to provide transportation of prisoners or civilian witnesses in the furtherance of a criminal investigation or the prosecution of a criminal case, for the purpose of prisoner and/or witness security, or to transport prisoners or such witnesses for other official reasons related to a criminal case.

8. **Criminal Investigation.** The use of an aircraft to participate in or to transport passengers to participate in, coordinate, or enhance a criminal investigation.

9. **Court Testimony.** The use of an aircraft to transport officers or evidence, or in other ways facilitating court testimony in criminal cases.

10. **Specialized Personnel and/or Equipment.** The use of an aircraft to transport the SWAT team, laboratory personnel, other specially trained personnel or equipment in the furtherance of a criminal investigation or other criminal enforcement activities.

### **55.02 Traffic Law Enforcement**

1. **Traffic Surveillance.** The use of an aircraft to observe certain high-volume stretches of highways for the primary purpose of detecting temporary impediments to traffic and directing action to alleviate the conditions. Principal impediments looked for are (a) traffic accidents; (b) stalled vehicles in the traffic stream; (c) any temporary incident such as a load lost on the highway, an explosion, or other such incident; (d) vehicles that are broken down or stalled off the pavement; and (e) other congestion.

2. **Enforcement Patrol.** The use of an aircraft to perform line patrol over a designated section of highway where violations are frequent. The purpose of this operation is the detection of traffic law violations, abandoned vehicles, vehicle breakdowns, road hazards, etc., and directing ground units that work in conjunction with the aircraft to the scene. The principal violations handled will be as follows: (a) DWI violations, (b) speed law violations, (c) passing violations, (d) right-of-way violations, and (e) stop sign and signal violations.

3. **Area Traffic Surveillance.** The use of an aircraft for the surveillance or observation of a specific area where a large number of vehicles are converging or leaving. The surveillance is for the purpose of detecting congestion points and relaying instructions to ground units for detouring traffic or for clearing obstructions. Such use would be made at large sporting events or other such gatherings where a large number of cars would be using limited street or highway facilities.

4. **Traffic Engineering.** The use of an aircraft to observe and/or photograph public roadways for the purpose of facilitating traffic engineering projects or to document the need for such a project.

5. **Traffic Photography.** The use of an aircraft to photograph accident scenes, dangerous intersections, traffic congestion, roadways, or other aerial photography that facilitates traffic law enforcement.

6. **Specialized Personnel and/or Equipment.** The use of an aircraft to transport accident investigation teams, traffic engineers, or specialized equipment in the furtherance of traffic law activities.

### 55.03 Search and Rescue

1. **Lost Person Search.** The use of an aircraft to conduct an aerial search for a lost or missing person, especially in rural areas where terrain makes ground searches difficult.

2. **Downed Aircraft.** The use of an aircraft to search for a reported downed plane or aircraft missing and suspected to be down.

3. **Drowning Victims.** The use of an aircraft to search for persons missing as a result of water accidents and suspected accidents and the person or persons are believed to be drowned.

4. **Rescues.** The use of an aircraft to rescue marooned persons during life-threatening situations.

5. **Specialized Personnel and/or Equipment.** The use of an aircraft for the transportation of rescue personnel, dogs, supplies, foods, medicines, etc., to the rescue site.

### 55.04 Medical and Disaster

1. **Medical Transfer.** The use of an aircraft for the emergency transportation of ill and/or injured persons to medical facilities or to transfer such a person from one medical facility to another.

2. **Delivering Supplies.** The use of an aircraft for the emergency delivery of medical supplies, medicines, organs, or medical equipment to an appropriate medical facility or accident scene.

3. **Disaster Reconnaissance.** The use of an aircraft to reconnoiter any disaster area such as a flooded area, tornado or hurricane damaged area, explosion, forest fire, etc.

4. **Communications Command Post.** The use of an aircraft to establish DPS communications and area coordination of police activities in the event that communication facilities are disabled.

5. **Specialized Personnel and/or Equipment.** The use of an aircraft for the transportation of damage evaluation teams, rescue teams, communication personnel, and their respective equipment.

#### 55.05 Civil Disturbances

1. **Area Reconnaissance.** The use of an aircraft for reconnaissance of a riot torn area. This operation is effective in determining mob size and police equipment needed, checking out potential false fire alarms or police calls, etc. Operation may include the use of aerial floodlights during night hours.

2. **Rescue.** The use of an aircraft to rescue beleaguered personnel when feasible.

3. **Antisniper Platform.** The use of an aircraft as a platform for antisniper operations when deemed feasible and desirable.

4. **Specialized Personnel and/or Equipment.** The use of an aircraft for transportation of key personnel and equipment into isolated areas.

#### 55.06 Administrative Flights

1. **Mail and Passenger Flights.** The use of an aircraft for the purpose of transporting DPS mail and passengers, submission of evidence, and the movement of equipment from outlying regional offices to Austin and return.

2. **Flight Training.** The use of an aircraft to maintain necessary pilot proficiency, entry level training for new DPS pilots, the upgrading of current pilot ratings, FAA flight currency requirements, and proficiency check rides.

3. **Aircraft Maintenance.** The use of an aircraft to transport aircraft parts and/or pilots to a maintenance facility. The movement of an aircraft to and from a maintenance facility and test flights to determine proper completion of maintenance procedures.

4. **Aircraft Pooling Board Flights.** The use of an aircraft to transport "other state agency personnel" at the request of the State Aircraft Pooling Board.

5. **General Transportation Flights.** The use of an aircraft to transport personnel in the furtherance of official state business.

# **EMERGENCY AND DISASTER FUNCTIONS**

## **01.13.00.00**

### **13.05.00 AUTHORITY**

Emergency and disaster functions for the State of Texas are defined in the Texas Disaster Act of 1975, Chapter 418, of the Government Code. The purpose of this Act is to provide an emergency management system encompassing state agencies and local governments to prevent or mitigate, prepare for, respond to, and recover from natural and man-made disasters, riots, and hostile military or paramilitary actions. The Governor is empowered to issue executive orders, proclamations, and regulations having the force and effect of law to implement the Act and amend or rescind them. Pursuant to the Act, governors have periodically issued executive orders relating to emergency management. The State of Texas Emergency Management Plan which is approved by the Governor and the State Emergency Management Council, outlines the organization and responsibilities for accomplishing comprehensive emergency management objectives in Texas.

**05.01 Emergency Management Objectives.** Emergency management objectives are to develop the capability of the state and local governments to effectively direct, control, and conduct emergency operations to respond to and recover from natural or technological disasters, security threats, or civil disturbances. Effective direction and control requires that the state and local governments have the plans, organization, and facilities necessary to analyze emergency situations and take effective action to preserve life and property. To carry out effective emergency operations, the state and local governments must have trained personnel, appropriate equipment and supplies, and tested procedures for using them efficiently in dealing with emergencies.

### **05.02 Key Elements of the Texas Disaster Act and the Current Executive Order**

1. With respect to the state level organization for emergency management and its general responsibilities:
  - a. The Governor is responsible for meeting the dangers to the state and people presented by disasters. The Governor may declare a state of disaster if a disaster has occurred or is imminent. Declaration of a state of disaster activates the recovery and rehabilitation aspects of the State Emergency Management Plan; however, the preparedness and response aspects are activated as provided for in the state plan. During a state of disaster, the Governor is commander-in-chief of state agencies, boards, and commissions having emergency responsibilities, and may use state and, with compensation, private resources to cope with the disaster, suspend certain procedural laws and regulations, control the movement of people, restrict the sale and transportation of various materials, arrange for clearance of debris, and seek federal disaster assistance.
  - b. An Emergency Management Council is established to advise and assist the Governor in matters relating to mitigation, preparedness, emergency response and disaster recovery. The Emergency Management Council is composed of the heads of designated state agencies, boards, and commissions and representatives of several volunteer groups. (See Annex #1 for a list of the members of the Emergency Management Council.)
  - c. A Division of Emergency Management (DEM) has been established in the office of the Governor to prepare and maintain the state emergency management plan, establish standards for local emergency management plans and assist local governments in developing such plans, and do other things necessary to implement the state emergency management program. By Executive Order of the Governor, the Director of Homeland Security is appointed Director of the Division of Emergency Management and appoints the State Coordinator, who manages day-to-day operations of DEM, which is administratively placed within the Department of Public Safety as the Emergency Management Service (EMS) in the Administration Division. The



Director of DEM also serves as chairperson of the Emergency Management Council. By Executive Order, both DPS and DEM/EMS are members of the Council.

d. Emergency operations areas, known as disaster districts, corresponding to DPS Highway Patrol districts and subdistricts, are established throughout the state to manage state emergency operations within specific geographic areas.

2. With respect to the responsibilities of local government:

a. Local governments are required to have an emergency management program providing for disaster mitigation, preparedness, response, and recovery. Counties may cooperate with cities within the county in an interjurisdictional emergency management program.

b. County judges and mayors serve as the Governor's designated agents in administration and supervision of the Texas Disaster Act within their jurisdictions and may exercise the powers, on an appropriate local scale, granted the Governor in that Act. County judges and mayors serve as emergency management directors for their jurisdictions and may declare a local state of disaster. A declaration of local state of disaster activates the recovery and rehabilitation aspects of the local emergency management plan; however, the preparedness and response aspects are activated as provided in the local plan.

### **05.03 State of Texas Emergency Management Plan**

1. The State of Texas Emergency Management Plan defines the organization, establishes operational concepts, assigns responsibilities, and outlines coordination procedures for accomplishing emergency management objectives in Texas and implementing Executive Orders of the Governor, the Texas Disaster Act, and applicable federal statutes pertaining to emergency management.

2. The State of Texas Emergency Management Plan is the basic planning document for state-level comprehensive emergency management actions. The plan consists of a Basic Plan and functional supporting annexes which provide general coordination responsibilities and/or actions required during all phases of emergency management. Each of the separate annexes identifies and outlines, at a minimum, those actions (categorized by hazard and readiness/response level) needed from each of the appropriate agencies within each functional support group. Appendices are developed, as appropriate, to facilitate accomplishment of functional responsibilities. Specific information about when and how an operation is to be performed by an individual agency will be outlined in standard operating procedures (SOPs), operating manuals, etc., which may be included or referred to in the basic plan, annexes, or appendices.

### **3. Definitions from the State of Texas Emergency Management Plan**

a. **Emergency.** Emergency means the occurrence or imminent threat of a condition, incident, or event which requires immediate response actions to save lives; prevent injuries; protect property, public health, the environment, and public safety; or to lessen or avert the threat of a disaster.

b. **Disaster.** Disaster means the occurrence of widespread or severe damage, injury, loss of life or property, or such severe economic or social disruption that supplemental disaster relief assistance is necessary for the affected political jurisdiction(s) to recover and alleviate the damage, loss, hardship, or suffering caused thereby.

## **13.10.00 EMERGENCY PREPAREDNESS ACTIVITIES OF THE DEPARTMENT**

**10.01 Planning.** The DEM/EMS maintains the State Emergency Management Plan and related materials, establishes planning standards for and reviews local emergency management plans, and provides planning assistance to local governments and other state agencies. DPS and DEM/EMS are responsible for preparing a number of annexes to the State Emergency Management Plan.

**10.02 Training.** The Department's field personnel are provided training in emergency response by internal training programs and by attending courses offered by other state agencies, local governments, federal agencies, and other providers. DEM/EMS offers an extensive set of emergency management training to Department personnel, other state agencies, local governments, and volunteer groups active in disasters.

**10.03 Exercises.** Elements of the Department participate in periodic exercises with other state agencies, federal agencies, and local governments with natural disaster, technological hazard, and security scenarios. The DEM/EMS training section assists local governments in designing, conducting, and evaluating local exercises. The staff designs, conducts, and evaluates a number of joint (state-local or state-local-federal) emergency preparedness exercises each year.

**10.04 Facilities.** The Department has established the State Operations Center (SOC) at its headquarters and has established SOCs at its regional headquarters and district offices for the conduct of emergency operations.

**10.05 Communications.** The Department has established and maintains a communications system to serve its needs in law enforcement and emergency operations. It disseminates warnings, direction, and instructions through this network and receives requests for emergency assistance, situation information, and damage assessments. Additionally, the Department possesses deployable communications equipment to supplement fixed facilities.

### **13.15.00 DPS ORGANIZATION FOR EMERGENCY MANAGEMENT**

#### **15.01 State Headquarters**

1. In accordance with the Executive Order of the Governor relating to emergency management, the Director of Homeland Security serves as the Director of the Governor's Division of Emergency Management (DEM).

a. The Governor's Division of Emergency Management is administratively placed within the Department of Public Safety as the Emergency Management Service (EMS) within the Administration Division.

b. Personnel of the Governor's Division of Emergency Management have the rights and obligations under the Department of Public Safety statutes, rules, and policies.

2. Department of Public Safety Director and Assistant Director. The Director of the Texas Department of Public Safety organizes, coordinates, and is the operating head of all emergency and disaster activities performed by the Department and is the agency's representative on the Emergency Management Council. The Assistant Director assists the Director in carrying out his responsibilities and assumes responsibility for Department operations in the absence of the Director.

3. Chiefs of the Texas Highway Patrol, Criminal Law Enforcement, Ranger, Driver License, and Administration Divisions. The chiefs of major divisions shall provide trained personnel, equipment, and supplies to carry out Department emergency responsibilities.

4. State Coordinator of Emergency Management. The State Coordinator is responsible for planning, implementing, and coordinating a comprehensive state emergency management program.

**15.02 Field Organization.** The Department field organization is composed of regional, district, and subdistrict offices.

1. **Regional Commander.** The regional commander in each of the six departmental regions coordinates, plans, conducts, and directs such emergency management activities for the region as are inherent in the normal responsibilities or as may be assigned by the Director of DPS. The regional commander is assisted by Highway Patrol captains in their respective districts, by lieutenants in the subdistricts, and by DEM/EMS regional liaison officers stationed within the region. During emergency or disaster operations, all service commanders, supervisors, and their personnel perform such functions and activities as are assigned by the regional commander.

2. **Highway Patrol Captain.** The Highway Patrol captain is directly responsible for the Department's disaster activities performed within a district. In addition to being responsible for the Department's activities, the captain serves as chairperson of the Disaster District Committee (DDC) and reports to the Director of DPS on matters relating to disasters and emergencies and may be assisted by a DEM/EMS regional liaison officer stationed at the district. The Highway Patrol lieutenant in a subdistrict has the same responsibility as the captain in a district.

3. **Other DPS Commanders.** In disaster operations, commanders of other services assist the Highway Patrol captain in the districts and Highway Patrol lieutenant in the subdistricts.

### **13.20.00 STATE-LOCAL ORGANIZATION FOR EMERGENCY RESPONSE**

**20.01 Local Government.** Emergency management planning and emergency response at the local level are the responsibility of the mayor in incorporated cities and towns and of the county judge for unincorporated areas of the county. Cities and counties develop and maintain emergency management plans for their respective jurisdictions and organize, equip, and train emergency response forces or contract for such services. A community experiencing an emergency is expected to first attempt to resolve the problem by implementing its emergency management plan and using its own personnel, equipment, and supplies, requesting assistance from other jurisdictions with which it has mutual aid agreements, and summoning firms it may have contracted with to provide certain emergency services. Cities needing additional emergency assistance are also required to seek that assistance from the county in which the incident occurs, and if such assistance is not available, then request state emergency assistance from the Disaster District chairperson responsible for the affected area.

#### **20.02 Disaster Districts**

1. Each Disaster District maintains an SOC, which may be activated during emergencies. Each district shall have a Disaster District Committee (DDC), consisting of local representatives of agencies having membership on the Emergency Management Council who are expected to have knowledge of their agency's local assets.

2. The DDC chairperson, the Highway Patrol captain in each district and the lieutenant in each subdistrict, is responsible for receiving requests for state assistance from local governments or from state agencies responding to emergencies. Working with members of the DDC, the chairperson will validate the local request, identify state resources within the district which can satisfy the request, and coordinate arrangements for getting those resources to the place they are required. If suitable state resources to satisfy a request for assistance are not available within the district, the Disaster District chairperson shall forward the request for assistance to the SOC.

3. Regional commanders coordinate the activities of the districts and subdistricts within their regions and perform such other functions as may be assigned by the Director.

**20.03 Emergency Management Council.** During periods of emergency or disaster, the Emergency Management Council may be activated to assess the situation, provide information for decision-making, formulate options, make recommendations to the Governor or his senior staff regarding appropriate courses of action, and coordinate state

assistance to local governments or state agencies responding to the emergency or disaster. The State Plan organizes the Council into emergency support functions (ESFs), multiagency groups responsible for specific emergency functions, such as shelter and mass care. Each ESF includes a “Primary” agency and a number of “Support” agencies. Many Council member agencies have multiple ESF assignments. Several agencies have also been designated by state law, as the “Lead” agency for specific-hazard events such as hazardous materials and oil spills, etc.

**20.04 State Emergency Response Team (SERT).** The State Emergency Response Team (SERT), composed of representatives of selected state agencies, may be activated to perform damage assessment and needs analysis after major disasters. The Department will provide certain personnel to staff the SERT.

**20.05 Field Command Posts and Staging Areas.** To enhance coordination of the state response to requests for emergency assistance, the state may establish field command posts or dispatch liaison personnel to command posts established by local governments or by the lead state or federal response agency. Forward staging areas may be established for personnel and equipment, particularly when those personnel and that equipment must provide emergency support over a broad area.

### **13.30.00 RESPONSIBILITIES OF THE DPS DURING EMERGENCIES**

During emergencies and disasters, the Department must carry out three different sets of responsibilities: (1) it must carry out state level emergency functions assigned in the Texas Disaster Act, the Executive Order of the Governor Relating to Emergency Management, and the State of Texas Emergency Management Plan; (2) it must carry out specific emergency-related tasks assigned by the Director; (3) it must perform its day-to-day responsibilities to preserve the peace and protect persons, property, rights, and privileges of all people in the state.

#### **30.01 State Level Emergency Management Responsibilities**

1. **State Operating Center (SOC).** During emergencies or disasters, DEM/EMS will activate the SOC in accordance with its SOP for SOC operations. Three different levels of activation have been defined; the level of activation for a particular emergency will be dependent on the scope and seriousness of the emergency. The responsibilities of DEM/EMS for the SOC include:

- a. Equipping the facility and maintaining it operationally ready to respond to emergencies.
- b. Developing procedures for receiving and processing information regarding emergencies and requests for assistance; analyzing information; assessing capabilities; formulating options; assigning tasks; coordinating use of state resources and disseminating information in briefings, reports, and news releases.
- c. Providing situation reports to the Governor and his senior staff, state agencies, federal agencies, volunteer groups, and elected officials during emergencies.
- d. Drafting disaster and emergency declarations and requests for assistance from the federal government and other states.
- e. Monitoring use of state resources and federal and out-of-state resources provided to the state; maintaining records of emergency operations.
- f. Maintaining specialized SOPs for specific types of emergencies.
- g. Training staff personnel, members of the Emergency Management Council, and personnel from supporting agencies or groups in operations of the facility.

h. Participating in periodic exercises to test SOC equipment and validate operating procedures and training.

2. Emergency Management Council. The Emergency Management Council will normally be convened at the SOC to deal with disasters and large-scale emergencies. The Director of Homeland Security, or his appointed representative, chairs the Emergency Management Council when it is convened. The council may be partially activated (selected agencies or one or more ESFs) or convened in its entirety.

The primary responsibility of the council is to advise and assist the Governor in conducting emergency response and recovery operations. Each member of the council is responsible for:

- a. Providing information on the emergency and providing the agency's assessment of the situation.
- b. Formulating options for dealing with specific problems and making recommendations to the decision-makers regarding appropriate courses of action.
- c. Coordinating the use of state personnel, equipment, and supplies (including commercial resources which the agency may contract for) to assist local governments or state agencies responding to the emergency or disaster.
- d. Monitoring and reporting on the use of agency resources committed to emergency operations.

The Department has two representatives on the council; Texas Highway Patrol (THP) officer representing DPS and the State Coordinator or designee representing DEM/EMS. As indicated below, DPS and DEM/EMS are identified as the primary agencies for a number of ESFs.

3. **Disaster District.** The responsibilities of the Disaster District chairperson include:

- a. With the assistance of THP, equipping the Disaster District SOC.
- b. Developing and maintaining SOC operating procedures.
- c. Maintaining a call list for the DDC and appropriate operating procedures.
- d. Receiving requests from local governments for state assistance, validating such requests, and coordinating response to those requests by tasking DDC members, or forwarding requests for assistance to the SOC if they cannot be satisfied at the district level.
- e. Providing direction and control for state resources, including the SERT and any federal and out-of-state resources dispatched to emergencies within the district, and monitoring the use of those resources.
- f. Providing emergency and disaster reports in accordance with Section 13.50.00.
- g. Training DPS personnel and DDC members in emergency operations.
- h. Conducting periodic exercises to test equipment and validate operating procedures and training.

The DDC chairperson will activate the Disaster District SOC and convene the DDC. The chairperson may convene the DDC as a whole or summon specific agencies to work at the SOC. For less serious emergencies, the chairperson may coordinate emergency response support with DDC members by phone and facsimile. The

chairperson is responsible for providing direction and control for state resources responding to an emergency or disaster within the district.

4. **State Emergency Response Team (SERT).** The SERT is responsible for performing damage assessment, analysis of needs, and/or field deployed state emergency assistance after major disasters. The SERT may be activated by the State Coordinator or upon the request of a Disaster District chairperson, who is also expected to provide guidance and direction to the team.

**30.02 Operational Responsibilities.** The Department is assigned operational responsibilities to carry out specific emergency functions. Several of the following functions are summarized; specific details can be found in the State of Texas Emergency Management Plan.

1. **Warning.** The Department is the primary agency for the state ESF for Warning; DEM/EMS is a support agency for this ESF. Responsibilities include:

a. In coordination with responsible federal and state agencies, operating a warning network. The National Warning System (NAWAS), the Texas Warning System (TEWAS), and other telecommunications systems are utilized to carry out this responsibility, as are facilities of the news media.

b. Providing timely warnings and essential emergency information to designated state agencies and local governments concerning actual or threatened dangers from natural hazards, technological threats, and terrorism or enemy attack.

c. Coordinating planning and the development and evaluation of warning system capabilities and requirements.

2. **Evacuation.** The Department is the primary agency for the state ESF for Evacuation; DEM/EMS is a support agency for this ESF. Responsibilities include:

a. Developing and executing area-wide traffic management plans for evacuation.

b. Upon request, assisting local governments in planning for and implementing evacuations.

c. Coordinating with local governments and other state agencies, monitoring, and, where appropriate, managing large-scale evacuation operations and providing current evacuation status reports concerning areas being evacuated, road conditions, traffic counts, and related information.

d. Notifying jurisdictions along evacuation routes of evacuation decisions.

3. **Law Enforcement.** The Department is the primary agency for the state ESF for Law Enforcement; DEM/EMS is not a support agency for this function. Responsibilities include:

a. Providing traffic control, security, and other law enforcement services along state highways, on state-owned land, or within state facilities.

b. Assisting local law enforcement personnel in controlling traffic, providing security in disaster areas, responding to civil unrest and prison disturbances, preventing looting, and related emergency law enforcement duties.

c. Reporting incidents and performing initial damage assessments during emergencies or disaster; in accordance with Section 13.50.00 and Annex #2.

**4. Emergency Public Information.** DEM/EMS is the primary agency for the State ESF for Public Information during emergencies and disasters; the Department is a support agency for this ESF. Responsibilities include:

a. Developing and disseminating emergency information and instructions to the general public, the news media, and local officials and responding to queries from those groups.

b. Representing the state in joint information activities.

c. Coordinating community relations and public outreach activities to support emergency response and recovery operations.

d. Serving as primary point of contact to the news media for DEM/EMS and the State Emergency Management Council.

**5. Recovery.** DEM/EMS is the primary agency for the State ESF for Recovery. Responsibilities include:

a. Coordinating and conducting detailed damage and needs assessments following a disaster.

b. Establishing and staffing state-federal disaster recovery centers.

c. Processing state and federal disaster or emergency declarations.

d. Processing, coordinating, and monitoring the delivery of disaster assistance by state and federal agencies and volunteer groups.

**6. Direction and Control.** DEM/EMS is the primary agency for the State ESF for Direction and Control; the Department is a support agency for this ESF. Responsibilities include:

a. Coordinating the mobilization and employment of state resources for emergency response and recovery.

b. Coordinating the development and execution of state plans and implementation of intrastate and interstate agreements and compacts relating to emergency assistance.

c. Coordinating the operations of certain state emergency direction and control systems and facilities. DEM/EMS will operate the SOC, and the Department will be responsible for operating the district SOCs and any state-level incident command posts where no state lead agency has been established.

d. Collecting, compiling, maintaining and reporting information relating to state emergency operations.

**7. Hazard Mitigation.** DEM/EMS is the primary agency for the State ESF for Hazard Mitigation. Responsibilities include:

a. Coordinating hazard mitigation planning among local, state, and federal agencies.

b. Administering hazard mitigation programs and activities following a federal disaster declaration.

c. Recommending to the Governor, changes to regulations, plans, standards, or laws which can reduce risk to life and property from a natural or man-made hazard.

**8. Transportation.** Texas Department of Criminal Justice (TDCJ) is the primary agency for the state ESF for Transportation; the Department is a support agency for this function. Responsibilities include:

- a. Identifying and obtaining appropriate transportation assets to meet emergency response and recovery requirements.
- b. Coordinating establishment of emergency refueling and maintenance facilities.
- c. Coordinating emergency movement of oversized/overweight loads.
- d. Supporting transportation emergency contingency plans and executing agreements for use of private and commercial aircraft to support disaster airlift operations.

**9. Donations Management.** DEM/EMS is the primary agency for the state ESF for Donations Management. Responsibilities include:

- a. Coordinating the operations of the state's donation management program.
- b. Providing information to the public on donation procedures.
- c. In coordination with Texas voluntary disaster relief groups, receiving, processing, and distributing donated goods to areas of need and managing spontaneous volunteers in the disaster area.

### **30.03 General Emergency Responsibilities**

1. In any emergency situation requiring response by DPS personnel, the first DPS officer on the scene shall assume responsibility for any immediate DPS action. If assistance is required, the officer shall notify the nearest appropriate DPS supervisor by the most expeditious means, and remain on the scene until properly relieved by appropriate personnel. The supervisor or officer assuming temporary command shall determine whether the primary responsibility lies with the Highway Patrol captain or the Ranger captain and notify them, providing them with all known details of the situation. The designated captain will determine the degree of response required and make their request for assistance accordingly.

2. DPS Communications will have the responsibility for providing all necessary preplanned communication services and any additional services deemed necessary by the officer in charge of the emergency situation; this includes coordinating communications with local agencies, deployment and operation of mobile communications to support field deployed emergency operations, and employment of alternate communications capabilities in the event that primary communications system is destroyed or determined inadequate for the situation.

3. In any emergency situation, all DPS personnel available at or near the site are subject to call to duty, on a temporary basis, by the designated commander, to perform duties for which they are qualified, or duties they may be capable of performing in such an emergency.

**30.04 Command Responsibilities.** Primary command responsibility will be designated as follows:

#### **1. Highway Patrol Service**

- a. Natural disasters, such as severe storms, floods (requiring evacuation), and large or widespread fires.
- b. Accidents and technological emergencies, such as aircraft crashes, train derailments or collisions, explosions, and hazardous materials or radiological incidents.



- c. Mass gatherings, such as music festivals, sporting events, labor unrest.
- d. Civil disturbances.

## **2. Ranger Division**

- a. Disturbances at Texas Department of Criminal Justice facilities.
- b. Planned searches for escaped or fleeing felons (including organized manhunts).
- c. Terrorist activities.
- d. Hostage situations.
- e. Barricaded wanted felons.

3. **Support.** The Ranger Division will give necessary support to emergency situations in which the Highway Patrol has command responsibility. The Highway Patrol Service will give necessary support of emergency situations in which the Ranger Division has command responsibilities.

**30.05 Texas Security Alert and Analysis Center (TSAAC).** The Texas Security Alert and Analysis Center (TSAAC) serves as the focal point to facilitate bi-directional information sharing related to terrorism and other major events within Texas. TSAAC is a support function of the Criminal Law Enforcement Division, Special Crimes Service and operates in a law enforcement only secure space within the Division of Emergency Management's operational complex. The Center serves as a communication tool to facilitate the sharing of information related to terrorism with the public, state agencies, critical infrastructure, and law enforcement that is crucial to the state's Homeland Security Strategy.

Upon the occurrence of a major criminal or natural event within Texas, the Chief of Criminal Law Enforcement Division or his designee may increase the resources of TSAAC by request to all major Division Chiefs. The staff of TSAAC report through their chain-of-command to the Director of the department. All reasonable efforts will be made to provide the required resources to carry out the primary mission of TSAAC for Homeland Security Protection.

## **13.40.00 CONCEPT OF STATE OPERATIONS FOR MAJOR EMERGENCIES AND DISASTERS**

**40.01** An emergency will be met at the lowest and most suitable level of government having a capability appropriate to the emergency situation. For major emergencies and disasters, the local chief executive may issue a declaration of local disaster. The Governor may issue a declaration of a State of Disaster for all or portions of the state. The Governor may request the President issue a major disaster or emergency declaration for all or portions of the state.

**40.02** Local government (a county or a city) has the primary responsibility for local emergency management activities and constitutes the first line of response during emergencies or disasters. Affected jurisdictions will respond to an emergency incident to the best of their capabilities in accordance with existing emergency management plans and procedures and are expected to invoke mutual aid agreements with other jurisdictions or organizations and contracts they may have with private industry to obtain additional resources. If a city has inadequate resources to respond to an emergency, it is required to request assistance from its county before seeking state assistance.

**40.03** When the situation exceeds the local government's capability to respond or recover, the local government's chief elected official (county judge or city mayor) or designee should request state assistance from the appropriate Disaster

District. In essence, state assistance to local governments begins at the Disaster District level, and the key person to validate, locate, obtain, and provide that state assistance and support is the DDC chairperson.

1. Some state agencies are required by law to render assistance in specific types of emergencies (e.g., oil spills, hazardous materials incidents, or radiological incidents). For these type incidents, local officials can request assistance directly from the cognizant agency or it may be requested on their behalf by the DDC chairperson. However, the DDC chairperson should keep apprised of the operational situation.

2. For most emergencies, the DDC chairperson will receive requests for assistance directly from local officials. The DDC chairperson should validate the request for assistance, requesting additional information, if necessary, and then coordinate with the agency representatives which compose the DDC to determine if the requested assistance can be provided from state resources within the district. If state assistance is authorized by the DDC chairperson or directed by statute, state agencies should provide response and recovery assistance within their capabilities.

3. The provision of state response assistance to local governments is not dependent upon a formal declaration of a State of Disaster, either by the local government or Governor, when such response is required by state law or when, in the opinion of either the Governor, the Director of the Division of Emergency Management, the State Coordinator, or the DDC chairperson, such assistance is needed to save lives or relieve suffering. State assistance furnished to local governments is intended to supplement and not substitute for local government resources which may include leases, purchases, use of private response forces pursuant to a contract, or mutual aid assistance.

**40.04** If appropriate state support cannot be provided at the Disaster District level, then the request for assistance will be forwarded by the DDC chairperson to the SOC and subsequently tasked to one or more of the ESFs of the State Emergency Management Council for resolution. When resources are identified to satisfy a request, the SOC will inform the Disaster District, which will, in turn, inform the requester, coordinate delivery, and monitor the utilization of those resources.

**40.05** If state resources are inadequate or inappropriate to deal with the emergency, the Governor or designated authority may request specific emergency management assistance from other states or the federal government. Other states may provide assistance in accordance with provisions of a number of interstate compacts and other agreements. The federal government will provide supplemental response and recovery assistance to Texas and its political subdivisions in accordance with the Federal Emergency Management Agency (FEMA) Region VI Regional Response Plan (RRP) and the Federal Response Plan (FRP). Additional federal-level, hazard-specific plans may be implemented to provide emergency management assistance to Texas. They include the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Federal Radiological Emergency Response Plan (FRERP).

## **13.50.00 EMERGENCY AND DISASTER REPORTING**

The Department's field personnel and operating facilities are responsible for reporting information regarding potential emergencies, certain types of incidents, and weather, providing initial damage assessments for emergencies, and providing information on ongoing emergency and disaster operations.

The following reports are required:

**50.01 Warning of Possible Emergency.** When Department personnel discover a situation which threatens life or property, it is their responsibility to advise local officials having jurisdiction in the area which may be affected and also provide information on the situation to elements of the Department. Examples of such situations include flash flooding upstream of a populated area, occurrence of tornadoes, fires for which no emergency response is evident, and apparent contamination of water supplies.

Depending on the urgency of the situation, reports to local officials may be made verbally or by message. Reporting to DPS elements should be through channels, normally verbally to the first facility which has teletype or facsimile capability, and then in writing. Reports to DPS Headquarters must be addressed to EMS and should include other Headquarters addressees, as appropriate.

A Warning of Possible Emergency to local governments should include the following essential elements of information (EEI):

1. Type of emergency.

2. Location of the area affected, to include county, and nearest city, preferably with reference to roads and other geographic features which appear on standard Texas Department of Transportation maps.

3. Time observed and by whom.

4. Area, community, or significant facilities likely to be affected.

And reports to DPS elements should include the following additional information:

5. Local officials notified and the time of notification.

6. Contact information for those officials (phone and, if possible, facsimile numbers).

7. Anticipated requirements for emergency assistance.

**50.02 Incident Report.** All Department of Public Safety personnel will report to Department Headquarters any incident of an unusual nature as soon as possible and by the most expeditious means. Reporting should be through channels, normally verbally to the first facility which has teletype or facsimile capability, and then in writing. Reports to DPS Headquarters must be addressed to EMS and should include other Headquarters addressees, as appropriate. It is the specific responsibility of regional commanders and field service commanders to ensure that such information is transmitted promptly.

EMS will provide information from Incident Reports to those state and federal agencies which have responsibilities for the type incidents being reported who have not already been notified.

1. Significant events which are not routine should be reported. The following are examples:

- a. Tornadoes, flash flooding, ice storms, and other severe weather.

- b. Road closures that significantly affect area traffic and movements.

- c. Explosions which cause significant damage or casualties.

- d. All fatal rural motor vehicle accidents, and any traffic accident involving school buses or in which five (5) or more persons were killed, or where celebrities or persons of statewide prominence are involved.

- e. Bank holdups, jailbreaks, and other major crimes of unusually heinous nature.

- f. When Department personnel participate in the apprehension of murderers and other notorious criminals.

- g. Aircraft crashes.
- h. Hazardous material incidents, including radiological incidents.
- i. Large or widespread fires which threaten lives or property.
- j. Dam failures or potential dam failure situations.

2. The essential elements of information (EEI) for incident reports are:

- a. Type of incident.
- b. Location of the area affected, to include county, and nearest city, preferably with reference to roads and other geographic features which appear on standard Texas Department of Transportation maps.
- c. Time of occurrence.
- d. A short description of what happened or is occurring.
- e. An estimate of casualties, if any.
- f. An estimate of damage, where appropriate.
- g. Organizations or agencies who have responded or are responding to the incident site and action being taken by those responders.
- h. Local, state, and federal agencies which have been notified of the incident.
- i. Assistance required, if any.
- j. Point-of-contact information on person making report.

THP has established standardized teletype message formats for various type incidents. Do not unduly delay reporting in order to obtain complete information. Report the occurrence of incidents and damage assessment information as it becomes available, and submit follow-up reports with updated information as it becomes available.

**50.03 Initial Damage Assessment Report.** During or immediately after an emergency or a disaster, Department personnel operating in the area of the emergency or disaster will perform an initial damage assessment. Information on damages may be obtained through personal observation, from local residents, or from local officials. The Highway Patrol captain or lieutenant at district level will normally compile information obtained from various field personnel and include damage assessment information in the Disaster District Situation Report. Alternatively, a stand-alone Initial Damage Assessment Report may be sent. In either case, reports must be addressed to EMS at DPS Headquarters, may be addressed to other appropriate addressees at Headquarters, and should also be addressed to the appropriate regional headquarters.

Initial Damage Assessment Reports should address the following essential elements of information (EEI):

- 1. Type of disaster.
- 2. Location of the area affected, to include county and nearest city, preferably with reference to roads and other geographic features which appear on standard Texas Department of Transportation maps.

3. Estimated casualties—dead, injured, and missing.

4. Estimated property damage. If possible, break out information by level of damage (damaged or destroyed) and type of property (residences, business, government facilities, and other).

5. Condition of utilities (electricity, water, telephone, sewer service) and communications.

6. If local officials are not managing the emergency response from their normal facilities, the temporary operating location and phone number or method of contacting that facility.

7. Outside assistance required, if any.

Do not unduly delay reporting in order to obtain complete information. Report the occurrence of incidents and damage assessment information as it becomes available, and submit follow-up reports with updated information as it becomes available.

**50.04 Disaster District Situation Report.** During major emergencies and disasters, Disaster Districts will submit a Disaster District Situation Report to the SOC. The format for this report is provided in Annex #2.

Information for the Situation Report will be obtained from local officials, Department personnel, personnel from other state agencies or from federal agencies responding to the emergency or disaster, reconnaissance reports, and other sources. Reports should be submitted at least twice daily, unless a different reporting schedule has been agreed to between the SOC controller and the Disaster District chairperson. Reports may be submitted by any electronic means.

Information contained in Disaster District Situation Reports will be used to develop State Situation Reports disseminated to the Governor and his senior staff, the Department's senior staff, the Emergency Management Council, other state agencies, the Federal Emergency Management Agency, volunteer groups active in disasters, state and local elected officials, the media, and to formulate requests for assistance from the federal government and other states.

#### **50.05 Severe Weather and Tornado Reporting**

1. **Weather Observation and Reporting.** The National Weather Service (NWS) and the Department have entered into a cooperative program of tornado and severe weather observation and reporting.

a. **Requests from NWS for DPS Support.** The NWS forecasts for areas where severe weather may develop are transmitted to Department offices in the forecast area and to the SOC. Department personnel, local law enforcement agencies, and local officials are notified to be on the alert should conditions become threatening. When suspicious cloud formations appear on NWS radar, NWS will request that the Department make visual observations at the location indicated. This request for visual observation will normally be made to the nearest Department facility.

b. **Responding to NWS Requests.** When NWS requests visual observation of a suspected tornado, Department personnel involved will comply with the request and report their findings to the NWS facility which made the request. When the visual observation corroborates the RADAR finding that a tornado exists, a tornado warning is issued by the NWS and local officials and all communities in its probable path are alerted.

2. **Reporting Damages from Severe Weather.** When tornadoes, hail, high winds, flash floods, or other severe weather causes damage or casualties, it is the responsibility of Department personnel to report such occurrences to EMS at DPS Headquarters by the most expeditious means. Reports of severe weather damage and casualties should also be addressed to the regional commander and Highway Patrol captain in whose region and district the severe weather

occurred. The format for Incident Reports outlined in Section 13.50.02 above shall be used to report severe weather occurrences.

# CIVIL DISTURBANCE MANAGEMENT

## 01.14.00.00

### 14.05.00 CIVIL DISTURBANCE MANAGEMENT

**05.01 Civil Disturbances.** Civil disturbances have been thought of exclusively as "riots," and this concept has had a direct bearing on the planning, training, and operations of control forces. However, the term "civil disturbances," as used in this chapter, includes a broad range of activities which vary in intensity and purpose from a peaceful assembly in a public place to a violent and destructive attack on people and property. Therefore, the management of a civil disturbance, whether it be a riot or a minor disturbance, must be based on the peculiarities of each situation. Hence, this chapter establishes a civil disturbance management plan for the Department of Public Safety which provides for modification as the situation dictates.

**05.02 Minor Disturbances.** Almost daily the police are called upon to control gang fights and other similar disturbances which may occur at sporting events, taverns, and other such gathering places. These are ordinary police matters and Department of Public Safety officers may assist local officers in controlling disturbances of this nature, notwithstanding the fact that some of these might fall within a technical definition of a "riot."

**05.03 Riot.** The assemblage of seven or more persons resulting in conduct which:

1. Creates an immediate danger of damage to property or injury to persons;
2. Substantially obstructs law enforcement or other governmental functions or services; or
3. By force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

**05.04 Responsibility.** The Department of Public Safety recognizes that the primary responsibility for enforcing criminal laws and for civil disturbance management lies with local law enforcement. However, the Department will take action to suppress civil disturbances, when needed, under the following conditions:

1. When requested to do so by a responsible public official.
2. When the Director decides that local enforcement has broken down and takes complete control of the situation.
3. When called upon to do so by the Governor.
4. When the civil disturbance occurs on the Capitol complex or Governor's Mansion grounds.

**05.05 Proper Request for Assistance.** A request for assistance to suppress a civil disturbance must be directed through channels to the Director. Department officers who receive such a request will transmit the request to their superiors. This is not intended to prohibit assistance to local officers in controlling disturbances which are minor in nature and are the type specified in 05.02.

**05.06 Department of Public Safety Action Without Request.** The Department will act to suppress a civil disturbance without a request from a local official only on orders from the Director.

## 14.10.00 DEFINITIONS

**10.01** The following terms, when used in this chapter or in the Department of Public Safety Civil Disturbance Management Training Manual, shall have the meaning herein ascribed.

1. **Regional Commander.** The regional commander of the region in which the civil disturbance situation is occurring unless other commander appointed by Director.

2. **Field Commander.** The THP major of the region in which the civil disturbance or disaster situation is occurring. Does not include Mansion or Capitol complex.

3. **Operation Commander.** The Highway Patrol captain or the district commander of the district in which the civil disturbance or disaster situation is occurring.

4. **Special Forces Commander.** A Highway Patrol lieutenant of the district in which the civil disturbance or disaster situation is occurring.

5. **Sector Commander.** A Highway Patrol captain or a Highway Patrol lieutenant designated by the operation commander.

6. **Platoon Commander.** A Highway Patrol supervisor designated by the operation commander to command two or more tactical squads or a civil disturbance control team.

7. **Squad Leader.** A Highway Patrol supervisor designated to lead a tactical squad.

8. **Field Headquarters.** The location from which the field commander operates.

9. **Command Post.** The location from which the operation commander operates. It may be the field headquarters, but may be at a location closer to the actual civil disturbance or disaster situation.

10. **Assembly Point.** The location where personnel are instructed to assemble for transportation to another district or region.

11. **Reporting Point.** A location near a civil disturbance scene where personnel report to the personnel officer for assignments.

12. **Staging Area.** A location near a civil disturbance area where Department personnel and resources will be held ready for assignment to civil disturbance control duty.

13. **Motor Pool.** A collection of motor vehicles for use during civil disturbance control.

14. **Supply and Transportation Officer.** A commissioned officer of the Department assigned by the Operation Commander of the district in which the civil disturbance or disaster situation is occurring.

15. **Public Information Officer.** The Highway Patrol lieutenant responsible for the Safety Education functions of the region in which the civil disturbance or disaster situation is occurring.

16. **Intelligence Officer.** A captain or lieutenant of the Criminal Investigations Division in the area in which the civil disturbance or disaster situation is occurring.



17. **Communications Officer.** The communications area manager of the region in which the civil disturbance or disaster situation is occurring.

18. **Tactical Squad.** Twenty-two uniformed Department officers including a squad leader, an assistant squad leader, and alternate squad leader, a two-trooper rifle team, and a six-trooper arrest team.

19. **Platoon.** Two or more tactical squads.

20. **Mobile Field Force.** One or more tactical squads deployed in marked police vehicles.

21. **On Duty—Action.** The time Department personnel are committed to performance of actual duty.

22. **On Duty—Reserve.** The time Department personnel are on duty and ready for “On Duty—Action,” but are being held in reserve.

23. **Off Duty.** The time Department personnel may engage in their own pursuits as long as they can be reached and quickly recalled to either form of duty.

#### 24. **Support Teams**

a. **Booking and Identification Team.** A Department law enforcement supervisor and a number of Department officers, including a driver and photographer, for transporting, booking, and identifying prisoners.

b. **Motorized Patrol Team.** Two or more Department and/or other agency law enforcement officers.

c. **Foot Patrol Team.** Two or more troopers equipped as deemed necessary.

d. **Gas Team.** Two or more Department officers equipped to dispense gas or oleoresin capsicum.

e. **First Aid Team.** Two or more Department officers equipped to administer first aid.

#### 25. **Special Forces Teams**

a. **Antisniper Team.** Two or more Department officers strategically deployed to provide protection for other Civil Disturbance Management personnel.

b. **Arrest Team.** Two or more uniformed or plainclothes Department officers deployed in addition to the tactical squad(s) and used to apprehend law violators within the crowd of civil disturbance participants.

c. **Reconnaissance Team.** Two or more Department officers assigned to survey the rioters’ or agitators’ location, movement, strength, etc.

d. **Surveillance Team.** Two or more Department officers assigned to monitor agitators/rioters.

e. **Guard Team.** Two or more Department officers assigned to protect any vital public facility or any private enterprise where equipment or supplies considered vital to the welfare of the law-abiding citizens or useful to rioters are kept (i.e., gas, water, electricity, weaponry, etc.). Guard teams may also be assigned by the Operations Commander as security guards to protect Department operational sites.

f. **SWAT Team.** A team of Department officers designated to perform a specific task by the use of special weapons and tactics.

## **14.15.00 DUTIES AND RESPONSIBILITIES**

### **15.01 Regional Commander**

#### **1. Preparation Phase**

a. Each regional commander will be responsible for the organization of at least two tactical platoons within his region.

#### **2. Execution Phase**

a. He will work with the THP and CID Majors and will coordinate the resources of the Department.

b. He will request Department resources from outside the region as he deems necessary.

c. He will, through channels, keep the Director of the Department of Public Safety informed as to the disturbance and the Department's involvement.

d. He will be responsible for coordination of SWAT efforts.

### **15.02 Field Commander**

#### **1. Preparation Phase**

a. The field commander will confer with service commanders concerning their responsibilities in reference to civil disturbance management as detailed in Section 14.15.00.

b. He will ensure that each service commander trains and retrain appropriate personnel to the extent they will have the ability to satisfactorily perform assigned civil disturbance control responsibilities.

c. He will prepare a Regional Civil Disturbance Control Procedure for distribution to all command personnel within the region and the Assistant Director of Texas Highway Patrol. The Regional Civil Disturbance Control Procedure will be updated annually and copies furnished by September 1 of each year. He will assist the service commanders in the selection of locations for other Department functions, such as personnel, supply and transportation, reporting points, staging areas, etc.

d. He will ensure that each Highway Patrol captain under his command prepares and submits, for his approval, a District Civil Disturbance Control Procedure for notifying and dispatching tactical squads and other uniformed personnel.

### **15.03 Operation Commander**

#### **1. Preparation Phase**

a. The operation commander shall, through appropriate personnel, establish and maintain liaison with the chiefs of police, sheriffs, and the chief of traffic and security of any school which is a part of the State University System. As a minimum, these officers are to be kept aware of the following:

1) The primary responsibility for enforcing criminal laws and for the suppression of civil disturbances lies with local officers. The Department will take action to suppress civil disturbances when requested to do so by a responsible local official.

2) Requests for assistance to suppress a civil disturbance must be directed through channels to the Director.

3) Realistic estimates of manpower the Department may be capable of providing within a given length of time.

b. He will prepare and submit to the field commander by September 1 of each year a District Civil Disturbance Control Plan for notifying and dispatching tactical squads and other uniformed personnel.

c. Each operation commander will be responsible for the organization of two tactical squads within his district.

1) Each squad will consist of a sufficient number of troopers so that fourteen members, including the squad leader, assistant and alternate squad leaders, plus the rifle team, and the arrest team, may respond within a specified time to a call to duty.

2) He may, after consultation with his field commander, assign any troopers of the uniformed services to a squad who live within his district with the following exceptions:

a) Any trooper assigned by the field commander to another function.

b) Any trooper who is deemed by the field commander to be unsuited for civil disturbance control squad duty because of ill health or other factors.

3) He will assign a Highway Patrol sergeant as the squad leader of each squad.

4) He will arrange for tactical squad training within his district of such frequency and duration that every squad member will be able to join any squad and execute the required maneuvers and orders or use equipment at an acceptable level of proficiency.

5) Training will be conducted in accordance with provisions established in the "Texas Department of Public Safety Civil Disturbance Management Training Manual."

a) He will arrange a method whereby other service personnel concerned who live within his district and the commanders of other services involved are notified of the time and place at which training sessions are to be held.

b) He will familiarize himself with all phases of training established in the "Department of Public Safety Civil Disturbance Management Training Manual" and will train with tactical squads and platoons sufficiently to enable him to adequately and properly direct the operation.

6) He will provide for the training of support and special forces teams as deemed necessary

7) He will be responsible for a roster of personnel available for assignment to civil disturbance control duty. This roster will, as a minimum, show the name of each trooper or sergeant available, the office phone number, the home phone number, and the radio call number assigned. The list will be

prepared in such a manner as to indicate a priority system of notification for any number of personnel that may be called to duty.

8) He will prepare, in cooperation with the communications area manager or the police communications facility supervisor, a plan for calling and dispatching civil disturbance control personnel.

9) After the plan is approved, copies or excerpts will be distributed to those within the district concerned with its execution.

d. He will ensure transportation of all civil disturbance control equipment and supplies in his care to any disturbance scene to which squads from his district are dispatched.

1) He will utilize the supply and transportation officer for the transportation of equipment and supplies.

e. He may be assisted by the supply and transportation officer to ensure a current inventory of equipment and supplies within the region not in his care.

## **2. Execution Phase**

a. After receiving a request from an appropriate local official for assistance in quelling a disturbance, the operation commander in whose district the disturbance is occurring will confer with the field commander and transmit a request to the Director, through channels, for additional equipment and manpower, if needed. In the event no additional manpower is requested from outside the region, the field commander will notify the Director, through channels, that a disturbance is in progress and no additional assistance is needed. In either case, the same message will contain the location of the field headquarters and other pertinent information.

b. When the operation commander determines that a disturbance is imminent or in progress, he will, after consultation with the field commander, place into operation and direct a civil disturbance control plan commensurate with the situation.

c. He will request manpower or supplies from outside the region through the field commander as circumstances dictate.

1) He will request troopers to be used in the operation by stating the number of squads required.

2) Additional supervisory or command personnel required will be requested from specific services as needed.

d. He will maintain liaison with local officials and/or the chief of traffic and security of any state school which is a part of the State University System, on whose premises a disturbance is occurring.

e. He will submit a report of the operation as directed.

## **15.04 Special Forces Commander**

### **1. Preparation Phase**

a. The special forces commander for the district, in conjunction with the operation commander, will be responsible for selecting, training, and equipping special forces personnel.

## **2. Execution Phase**

a. When he is informed that a disturbance exists, he will be responsible for notifying all special forces personnel.

b. He will be responsible for coordination of the special forces efforts including but not limited to, search and assault, reconnaissance, antiniper, surveillance, and guard teams.

c. He will proceed to field headquarters or command post and in cooperation with the operation commander coordinate all special forces effort.

d. He will have the responsibility for determining the ability of the special forces to accomplish any assigned tasks.

## **15.05 Intelligence Officer**

### **1. Preparation Phase**

a. He will continuously collect, evaluate, and summarize intelligence information concerning the possibility of a civil disturbance within his area of responsibility.

b. He will establish and maintain liaison with each operation commander and field commander whose territory lies within his area. He will continuously provide the operation commander and field commander with the best available intelligence on:

- 1) Possible site of disturbance
- 2) Probable cause of disturbance
- 3) Composition of groups which may be involved
- 4) Known leaders of these groups
- 5) Objectives and/or purposes of these groups
- 6) Temperament of groups and/or organizations

c. He will coordinate his use of other service personnel with their supervisors.

### **2. Execution Phase**

a. Upon notification that this plan has been activated, the intelligence officer in whose area the disturbance is occurring will report to the operation commander and serve as his intelligence officer.

b. He will collect, receive, evaluate, and summarize all intelligence information and will make this information immediately available to the operation commander.

c. He will establish liaison with local intelligence officers within the area.

d. He will arrange for adequate shift relief by other Criminal Investigations Division personnel.

e. He will direct Criminal Investigations Division personnel to specific sectors in the involved area and to specific duties, as requested by the operation commander.

f. He will be responsible to the operation commander for the following activities:

- 1) Identifying known leaders of the disturbance
- 2) Determining the probable cause of the disturbance
- 3) Establishing the number of people involved
- 4) Identifying others who may be helpful or sympathetic to the disturbance
- 5) Locating arms, equipment, and supplies available to the leaders of the disturbance
- 6) Establishing undercover operations and observation in the disturbance area
- 7) Infiltrating crowds, meetings, and public gatherings
- 8) Debriefing other officers leaving the disturbance area
- 9) Gathering information of evidentiary value in order to strengthen cases filed or to provide evidence to justify future arrest of agitators and leaders.

## **15.06 Platoon Commander**

### **1. The Execution Phase**

a. The platoon commander should be in charge of the manpower pool and will be responsible to the operation commander for the following specific personnel functions.

- 1) Coordination of personnel assigned to the disturbance area.
- 2) Keep the operation commander fully informed as to the number of personnel arriving for assignment and/or the number of personnel available in staging and rest areas for immediate assignment, the number of personnel off duty, and the total number of personnel committed to actual operations.
- 3) Keep accurate records indicating the time personnel are assigned to duty and the time they go off duty.
- 4) Know the off-duty location of all personnel.
- 5) Keep a record of injured or ill personnel.
- 6) Be responsible for security as needed.
- 7) Assignment of lodging information furnished by the supply and transportation officer.

b. Reporting Point Procedure

1) Upon arrival at reporting point or other designated location the platoon commander should be furnished a list of available lodging facilities by the supply and transportation officer.

2) The platoon commander should assign a place of lodging to the squad leader and each of his troopers and a clerk will record where each officer is quartered.

3) Before leaving the reporting point, the squad leader should receive his squad's assignment from the platoon commander to one of the following categories: "On Duty-Action;" "On Duty-Reserve," or "Off Duty." He will be instructed to whom and where to report. The platoon commander will ensure that accurate records are kept as to the status of all tactical squad personnel. Personnel status determination will be based upon the immediate need for personnel, the length of time this particular squad has been on duty when it arrived at the disturbance area, and other pertinent facts.

4) Instructions, assignments, and filing procedures concerning command personnel, platoon leaders, and other Department personnel reporting for duty should be handled much in the same manner, but on an individual basis.

5) A clerk should be assigned the specific task of keeping a running tabulation of the number of personnel arriving for assignment and available for staging areas.

6) Squads and command personnel may be committed and assigned directly to immediate duty in the disturbance area. In this event, the operation commander will advise the platoon commander of the names and locations of personnel assigned.

7) When the operation commander calls for manpower, the squad leader will be notified by the platoon commander as to whom and where to report. The time that these people go on and off duty will be recorded by the platoon commander. The names and duty times of personnel will be forwarded to the public information officer at the conclusion of the operation.

c. The platoon commander shall assign security details as needed.

## **2. Clerical Preparation Phase**

a. The platoon commander will arrange for the assignment of personnel to clerical duty.

b. He will be responsible for the acquisition and transportation of necessary equipment and supplies to carry out the duties of the clerks.

## **3. Responsibilities**

a. He will utilize his own subordinate supervisors as assistants and/or relief.

b. He will report to the field commander at field headquarters.

c. He will provide services as requested by the field commander and the operation commander.

d. He will utilize his own subordinate supervisors as assistants and/or relief and request additional manpower as needed.

## **15.07 Supply and Transportation Officer**

## **1. Preparation Phase**

a. He will familiarize his personnel with the duties they will perform.

b. He will furnish the field commander and operation commander with an inventory of riot equipment and supplies within the region not in the care of the operation commander. He will submit this information on September 1 of each year and more often in the event of significant change.

## **2. Execution Phase**

a. The supply and transportation officer will notify personnel assigned to him where and when to report for duty.

b. He will determine from the field commander or the operation commander the location of the field headquarters and the reporting point. He will cooperate with these two commanders in determining the most suitable location for the staging area and motor pool.

c. He will determine the needs for security for the equipment and supplies for which he is responsible. If additional guards are required, he will request this service from the personnel officer.

d. He will receive and receipt equipment and supplies brought to the scene not immediately assigned to duty. The equipment that will be turned over to the supply and transportation officer will be determined by the operation commander.

e. He may establish a motor pool for vehicles from other regions or districts which are not immediately required for the further transportation of the occupants.

f. Procure additional equipment and supplies as directed by the operation commander.

g. Issue equipment and supplies as needed to troopers reporting for duty. He will obtain a receipt for these items if time permits.

h. Deliver troopers, equipment, supplies, food, and water as needed or requested by the field commander or operation commander.

i. Provide for the delivery of fuel and oil to the motor pool at suitable intervals. He will see to it that each vehicle has sufficient fuel, oil, and a spare tire before it is issued. He will keep proper records on automotive supplies so used.

j. He will provide the platoon commander with available information on housing and meal availability and update this information as required.

## **15.08 Communications Officer**

### **1. Preparation Phase**

a. The communications officer will confer with the operation commander concerning probable needs for communications facilities.



b. He will cooperate with service commanders within the region in planning for alerting or ordering to duty personnel within the region.

c. He will keep himself informed at all times as to the types and quantity of radio equipment available from stock in Austin and/or other field locations and keep the operation commander informed.

## **2. Execution Phase**

a. He will report to the operation commander and make himself available to advise and assist him with communication needs.

b. He will be responsible for providing trained personnel to operate telephone, teletype, or radio communications networks as needed.

c. When additional communications equipment is needed the communications officer will be responsible for the acquisition of such equipment. Any additional equipment obtained from Austin should be channeled through the supply and transportation officer.

d. He will provide the public information officer with available information useful in preparing the narrative appraisal report.

## **15.09 Public Information Officer**

### **1. Preparation Phase**

a. The public information officer will confer with the field commander regarding the development of a plan for disseminating information and in handling news media personnel, in cooperation with local law enforcement agencies who will be involved.

### **2. Execution Phase**

a. Under the direction of the field commander, he will arrange for the release of appropriate information to the news media.

b. Upon arriving at the scene of the disturbance in which the Department is engaged, he should:

1) Report to the field commander and put into operation the plan for handling news media. All news releases are to be coordinated with the local agency.

2) Establish liaison immediately with those officers of the city, county, federal, or other state agencies who will be involved in the public information function for the overall operation.

3) Develop, as quickly as possible, with the news media a clear understanding of rules as to:

a) Inaccessibility of areas deemed, of necessity, to be "off limits."

b) The fact the public statements and releases will be made only by the field commander, operation commander, the public information officer, or Department headquarters in Austin.

c) The desire on the part of the Department to cooperate as fully as possible with the news media in dissemination of public information.

4) He will make arrangements, in conjunction with other agencies involved, for a press room or area in which the news media can assemble or report to receive announcements or releases.

c. He should make arrangements so that, except at times when the field commander or operation commander desire otherwise, contacts with the news media will be handled by the public information officer.

d. The Director of the Department of Public Safety and his staff at headquarters shall be informed of major statements, releases, or announcements made by the field commander and/or operation commander.

e. The Department recognizes the fact that under most circumstances we will act to quell a disturbance at the request of local officials. Since many cities have a well developed public information section, it will be the policy of this Department to coordinate any news releases or contact with the news media with the proper local officials.

f. He will be responsible to the operation commander for the maintenance of a complete record of the disturbance and of actions taken by the Department and other police agencies.

1) He will assist the operation commander in the preparation of a complete report of the operation.

# EMPLOYMENT POLICIES AND PROCEDURES

## 01.15.00.00

### 15.05.00 INTRODUCTION

The success of an organization depends upon the character of its employees. The employees themselves then are often best qualified to interest others in the same career. In order that you may continually assist in the recruiting process the information in this chapter is provided for your reference.

### 15.07.00 CONFIDENTIALITY OF MILITARY DISCHARGE RECORDS

Military discharge records (DD-214 or other) are often collected and reviewed as part of the hiring process. State law requires that this record be confidential. The Department may permit inspection or copying of the record or disclose information contained in the record only in accordance with a court order or in accordance with the following:

**07.05** On request and the presentation of proper identification, the following persons may inspect the military discharge record or obtain from the Department free of charge a copy of the record:

1. the veteran who is the subject of the record;
2. the legal guardian of the veteran;
3. the spouse or a child or parent of the veteran or, if there is no living spouse, child, or parent, the nearest living relative of the veteran;
4. the personal representative of the estate of the veteran;
5. the person named as one of the above in an appropriate power of attorney executed in accordance with Section 490, Chapter XII, Texas Probate Code, or
6. another governmental body.

Department employees that obtain information from military discharge records shall limit the use and disclosure of the information to the purpose for which the information was obtained.

### 15.10.00 APPOINTMENT POLICIES

**10.01 General Employment Policy.** It is the policy of the Department of Public Safety to make all appointments on the basis of merit and in the best interest of the Department in accordance with the rules and regulations of the Public Safety Commission and applicable statutes. Applicants must be of good moral character and habits. A conviction for any felony disqualifies. A probated or suspended sentence shall be considered a conviction. Applicants will be investigated as to the truth of the statements made in their application and oral interview, and any misstatement of fact will be sufficient grounds for rejection of the applicant. All persons, upon filing an application for employment, thereby consent to an investigation of their character, habits, previous employment, and suitability for the position. Applications for all positions will be considered irrespective of sex, race, color, religion, national origin, age, or disability. Applicants for trooper-trainee and certain other selected positions are required to execute an Assumption of Risks, Covenant Not to

Sue, and Authorization for Release of Personal Information Waiver form, thereby assuming risks and liabilities of agility testing and consenting to an investigation of their records.

**10.02 Nepotism.** Recognizing that the employment of close relatives may lead to misunderstandings and jealousies that work to the disadvantage of both the employee and the Texas Department of Public Safety, the following policy is established to prevent these embarrassing situations from arising. The policy set out below includes full-time, part-time, temporary, and summertime employees.

It is the policy of the Texas Department of Public Safety to permit the employment of relatives of employees subject to the following conditions: (1) No employee may serve on a selection board that interviews a close relative; (2) no employee may work under the immediate or in-line supervision of a close relative; (3) two or more employees who are close relatives may not work in the same unit (bureau, special section, service, etc.) in the same designated headquarters; and (4) the employment of close relatives must be approved by the Assistant Director or Deputy Director prior to the date of employment. When close relationships develop through the marriage of two employees, the same provisions apply as above unless otherwise approved by the appropriate Deputy Director. When the interest of the Department would be better served, the appropriate Deputy Director may waive these provisions. "Close relative" means: spouses; those individuals related by blood, adoption, or marriage who are living in the same household; siblings (whole, half-blooded, adopted, or step); and parent child relationships by blood, adoption or marriage (step or in-law).

**10.03 Screening of Applicants on the Basis of Traffic and Criminal Records.**

1. When it is determined that an applicant fits into any one of the following categories, the applicant will not be eligible to be considered for employment with the Department, or if the applicant has been offered a position, the applicant will be rejected at once:

- a. A conviction for a felony.
- b. An entering of an order of deferred adjudication for a felony, until five years after court supervision ceased and the case was dismissed.
- c. A conviction of driving while intoxicated during the five-year period immediately prior to the date of application.
- d. A finding by a court of competent jurisdiction that the applicant was a delinquent child during the five-year period immediately prior to the date of application. If the applicant's record in the proceeding is ordered sealed, the incident should be disregarded and treated as though it did not exist.
- e. The applicant's driver license has been suspended, including a probated suspension, by the Department during the last three years as a habitual violator.
- f. There may be additional disqualifiers for specific positions.
- g. The applicant's driver license has been suspended for refusal to submit to a chemical test within the last ten years.

2. In addition to the above disqualifiers, an applicant applying for a position that requires access to TLETS/TCIC/CCH will not be eligible to be considered for employment with the Department, or if the applicant has been offered a position, the applicant will be rejected at once, if it is determined that an applicant fits into any one of the following categories:

- a. A conviction for an offense of the grade of felony or Class A misdemeanor.

b. An entering of an order of deferred adjudication for any criminal offense of the grade of felony or Class A misdemeanor.

c. An entering of an order of deferred adjudication for any criminal offense of the grade of Class B misdemeanor within the last ten years.

d. A conviction of an offense of the grade of a Class B misdemeanor within the last ten years.

e. A conviction for a family violence offense.

f. Currently being under indictment for any criminal offense.

3. For purposes of this section, a person is convicted of a crime if the court enters an adjudication of guilt regardless of whether:

a. the sentence is subsequently probated;

b. the case against the person is dismissed and the person is released from any penalties and disabilities resulting from the offense; or

c. the person is pardoned, unless the pardon is for actual innocence.

**10.04 Individual Evaluation of Applicant's Suitability.** When an applicant's record shows any of the following, additional information will be secured from the applicant or other sources and an individual evaluation will be made of the applicant's suitability:

1. An arrest and/or indictment without conviction for a felony offense. If recent, the applicant will generally be disqualified unless there are strong extenuating circumstances such as a mistake having been made, withdrawal of charges by arresting agency, etc.

2. An arrest without conviction for driving while intoxicated. If recent, the applicant will generally be disqualified unless there are strong extenuating circumstances similar to 1 above.

3. A conviction for driving while license suspended. (Generally, this should cause rejection, but circumstances can be considered.)

4. Any suspension of the applicant's driver's license.

a. Consider basis of action. (Some actions under SR might not be significant.)

b. Consider recency of case.

c. Consider gravity of case.

d. Consider requirements of the position being sought.

5. A traffic record or other condition of such a nature that the Department has started action or is about to start action to suspend, cancel, or revoke the applicant's license.

6. Applicants who do not have a valid Texas driver's license will be individually evaluated according to the requirements of the position being sought.

7. A pattern of a high number of entries of accidents or arrests, at least two per year, in the applicant's traffic record over any three-year period and extending up into the past two years, but who was not suspended during the three-year period.

a. Consider recency of last accident as well as total number.

b. Consider cases in which applicant was charged or in which other driver was not charged.

c. Consider conditions and circumstances including occupation - amount of exposure to arrests and accidents.

8. An arrest or conviction for a Class A or Class B misdemeanor.

a. Consider recency.

b. Consider nature of offense.

c. Consider conditions.

9. Any military disciplinary action.

10. Past use of any illegal substance(s) may be cause for rejection.

11. **Criminal Records - Nondisclosure Orders.** When researching criminal records on applicants, investigators may come across records that have been expunged or had an order of nondisclosure entered. The following rules apply to those records:

**Deferred Adjudication and Nondisclosure Orders.** Deferred adjudication may be granted in instances where the defendant pleads guilty or no contest and there is sufficient evidence to find the defendant guilty but the court delays rendering a verdict for a specific time period. If the defendant complies with the court's requirements, the court dismisses the complaint and there is no conviction. This does not mean the arrest was dismissed. The fact that the defendant was arrested may be used if needed. On September 1, 2003, a law was enacted that changed the rules related to the release of information related to deferred adjudication probations and now allows Nondisclosure Orders to be entered in some cases. This order prohibits law enforcement from making public disclosure of information related to the case, but does not require the destruction of the records or prohibit the use of the records by the criminal justice agency for a criminal justice purpose, including agency hiring or employment decisions. The law also allows the person with the deferred adjudication to deny the existence of the arrest or probation, so if the applicant does not originally provide information on an arrest or probation, so if the applicant does not originally provide information on an arrest that the investigator later finds was subject to a Nondisclosure Order, the failure of the applicant to disclose the arrest should not be held against the applicant. However, the investigator's conclusion about the bearing of the records on the fitness of the applicant for employment should be included in the background investigation. Also, a Nondisclosure Order will not keep the Department from using any probation or court-ordered supervision as a disqualifier in accordance with our normal rules.

It is important to note that while the Department is not prohibited from using these records in the hiring process, there should be no disclosure of the records to persons outside the Department by the investigator or other persons involved in the hiring process. In order to avoid accidental disclosure of these records, these

arrests should be noted in Nondisclosure Order Notice, HR-38, which should be included with the background investigation report.

**10.05 General Guides for Evaluation of Applicant.** Traffic and criminal record checks on all entry level law enforcement positions will be conducted in accordance with the provisions of the Recruit Manual. These record checks will be conducted after the interview board on all non-commissioned applications with the exception of communications applicants, which will be conducted prior to the interview. Also, traffic records will be checked as part of the initial screening process on applicants for positions that require a valid drivers license. For Headquarters applicants the checks will be done by Human Resources, except that if a background investigation is being conducted the checks can be done by the investigator. For field vacancies, the supervisor with the vacancy will be responsible for causing the checks to be done.

1. On any item in Section 10.03 the personnel officer, supervisor or investigator who finds such record will initiate appropriate action to reject the applicant.

2. In making decisions in an individual evaluation of an applicant's traffic and criminal record, the personnel officer and all others making such decisions will interpret these records in terms of what they reveal about the moral character, habits, attitudes, and general responsibility of the applicant.

3. Any pattern of behavior that in sum total reflects less than good moral character, or reflects bad habits, dishonesty, untruthfulness, antisocial attitudes, or general irresponsibility will disqualify the applicant.

4. With certain type entries in the applicant's records, an applicant may be accepted if the entries are not of major gravity and when there is evidence that the applicant has reformed. Such items are contained in Section 10.04.

5. The responsibility for making final decisions on the cases set out in section 10.04 will be made by the supervisor with the vacancy with the approval of the major division chief or special section head through the chain of command. The Director will make the decision on disqualifications under section 10.04 on all entry level law enforcement applicants.

**10.06 New Employee Employment Investigations.** All positions are classified as security-sensitive. All positions shall require a full background investigation that will be conducted by a commissioned peace officer. Security sensitive positions are those positions in which the employee will have access to employee information or employee databases, criminal history information on either employees, citizens or contract employees or work in an area where this type of information is readily accessible, has access to any Department financial records or transactions, or has access to any DPS buildings.

The background investigation on non-commissioned employees, except communication, Commercial Vehicle Enforcement Service Inspector/Investigator, and Texas Highway Patrol Customer Service positions, will be conducted after the interview board. However, a telephone reference check can be conducted prior to the interview. All background investigations must be conducted prior to new hire. The traffic and criminal history check will be conducted prior to approving an applicant to start employment prior to the completion of the investigation. The background investigation on applicants for communication positions will be conducted prior to the interview board. The background investigation on applicants for Commercial Vehicle Enforcement Service Inspector/Investigator and Texas Highway Patrol Customer Service positions may be conducted before or after the interview at the discretion of the Division Head or their designee. If the background investigation is completed after the interview, the selected applicant(s) will be offered the position(s) on the condition they pass the background investigation and pre-employment controlled substance test.

The reference check should normally be done prior to the interview, but at a minimum will be completed prior to start of employment.

The completed employment reference check or background investigation shall be included in the personnel file.

Background investigation procedures for trooper-trainee applicants will be governed by the policy in the Recruit Manual.

#### **10.07 Employment Investigations on Current Department Employees.**

1. **Non-commissioned employees** - A background investigation shall be completed on all non-commissioned employees promoting or transferring to a security-sensitive position from a non-security-sensitive position, if one is not already on file.

2. **Commissioned employees** - Promotional assessment may be conducted on all applicants selected to appear before the interview board as part of the Law Enforcement Promotional System. The appropriate Division Chief will designate which positions will require the promotional assessment.

**10.08 Background Investigation (Security-Sensitive Positions).** The procedures for conducting Background Investigations are outlined below. The listed items are a minimum for this category of investigation and may include additional information if deemed appropriate by the investigator.

1. Review all applicable paperwork for inconsistencies, inaccuracies and false statements. Appropriate paperwork is the Personal History Statement ([HR-9NC](#)), State of Texas Employment Application (available through the applicant tracking system), complete traffic history record, complete criminal history record, inquiries into DPS internal files, inquiries into local law enforcement files, papers and school transcripts.

2. Verify provided information such as DL number, Social Security number and college credits where applicable.

3. Conduct interviews with past and present employers and supervisors. The interview should include employment date verification, job titles, duties and responsibilities. Pertinent questions regarding the person's work habits, dependability, performance, interpersonal skills and eligibility for rehire are appropriate.

4. Conduct interview with applicant in person. Questions regarding any statement or apparent inconsistencies may be cleared here.

5. Conduct interviews with listed references to establish consistency in character attributes.

6. Review personnel files from any prior employers if obtainable. The focus is to verify information provided and review any performance evaluations and reason for termination.

7. Conduct interviews with neighbors to establish veracity and character of applicant.

8. Write a report of findings focusing on work history. The report is not a recommendation except to the extent that certain disqualifiers were found during the investigation. The following areas are outlined and clarified: Work history, Criminal/Driving History, Illegal Substance Abuse, Military History, Educational History, Reputation, and a conclusion of investigative findings, both positive and negative.

#### **10.09 Employment Reference Checks**

1. The HR Background Investigator will conduct the reference check which will include, where applicable, an inquiry on the following:



a. work history for the past three years, including period of employment, duties performed, performance evaluations and reason for termination;

b. educational requirements, through the acquisition of a copy of college transcript or other suitable records showing completion of trade school or technical training (a copy of a high school diploma or GED certificate is not required); and

c. vocational licensing or certification.

2. Verify provided information and review all applicable paperwork for inconsistencies, inaccuracies and false statements.

**10.10 Promotional Assessments.** These assessments shall meet the listed criteria at a minimum, but additional criteria specific to the position being sought, e.g. Pilot, may be added. The applicant as the guiding resource to the assessor shall complete the [HR-9NC](#) if not already on file in Human Resources. The applicant may be requested to update specific areas of the [HR-9NC](#) as deemed necessary by the hiring entity. The completion of the assessment should be assigned to a supervisor who may be assisted by a line employee and shall document the assessment through memorandum.

1. Determine if the employee has been subject to the appropriate reference check, background investigation or promotional assessment in the past; and if so, review the information.

2. Review and provide an overview of the Performance Evaluations for the immediate three years.

3. Assessment: This assessment shall include interviews with the applicant's previous supervisors, peers, co-workers, and non-Departmental personnel with whom the applicant works to determine the following:

a. The work ethic of the applicant to include his/her ability and energy to perform without direction.

b. The applicants focus on the objectives of the Service/Bureau/Division to which he/she desires to promote to include his/her knowledge and experience level.

c. Interpersonal skills.

d. Review of past correspondence to evaluate writing skills and accuracy.

e. Leadership traits exhibited such as the ability to exercise position influence to undertake collective action. Past training and assignments that support development as a leader.

f. Personal Character.

1) Ability to keep commitments and complete assignments.

2) Reputation for honesty, straightforward discussions, courtesy, professional bearing, respect for people of diverse backgrounds, and overall integrity.

3) Dependability.

g. Problem solving, analysis, and decision-making skills.

h. Deportment.

4. An interview of the applicant shall be conducted. During the interview, the applicant should be given the opportunity to rebut any negative findings developed during the assessment.

5. An objective summary of findings that includes information from the applicant's current chain-of-command supporting the applicant's promotion. The assessor should make no recommendation. The report should stand-alone and be made available to all members of the Interview Board.

**10.11 Citizenship.** All applicants for positions in the Department shall be citizens of the United States of America. Due to the enactment of "The Immigration Reform and Control Act of 1986," citizenship must be confirmed by the viewing of an appropriate document such as a passport or original birth certificate. The document must be copied and an Immigration and Naturalization Services Form I-9 must be completed on each person that is employed and the copy of the document must be attached to the I-9. If the applicant is a naturalized citizen, the original certificate of naturalization must be viewed and copied and attached to the completed I-9 form.

Employers are permitted to copy these documents in order to meet the requirements of the Act. These documents must be forwarded to the Human Resources Bureau along with other sign-up papers where they will be maintained for a period of not less than three (3) years or for one (1) year after separation, whichever is later. In instances where all efforts have been made to obtain the required documents and have proven futile, certain other documents may be accepted subject to the discretion of the Human Resources Director.

**10.12 Age.** Applicants must be within the age range as set forth in the job requirements; however, no person under 17 years of age shall be employed.

**10.13 Applicant Testing.** Basic skill testing will be conducted when such testing has been reviewed by the director of Human Resources and determined to be appropriate and job related for the position vacancy. In no instance will such tests be administered without proper approval. Testing will not normally be administered for unskilled labor, trades, and professional positions. The personality test will be administered only to applicants for law enforcement positions, the position of police communications operator, and certain technical or administrative positions.

**10.14 Applicant Credit Investigations.** To be in compliance with Public Law 91-508 passed by the 91st U.S. Congress, employees conducting background investigations will not request credit information directly from consumer reporting services. At such time as it is determined that an investigation will be conducted on an applicant and a report from a consumer reporting service is desired in connection with that investigation, the investigator should request the applicant to obtain said report from the consumer reporting service involved. The applicant should be instructed to either deliver the report or have it mailed to the investigator.

**10.15 Fingerprinting.** All applicants who are appointed to positions in the Department must be fingerprinted and cleared through the Crime Records Service. The fingerprints of employees and contractors will be maintained by DPS and within the FBI fingerprint repositories. DPS will maintain a subscription to events associated with those fingerprints through the DPS Clearinghouse and the FBI rap back program. These subscriptions will ensure the Department is made aware of any criminal events (arrests, dispositions, and wanted notices) both in Texas and nationally, that are reported to those two fingerprint repositories. Upon separation from DPS service, the Department will automatically terminate its subscription to that individual. The individual's fingerprints will remain in the DPS and FBI repositories to facilitate continued licensing in other like vocations, professions, or licenses that require fingerprint-based criminal record checks and monitoring – e.g. teachers, nurses, peace officers, private security licensees, concealed handgun licensees, etc.

At the time an employee or contractor notifies the Department that they intend to separate from DPS service, the employee or contractor may request that their employment related fingerprints be removed from the DPS and/or FBI fingerprint repositories. If the individual is subscribed to by other agencies or entities due to licensure or employment, waivers from those agencies may be required before fingerprint removal from the repositories. Upon receipt of the request for removal of fingerprints, Human Resources personnel will notify the individual if other agencies or entities also subscribe to the individual and whether waivers from those subscribers will be necessary before removal of the

individual's fingerprints from the repositories. Any risk associated with revocation of other licensure or costs associated with reprinting for other employment or licensure directly related to the requested fingerprint removal from the systems will fall on the individual not DPS.

**10.16 Time for Appointment.** Applicants may be appointed for employment at any time during the month. However, when the first day of the calendar month falls on Saturday or Sunday and an employee reports for duty on the first working day of the month, the [HR-25](#) shall reflect appointment effective the first day of the month.

When an employee resigns on the last working day of the month, the [HR-25](#) may reflect the resignation effective the last day of the month when the last day of the calendar month falls on Saturday or Sunday.

**10.17 Bonding.** Every employee of the Department will be bonded by an individual or blanket faithful performance bond.

**10.18 Completion of Forms Prior to Appointment.** When processing an applicant for employment into the Department the supervisory chain of command will submit the items listed in section 10.16 through the proper channels for transmission to the Human Resources Bureau. (Exception - applicants to be employed in the Austin headquarters complex will be processed by the Human Resources Bureau. In such instances it will be expected of the function concerned to submit a [HR-25](#) and a copy of the background investigation to the Human Resources Bureau. Such items as testing, physical examination, and sign-up papers will be handled by the Human Resources Bureau.)

Upon receipt of the information, the Human Resources Bureau will review and process the data, set up the Department's personnel file and forward an approved copy of [HR-25](#) to the supervisory chain of command.

#### **10.19 Affidavits and Employment Documents**

1. The following forms must be completed before any applicant is placed on the payroll:

- a. Completed State of Texas Application for Employment
- b. Personal History Statement and Promotional Questionnaire form ([HR-9NC](#)) - (Required when job offer is conditional on results of background investigation.)
- c. Condition For Employment (when required)
- d. Assumption of Risk Waiver ([HR-99B](#)) (when required)
- e. Investigation Report (when required)
- f. Physical Examination Report, [HR-7](#) (when required)
- g. Fingerprint cards
- h. Group Insurance document
- i. A copy of the applicant's birth certificate, naturalization certificate or other appropriate document and the Immigration and Naturalization Service Form I-9
- j. Personnel Action Form ([HR-25](#)) completed in triplicate. (See Chapter 7 for salary rates of classified positions.)

- k. Military History Form DD-214 (where required)
- l. Withholding certificate
- m. Oath of Office ([HR-19](#))
- n. Employees longevity and vacation data
- o. Personal Data - form ERS-3.01
- p. Receipt - form 22-1 (House Bills relating to political aid, etc.) [HR-5](#)
- q. Address information is collected on the [HR-84](#)
- r. DPS Personal Data Card ([HR-94](#))
- s. Work sheet for employee record card (HR-21A) (where required)
- t. Employment Funded by Federal Grant form (when required)
- u. Employee Background and Skills Profile ([HR-84](#))
- v. Certificate of Compliance with Federal Firearms Law

2. **New Employee Orientation.** Supervisor Check-Off List ([HR-167](#)) shall be signed and returned to the Human Resources Bureau as soon as possible after appointment.

## **15.12.00 VETERAN'S EMPLOYMENT PREFERENCE**

### **12.01 Qualifications and Definitions**

1. A veteran qualifies for a veteran's employment preference if the veteran:

- a. served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability;
- b. was honorably discharged from the military service; and
- c. is competent.

2. A veteran's surviving spouse who has not remarried or an orphan of a veteran qualifies for a veteran's employment preference if:

- a. the veteran was killed while on active duty;
- b. the veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law; and
- c. the spouse or orphan is competent.

3. "Veteran" means an individual who served in the army, navy, air force, marine corps, or coast guard of the United States or in an auxiliary service of one of those branches of the armed forces.

4. "Established service-connected disability" means a disability that has been or may be established by official records.

5. An individual who qualifies for a veteran's employment preference is entitled to a preference in employment with the Department over other applicants for the same position who do not have a greater qualification. An individual entitled to a service-connected disability preference for employment in a position for which a competitive examination is not held is entitled to preference over all other applicants for the same position without a service-connected disability who do not have a greater qualification.

6. Where the Department required a competitive examination for promoting employees, an individual entitled to a veteran's employment preference that otherwise is qualified for that position and who has received at least the minimum required score for the test is entitled to have a service credit of 10 points added to the test score. An individual who has an established service-connected disability is entitled to have a service credit of five additional points added to the individual's test score.

7. An individual entitled to a hiring preference under this section is also entitled to a preference in retaining employment if the Department reduces its workforce. The preference granted under this section applies only to the extent that a reduction in workforce involves other employees of a similar type or classification.

**12.02 Complaint Regarding Veteran's Employment Preference Decision.** The Public Safety Commission of the Texas Department of Public Safety has adopted a grievance procedure providing for prompt and equitable resolution of complaints alleging any action in violation of state provisions for veteran's preference. An individual entitled to a veteran's employment preference under this chapter who is aggrieved by an employment decision related to veteran's preference may appeal the decision by filing a written complaint.

1. Complaints regarding veteran's preference should be addressed to: Human Resources Director, Human Resources Bureau, 5805 North Lamar Blvd., P.O. Box 4087, Austin, TX 78773-0251, who has been designated by the Public Safety Commission to receive complaints and coordinate compliance efforts.

2. The written complaint needs to contain the name and mailing address of the person filing the complaint and briefly describe the alleged violation. A complaint should be filed with the Human Resources Director within thirty (30) business days after the complainant receives notice of the employment decision that is the basis of the alleged violation.

3. Upon receipt of a complaint, an informal but thorough investigation shall be conducted by the Human Resources Director. The initial investigation shall be completed within five (5) business days after the complaint is received. The Human Resources Director, in consultation with the Chief of Administration, the Chief of the Division with the position/vacancy at issue and the Director or his designee, shall make a determination as to the validity of the complaint and any proposed resolution. The General Counsel shall assist as the need arises.

4. The Human Resources Director shall respond in writing to the complaint not later than fifteen (15) business days after the date the Department receives the complaint. The written response shall contain the result of the initial investigation, a description of the proposed resolution, if any, a notice that the complainant can request consideration of the case by the Public Safety Commission at the next available public meeting and instructions on how to request the consideration before the Commission. The request for consideration should be made by the complainant within fifteen (15) business days of the date the response is mailed to the complainant.

5. All veteran's preference complaints shall be reported to the Commission and those requesting consideration will be placed on the agenda of the next available meeting as personnel issues. The Commission may render a different

employment decision than the decision that is the subject of the complaint if the Commission determines that the veteran's preference was not properly applied.

6. Those individuals requesting consideration by the Commission will receive written notice of the Commission's decision.

### **15.13.00 FORMER FOSTER CHILD'S EMPLOYMENT PREFERENCE**

**13.01 Qualifications.** An individual who was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday and is currently 25 years of age or younger is entitled to a preference in employment with a state agency over other applicants for the same position who do not have a greater qualification.

**13.02 Complaint Regarding Former Foster Child's Employment Preference Decision.** The Public Safety Commission of the Texas Department of Public Safety has adopted a grievance procedure providing for prompt and equitable resolution of complaints alleging any action in violation of state provisions for former foster child's preference. An individual entitled to a former foster child's employment preference under this chapter who is aggrieved by an employment decision related to former foster child's preference may appeal the decision by filing a written complaint.

1. Complaints regarding former foster child's preference should be addressed to: Human Resources Director, Human Resources, 5805 North Lamar Blvd., P.O. Box 4087, Austin, TX 78773-0251, who has been designated by the Public Safety Commission to receive complaints and coordinate compliance efforts.

2. The written complaint needs to contain the name and mailing address of the person filing the complaint and briefly describe the alleged violation. A complaint should be filed with the Human Resources Director within thirty (30) business days after the complainant receives notice of the employment decision that is the basis of the alleged violation.

3. Upon receipt of a complaint, an informal but thorough investigation shall be conducted by the Human Resources Director. The initial investigation shall be completed within five (5) business days after the complaint is received. The Human Resources Director, in consultation with the Chief Human Resource Officer, Assistant Director of Administration, the Assistant Director of the Division with the position vacancy at issue and the Director or his designee, shall make a determination as to the validity of the complaint and any proposed resolution. The General Counsel shall assist as the need arises.

4. The Human Resources Director shall respond in writing to the complaint not later than fifteen (15) business days after the date the Department receives the complaint. The written response shall contain the result of the initial investigation, a description of the proposed resolution, if any, a notice that the complainant can request consideration of the case by the Public Safety Commission at the next available public meeting and instructions on how to request the consideration before the Commission. The request for consideration should be made by the complainant within fifteen (15) business days of the date the response is mailed to the complainant.

5. All former foster child's preference complaints shall be reported to the Commission and those requesting consideration will be placed on the agenda of the next available meeting as personnel issues. The Commission may render a different employment decision than the decision that is the subject of the complaint, if the Commission determines that the foster child's preference was not properly applied.

6. Those individuals requesting consideration by the Commission will receive written notice of the Commission's decision.

## 15.15.00 BASIC REQUIREMENTS FOR EMPLOYMENT AS TROOPER-TRAINEE

### 15.01 Trooper-Trainee Application Requirements

1. Applicants must be at least 20 years of age to apply and must be 21 years of age at the time they graduate from the academy class and are promoted to the position of Probationary Trooper.

2. Applicants must have a minimum of 60 college earned hours from a regional accredited college or university. Required semester hours may be substituted for by prior law enforcement, or military experience at the following ratios:

<b>Earned Hours</b>		<b>Law Enforcement/ Military</b>	
0-15	plus	24 months or more	or
15-30	plus	18 months or more	or
31-45	plus	12 months or more	or
46-60	plus	6 months or more	or

Applicants that currently hold a valid Texas Peace Officer license or who were honorably discharged from the military after at least 24 months who are substituting law enforcement experience or military, experience for earned college hours must at a minimum, have obtained a passing score on the general education development (GED) test indicating a high school graduation level or earned a home school diploma from a secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home or have graduated from a United States high school or an accredited secondary school equivalent to that of a United States high school.

a. Military experience is defined as having served active duty time in the Armed Forces of the United States, including active duty service in any branch of the Reserves or National Guard.

b. Law Enforcement Officer experience is defined as time spent as a full-time paid employee performing Police duties in a position with a governmental entity, which requires a license as a Texas Peace Officer or its equivalent in another state.

c. Federal Law Enforcement experience with a Federal Agency given Special Investigator designation by the Texas Code of Criminal Procedure Article 2.122 is acceptable as law enforcement experience.

d. All military and law enforcement experience substituted for college earned semester hours must be verifiable. The Department may require a letter from the applicant's employer to verify their law enforcement experience, or military commander to verify their military active duty service and date of discharge if a DD-214 or NGB-22 is not available.

e. Members of the reserve components of the armed forces of the United States and National Guard personnel are eligible to use their military time in lieu of college to apply. Reserve or National Guard personnel who have accumulated 730 retirement points or have 6 years' service in the Reserve or National Guard are eligible to apply. Retirement points or service will need to be verified through the individual's Retirement Points Accounting Management (RPAM) report, NGB Form 23, Retirement Points Accounting System (RPAS) or AHRC Form 249-2-E.

3. Applicant must have a valid Texas Driver's License; or be able to obtain a Texas Driver's License within 30-days of employment.

4. Applicants must be a citizen of the United States.

5. Applicants must make application by the method and forms prescribed or furnished by the Department.

6. Applicants with military service must submit a certified copy of their most current military history form (DD-214 Member-4 Copy, or NGB-22) with the required forms and documents once they have been approved through the pre-screen process. Military service will be reviewed using the following guidelines:

a. Applicants who possess an honorable discharge will be eligible for further consideration.

b. Applicants who possess a general discharge under honorable conditions should be considered; however, all disciplinary action must be thoroughly investigated and an evaluation of military performance must be made in order to determine if the applicant is eligible for further consideration.

c. Any applicant who possesses a dishonorable discharge or bad conduct discharge shall be rejected and applicant processing discontinued.

d. Applicants whose discharge from military service was for ineptitude, unsuitability, undesirability, or like causes will be rejected.

e. After a conditional job offer has been made, applicants with medical discharges from military service must furnish a written explanation which is satisfactory to this Department.

7. Applicants must submit an application electronically as prescribed by the Department along with other required forms and documents before being allowed to take the physical readiness test or the written examination.

8. Applicants must complete any tests or forms required prior to probationary appointment.

9. All applicants that apply for a position as a commissioned officer with the Department must pass the physical readiness test, written exams, polygraph exam, background investigation, assessment board, drug screen, psychological interview, vision, hearing and physical examination prior to probationary appointment. The physical readiness test will be conducted by Department of Public Safety personnel. The physical examination and psychological interview will be made by a physician and psychologist designated by the Department after a conditional job offer has been made.

10. Applicant must be of good moral character and habits. An investigation will be made regarding character, habits, previous employment, or other matters necessary to satisfactorily establish good moral character, habits, honesty, truth, and veracity. Credit history and financial condition of the applicant will be reviewed. Credit history will not be sole basis for disqualification.

Applicants must answer truthfully and fully all questions asked of them. Any misrepresentation or omission of any material fact on the application, other department forms, during the background investigation, or in any phase of the selection process may disqualify the applicant. If an investigation discloses a willful misrepresentation, omission or falsification, the application will be rejected and the applicant will be permanently disqualified from applying in the future.

11. Any of the following may disqualify the applicant:

a. Traffic and Criminal Records Disqualifiers

1) Being prohibited by state or federal law from operating a motor vehicle;

2) Having been convicted of three (3) or more traffic violations, or a conviction of failing to maintain financial responsibility within the last 12 months, will disqualify the applicant for three (3) years from the date of the last traffic violation or offense conviction;



3) Having been convicted of six (6) or more traffic violations, or a conviction of failing to maintain financial responsibility within the last 24 months, will disqualify the applicant for 3 years from the date of the last traffic violation conviction;

4) The applicant's driver license has been suspended for refusal to submit to a chemical test within the last ten years;

5) Currently on probation for any traffic offense or having a suspended driver license, applicant can not apply within 3 years of the date the probation was completed or date the suspension was lifted;

6) Currently delinquent or having been delinquent in child support payments within the last 5 years as determined by a court or the Texas Attorney General's Office;

7) Having been or currently on court-ordered supervision or probation for any offense of the grade of felony or Class A misdemeanor;

8) Having been convicted of any offense of the grade of felony or Class A misdemeanor;

9) Having been on or currently on court-ordered supervision or probation for any criminal offense of the grade of Class B misdemeanor within the last ten years;

10) Having been convicted of an offense of the grade of a Class B misdemeanor within the last ten years;

11) Having been convicted of a family violence offense;

12) Currently being under indictment or criminal investigation;

13) Being prohibited by state or federal law from possessing firearms or ammunition;

14) Having committed theft(s) while in a position of trust or in a pattern that shows habitual theft will permanently disqualify the applicant;

b. Illegal Drug Usage:

1) Having a history of illegal drug use as an adult that tends to establish a pattern. Illegal drug usage as a juvenile will not be a reason to reject an applicant, if no establish pattern continues as an adult;

a) Applicants who have an established pattern of illegal use of any class of controlled substance, including marijuana as defined in the Texas Health & Safety Code will be rejected. This includes prescription drugs not prescribed to the applicant for their use, anabolic steroids, and designer type drugs. Evaluation will be based upon; how the drug was obtained, the number and frequency of use, the intended purpose, type of drug, and from whom the drug was obtained.

b) The suitability of an applicant, who has illegally used any class of a controlled substance that does not establish a pattern of abuse, including marijuana will be evaluated on the basis of circumstance of involvement, use, length of use, and quantity of use.

c) Applicants who have established a pattern of selling, manufacturing, distributing or cultivating illegal drugs, including marijuana will be rejected.

c. Other Disqualifiers:

1) Having committed sufficient criminal activities to establish a pattern of disregard for the law will permanently disqualify the applicant;

2) Having committed any **detected or undetected** crime of a serious or aggravated nature including, but not limited to: criminal homicide, kidnapping, sexual assault, sexual assault of a child, indecency with a child, incest, felony assault will permanently disqualify the applicant;

3) Commission of a **detected or undetected** serious crime as an adult, which constitutes a felony, domestic violence, Class A misdemeanor, a misdemeanor involving moral turpitude, repeated misdemeanor offenses, or a crime involving violence that occurred within 10 years prior to the submission of the application will disqualify the applicant;

4) Any **undetected** crimes occurring beyond the ten year period will be subject to further review.

5) Having been involved with seditious movements, terrorist activities, or any efforts to violently overthrow the United States government will permanently disqualify the applicant;

6) Disciplinary action in prior employment, the military or educational institutions will be a basis for further evaluation. Applicant cannot reapply within 1 year from the date they were disqualified.

7) Other indications of criminal history will be individually evaluated.

8) If applicant is not recommended for an assessment board interview, or not recommended for a conditional job offer, the applicant will not be eligible to reapply for 1 year from the not recommended date. After three (3) application processes being not recommended, the applicant cannot reapply for ten (10) years from the last date not recommended.

12. In all instances where a question may arise as to whether an applicant is disqualified or meets the above application requirements, the Director or his designee shall make the final determination as to whether an applicant is disqualified or meets the requirements.

**15.02 Medical Physical Standards for Trooper-Trainee/Reinstatement.** Applicants must conform to the following medical physical standards:

**1. Vision.**

a. Distant visual acuity of any degree that does not correct with spectacle lenses to an least one of the following:

- 1) 20/40 in one eye and 20/70 in the other eye
- 2) 20/30 in one eye and 20/400 in the other eye
- 3) 20/20 in one eye and 20/400 in the other eye

b. Current near visual acuity of any degree that does not correct to 20/40 in the better eye

c. Current refractive error (hyperopia, myopia, astigmatism in excess of -8.00 or +8.00 diopters spherical equivalent or astigmatism in excess of 3.00 diopters.

(The above distant and near visual acuity are standards set forth in the Department of Defense Instructions 6130.03 Medical Standard for Appointment, Enlistment, or Induction in the Military Services page 14, section 5 titled Vision, revision date September 13, 2011.)

d. **Field of Vision.** Horizontal 60-85 degrees temporally from a central fixation point.

e. **Other Visual Factors.** Applicants will be rejected for color deficiencies as determined by Department of Public Safety testing, chronic inflammation of the eye or adnexa, or permanent abnormalities of either eye (including cataracts, corneal opacities, paralysis of ocular muscles, etc.). Loss of either eye will reject.

2. **Ears.** Hearing with or without a hearing aid for each ear is required and must meet the standards listed below:

Audiogram:

Left/Right	
500	Must be 25 dB or less in each ear
1000	Must be 30 dB or less in each ear
2000	Must be 35 dB or less in each ear
3000	Must be 40 dB or less in each ear

3. **Heart.** The action of the heart must be uniform, free, and steady, its rhythm regular, and the heart and vascular system free from organic changes. Organic heart disease will disqualify.

4. **Circulation.** Blood pressure—systolic maximum, 139; diastolic, 89; pulse pressure, 45. A slight variation from these figures may be permissible subject to the discretion of the examining physician. Hypertension that is controlled by medication to within the limits set forth herein is acceptable. The applicant must furnish a medical statement describing the medication and any warnings or cautions for proper safeguards against physical conditioning techniques with a statement furnished by a physician. It is also very important that the training academy and DPS physical training officer know when a trainee is taking medication. A marked tendency to the formation of varicose veins must reject.

5. **Respiration.** Must be full, easy, and regular; the respiratory murmur must be clear and distinct over both lungs, and no disease of the respiratory organs may be present.

6. **Hernia.** An actual hernia in any form must be evaluated and not prevent or restrict the applicant from performing the required testing, training and job duties.

7. **Genito-Urinary.** Applicants must be free from stricture or incontinence of urine. Kidneys or kidney must be healthy and the urine normal.

8. All limbs and extremities must be functional to allow the applicant to perform the required testing, training and job duties. Must be free from infections of the joints, sprains, stiffness, or other conditions, which prevents or restricts the applicant from performing the required testing, training and job duties.

9. An applicant who has a history of epilepsy, blackouts, fainting spells, seizures, or convulsions must be seizure free for two (2) years without taking medication.

10. Applicants must be mentally alert and sound of mind and must be possessed of initiative, intelligence, good judgment, good address, and neatness of appearance.

11. Applicants for a position with the Department must pass the physical readiness testing which is set out by the Department.

12. Applicants who have a history of diabetes will be considered on a case-by-case basis.

13. In all instances where a question may arise as to whether an applicant meets the medical-physical standards, the Director or his designee shall make the final determination as to whether an applicant is physically qualified for acceptance as a trooper.

#### **15.20.00 ENTRANCE EXAMINATION FOR TROOPER-TRAINEES**

**20.01** Entrance testing for the positions of trooper-trainees will be administered in accordance with the standard operating procedures approved by the Assistant Director of Education, Training and Research or his designee.

**20.02** Examinations will be administered in each regional, district or sub-district Highway Patrol office as needed for the appropriate processing of applicants.

**20.03** All officers utilized in administering testing shall have received training from Education, Training and Research in Austin.

**20.04** The entrance examinations shall be uniform statewide.

## **15.25.00 BASIC REQUIREMENTS FOR POLICE COMMUNICATIONS OPERATOR I**

### **25.01 Application Procedure**

1. Applicants must make application on the forms prescribed and furnished by the Department.
2. Applicants will be required to complete any tests or forms required prior to probationary appointment.

3. Applicants must be of good moral character and habits, and must have had no convictions for any felony crime within this state or elsewhere. (Traffic and criminal records must be screened as described in section 10.03.) Applicants will be investigated as to the truth of the statements made in their application and personal history or during their oral interview, and any misstatement of fact found therein will be sufficient grounds for rejection of the applicant. All persons, upon filing an application for examination, thereby consent to an investigation of their character, habits, previous employment, or other matters necessary to satisfactorily establish their good moral character, habits, honesty, truthfulness, and veracity. Applicants who qualify on the written examinations will complete the required personal history statement and a preliminary background investigation will be conducted. At a minimum, the preliminary background investigation will consist of driving history inquiries, criminal record history, previous employment inquiries, and contacts with personal references. A complete background investigation will be conducted on the applicant who is to be employed.

a. Applicants will be fingerprinted at the time of processing.

4. An applicant must be at least 20 years of age on the date of probationary appointment to the position of Police Communications Operator I.

5. An applicant must have completed high school or submit a certification showing an equivalent educational background which is acceptable according to Texas Education Agency standards.

6. Applicants with prior military service must submit an 8 x 10 photostatic or certified copy of their military history form DD214 with the completed application.

a. Applicants with less than an honorable discharge will be rejected.

b. Applicants whose discharge from military service was for inaptitude, unsuitability, undesirability, or like causes will be rejected.

c. After a conditional job offer has been made, applicants with medical discharges from military service must furnish a written explanation which is satisfactory to this Department to receive consideration.

7. Applicants must be a citizen of the United States.

### **25.02 Medical-Physical Standards**

1. All applicants for this position must have a complete physical examination made by a physician designated by this Department at the time of probationary appointment.

2. An applicant who has a history of epilepsy, blackouts, fainting spells, seizures, or convulsions, must be free for two (2) years without taking medication.

3. Applicants who have a past medical history of diabetes will not be rejected until an individual evaluation is conducted. Applicants are required to submit a doctor's statement reflecting the stage and/or severity of the diabetes and the prescribed treatment.

4. Applicants with physical conditions such as loss of a limb or disfiguration may be employed, provided, in the judgment of the regional commander, the applicant can perform the required duties satisfactorily and is able to get to and from his place of work without Department assistance.

The determination for Headquarters Communications Center will be made by the supervisor over that section.

5. **Ears.** Normal hearing with or without a hearing aid for each ear is required.

6. **Nose, Throat, and Mouth.** The nose, throat, and mouth must be free from deformities or conditions that interfere with distinct speech.

7. Applicants must be mentally alert and sound of mind and must possess initiative, intelligence, good judgment, good address, and neatness of appearance.

8. In all instances in which a question may arise as to whether an applicant meets the above qualifications, the Director or his designee shall make the final determination.

### **25.03 Testing of Applicants**

1. When a person desires to apply for the position of Police Communications Operator I, the regional supervisor, Police Communications, or the supervisor, Police Communications Facility, will conduct an inquiry to determine if the applicant meets the basic requirements.

2. If the person meets the basic requirements, the regional supervisor, Police Communications, or the supervisor, Police Communications Facility, will administer the necessary tests.

### **15.30.00 REINSTATEMENT OF COMMISSIONED OFFICERS**

**30.01 Policy.** Reinstatement is the internal process in which the Department reemploys former employees when such employment promotes the efficiency of the service as determined by the Assistant Director of the affected division based on critical personnel need and the exceptional work history of the employee.

A former employee does not have a right to be reinstated and, as in all other cases of employment, is subject to final approval by the Director. An applicant for reinstatement must agree to accept any assignment/station upon reinstatement and the transfer of assignment/station as future needs of the Department may dictate. Employees will only be reinstated to non-supervisory line positions in the Texas Highway Patrol and Criminal Investigations Divisions.

**30.02** Nothing in this reinstatement policy precludes a former employee from applying for employment with the Department in any position under the hiring procedures pertaining to all new applicants.

**30.03 Reinstatement Process.** The Assistant Director of the affected division may employ the individual into a position provided the following requirements are met.

1. General requirements for reinstatement:

- a. The applicant previously performed duties in the Texas Highway Patrol, Criminal Investigations Division or Regulatory Services Division.
- b. The applicant had a history of exceptional performance in those positions.
- c. The position being sought is a non-supervisory, line position.
- d. The applicant was in good standing with the Department at the time of resignation or retirement.

2. Specific criteria for reinstatement of retired commissioned officers.

- a. The applicant agrees to accept an authorized rehire location.
- b. The applicant had a history of "high performance."
- c. The reinstatement has been recommended by the Regional Commander and approved by the Assistant Director.
- d. The applicant agrees to serve a minimum of three (3) years in position/location being offered.

3. Applicants for reinstatement must comply with the application process contained in this GM chapter.

4. Applicants must comply with TCLEOSE licensing requirements for Texas peace officers and provide documentation at the time of application that they hold a valid Texas Peace Officer license.

**30.04 Additional Requirements for Reinstatement.** The reinstatement of former employees may be considered under the following conditions:

1. Employees Requesting Reinstatement after Resignation

- a. An applicant must submit a written request for reinstatement through Human Resources to the Assistant Director with the vacancy. The applicant under this section will be required to submit to a background investigation and interview board.
- b. The applicant must meet the requirements for new applicants except for the SRA tests and unless otherwise noted in this chapter.
- c. The applicant must be of good moral character and habits which would be considered acceptable for a like entry-level position.
- d. The applicant must submit to a pre-employment polygraph examination, and qualify on the required physical examination and psychological examination, if required.
- e. The applicant must meet the current Physical Fitness Standard.
- f. The applicant must qualify on Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) requirements where applicable.
- g. An applicant for reinstatement into a law enforcement position must qualify on firearms as specified for the position sought.

## 2. Employees Requesting Reinstatement after Retirement

- a. An applicant must submit a written request for reinstatement through Human Resources to the Assistant Director with the vacancy. Human Resources will obtain documentation from the employee's previous chain of command for recommendations.
- b. If more than 5 years have elapsed since the date of retirement, the applicant must submit to a complete background investigation and interview board.
- c. The applicant must meet the requirements for new applicants except for the SRA tests and unless otherwise noted in this chapter.
- d. The applicant must be of good moral character and habits which would be considered acceptable for a like entry-level position.
- e. The applicant must qualify on the required physical examination and psychological examination, if required.
- f. If more than 12 months have elapsed since the employee retired, the employee must submit to a pre-employment polygraph examination.
- g. The applicant must meet the current Physical Fitness Standard.
- h. The applicant must qualify on Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) requirements where applicable.
- i. An applicant for reinstatement into a law enforcement position must qualify on firearms as specified for the position sought.
- j. Applicants who desire to return to the department in a High Vacancy Location or a Hardship Duty Station, as those positions are designated from time to time by the department, will be rehired at a level no higher than senior trooper or senior agent for CID/RSD.
- k. Applicants who desire to return to the department in a location other than a High Vacancy Location or a Hardship Duty Station will be rehired at a level no higher than trooper III, or agent III.

**30.05 Additional Considerations.** The Assistant Director of the affected division will consider additional factors before making a determination of a reinstatement request such as, but not limited to:

1. The applicant's departmental work history and performance.
2. The applicant's exit interview paperwork resulting from the applicant's resignation.
3. The applicant's work history and general conduct following separation from the Department.
4. The Department's needs at the time of the reinstatement request.

**30.06 Final Determination.** The Assistant Director of the affected division will make the determination of reinstatement requests. When the question arises to consider waiving a requirement or procedure of this policy, the Director will make the determination.

### 30.07 Reinstatement Procedures

1. The procedures set forth in this section will be followed unless otherwise determined by the Director. If at any step of the process there appears to be good reason to recommend disapproval of the reinstatement request, the Assistant Director of the affected division should be so advised through appropriate channels. If the Assistant Director of the affected division determines further processing is not necessary, the process will be discontinued and the Assistant Director of the affected division will furnish appropriate notification to the applicant.

The procedures are as follows:

a. The former employee desiring reinstatement must address a letter to that effect to Human Resources. The applicant for reinstatement should attach to this letter a completed Department of Public Safety application form. The letter and application should be mailed to Human Resources.

b. Human Resources will serve as the coordinator of all such reinstatement requests.

c. Upon receipt of the reinstatement request, Human Resources will mail the applicant a reinstatement packet and await the return of the packet before proceeding. Once the reinstatement packet is received, Human Resources will:

1) Review the applicant's eligibility, based on the personnel file information.

2) Conduct a record check of the subject with Crime Records, Criminal Investigations, Rangers, Intelligence and Counter-Terrorism, and Driver Records.

3) Prepare a resume of the former employee's work history.

4) Forward to the appropriate Assistant Director of the affected division a copy of the reinstatement request, application, attached required documents, comments on the Department of Public Safety records checked, and any identifiable problems of eligibility will be noted.

d. The Assistant Director will designate a staff person to review the request and all attachments and make a preliminary recommendation in writing to their division's Assistant Director.

e. The Assistant Director of the affected division at this point may determine that no further consideration should be granted and that the reinstatement process should be terminated and the applicant so advised.

f. If it is determined that further consideration should be granted, the Assistant Director of the affected division will return the reinstatement package to their designee, who will forward the resume and other related documents to the appropriate Texas Highway Patrol, or Criminal Investigations Division Major who will require the following:

1) A background applicant investigation will be directed specifically towards the individual's work history and activities since leaving the Department as well as other crucial areas of importance relevant to the question of reinstatement such as personal conduct and past Department of Public Safety performance, including requiring the applicant to submit to a pre-employment polygraph test.

2) An in-depth applicant interview will be conducted by an oral interview board using the guidelines specified on form HR-40b. Additional considerations to be noted by the oral interview board would be career potential, his/her interest in performing in an effective manner as an employee of this



Department, and the predictability of the candidate remaining as a productive employee if reinstated. The prescribed interview rating form is to be completed for each applicant interviewed. As a rule, it is desirable to conduct this interview near the conclusion of the background investigation. This provides the oral interview board the opportunity to address certain points of the investigation where response from the applicant would be desirable. It is permissible for this interview to be conducted prior to the investigation if it appears to be advantageous in certain instances. The chairman of the oral interview board will complete a memo reporting the overall impressions of the applicant which will be submitted through in-line supervisors with a completed form HR-40b attached.

3) The Assistant Director's designee will require a recommendation from the appropriate supervisory level for approval or disapproval of the reinstatement request.

g. The Assistant Director's designee will review the recommendation from the supervisory level, the background investigation and results of the oral interview process. The Assistant Director's designee will then make a recommendation to their Assistant Director regarding the continuation of the process. The Assistant Director of the affected division will determine if a conditional offer of employment will be made.

h. If it is determined that further consideration should be granted and a conditional job offer made, the Assistant Director of the affected division will return the reinstatement package to Human Resources who will require the following, if applicable:

1) The applicant for a law enforcement position will be required to pass the physical exam and the physical readiness test. The physical examination will be conducted by a physician who routinely examines new entry level law enforcement applicants.

In addition, the applicant for a law enforcement position who has been separated for six months or longer from a commissioned law enforcement position (under TCLEOSE) will be required to take a drug screen dependency test. At the time of the physical and drug screen test, the required physician's certification of physical qualification and drug screen dependency required by TCLEOSE must be completed on the prescribed TCLEOSE forms. The completed TCLEOSE forms and DPS Physical Examination Report (HR-7) will be obtained at the time of testing.

2) Applicants for law enforcement positions who have been separated for six months or more from a commissioned law enforcement position (under TCLEOSE) will be required to complete the written psychological tests and interview being utilized in the screening of entry level law enforcement applicants.

At the time of the psychological test and interview the required psychologist's Certificate of Declaration of Psychological and Emotional Health required by TCLEOSE must be completed on the prescribed TCLEOSE forms. The completed forms will be obtained at the time of testing.

3) If the applicant must qualify on firearms, a field firearms officer will administer the qualification tests unless special arrangements are made to administer the tests at the Department of Public Safety Training Academy. (Note: A release form HR-99 must be obtained before the tests are administered.)

i. Human Resources will make a written evaluation of the data contained in the applicant package and return the written comments and package to the Assistant Director of the affected division.

j. The Assistant Director of the affected division will review the field reports, recommendations, and Human Resources review. The Assistant Director of the affected division will submit recommendations to their designee.

k. The Assistant Director's designee will notify Human Resources in writing of the Assistant Director's decision. The Assistant Director's designee will prepare correspondence for the approval or disapproval of the request for reinstatement. If the reinstatement is to be approved, the Assistant Director's designee will furnish the effective date, station assignment, and other related information to Human Resources. Applicants to be reinstated will be advised in the approval letter as to when and where to report.

### **30.08 Conditions of Reinstatement**

1. Individuals employed through reinstatement must successfully complete the same period of probation as required of all new employees.

2. Eligibility for longevity pay or hazardous duty pay for reinstates is set forth in Chapter 10.

3. The effect of broken service as it applies to eligibility for promotion is set forth in Chapter 07.26.04, paragraph 4.

4. Applicants to be reinstated will be placed on the payroll at such time there is no conflict with a pending posting for a vacancy or eligibility list unless an exception is granted by the Director or Assistant Director of the affected division.

5. Individuals employed through reinstatement may be required to attend any training deemed appropriate by the Director or Assistant Director of the affected division.

**30.09 Transfer after Reinstatement of Retired Officers.** Officers reinstated following retirement from the Department may apply for transfer before the completion of the three-year commitment.

All requests to transfer before the expiration of the three-year commitment will be decided by the appropriate Assistant Director based upon the best interests of the Department.

Transfers from a High Vacancy Location or Hardship Duty Station to a location without such a designation before the completion of the three-year commitment will be at a level no higher than Trooper III or Agent III.

Seniority for the purpose of transfer by officers reinstated following retirement will be based on the date of reinstatement.

## **BUILDING USE AND ENERGY CONSERVATION**

### **01.16.00.00**

#### **16.05.00 OFFICE HOURS**

**05.01** The law provides that office hours of state agencies will be from 8:00 a.m. to 5:00 p.m., Monday through Friday of each week, except holidays authorized by statute. Most regular, nonenforcement employees will work forty hours a week excepting official holidays. Exceptions to the minimum length of workweek will be made by the Director for employees whose services are required for longer periods in the public interest.

1. State offices shall remain open during the noon hour each working day with at least one person on duty to accept calls, visitors, or transact business.

#### **16.10.00 ENERGY CONSERVATION**

##### **10.01 General**

1. All DPS facilities will be operated with a minimum staff on weekends and on all legal holidays. Heating and air conditioning thermostats will be adjusted for maximum reduction in the use of natural gas and/or electricity during such periods.

2. The Communications Service will operate as normal. In some locations, provisions for separate heating or air conditioning may need to be made for the Communications facility.

3. Weekend and holiday duty officer assignments shall continue as required, with duty personnel on standby when practical.

4. Room and bay assignments will be made at the Homer Garrison Jr. Law Enforcement Academy to group the students into as few floors as possible. Heating and/or air conditioning will be cut off from unoccupied floors, when possible.

##### **10.02 Buildings**

###### **1. Temperature Control**

a. Thermostats will be set to maintain 65 degrees or below for heating when mechanical heating systems are used. Higher temperature levels are permissible provided mechanical means are not used to achieve them. EXAMPLE: Normal heat buildup in the building of over 65 degrees is permissible.

b. Thermostats will be set to maintain 78 degrees or higher for cooling when mechanical cooling systems are used. Exceptions can be made in cases where a lower temperature is necessary for the protection of equipment or other materials that could be damaged or result in the voiding of equipment warranty.

c. Doors of rooms and offices which will be unoccupied for an extended period of time will be closed unless such action has an adverse effect on the heating or cooling of adjacent areas.

d. Other than during normal working hours, heating and cooling systems will be shut off. The exceptions to this policy are manned work areas conducting normal business, approved special events, and the exception set out in paragraph b. Janitorial and security services are not considered to be an exception to this policy.

e. Those systems that can provide zone heating or cooling will not make both available simultaneously unless simultaneous availability causes the use of less energy. Location of zones, thermostats, type of equipment, etc., may require the operation of both heating and air conditioning simultaneously at an average temperature setting higher than 65 degrees and lower than 78 degrees during the winter or off seasons. This setting will in most cases cause the equipment to “coast” thereby consuming less energy. A recommended setting of 70 degrees to 72 degrees should accomplish conservation and comfort.

## **2. Electrical Use**

a. When possible, air conditioning systems will be operated on a minimum wattage that is consistent with maximum amperage savings and still maintain specified cooling temperatures.

b. When possible, reduce the wattage and number of lamps in use that are consistent with health and safety requirements. Turn off all lamps, machines, and appliances when not in use unless normal operations are affected. All building lights will be extinguished when the building is not in use, except for necessary security lights.

c. Natural lighting should be utilized to the fullest extent when such use would not be at cross purposes with heating or cooling of the area. EXAMPLE: The use of drapes to reduce energy loss.

d. Janitorial personnel will use only the amount of lighting necessary to clean individual work areas and offices. Where practical, sectionalized cleaning of a building will be used.

**3. Water Use.** Hot water temperature will not exceed 105 degrees unless exempt. All faucets (hot or cold) will be maintained to avoid water loss. Exemptions are allowed for: sleeping quarters, dish washing, processes, or “banking” (storage capacity) due to volume of use.

**4. Auxiliary Heating and Cooling.** Approved auxiliary heating (electric heaters) and cooling devices (fans) may be used in individual offices and work areas in those instances where a central system has failed to maintain the room temperature at required levels. Auxiliary heating and cooling devices may not be used to raise or lower a room or work area temperature above or below required levels for individual comfort.

**10.03 Responsibility.** All division chiefs, regional commanders, and supervisors of the Criminal Law Enforcement Division will be responsible for a monthly review of energy conservation practices within their command.

**10.04 Field Inspections.** Each inspector in the Office of Audit and Inspection, when on field inspection, in addition to any other areas of inspection shall also inspect for compliance with DPS guidelines for energy conservation.

# MANAGEMENT MEETINGS AND FIELD STAFF WORKSHOPS

## 01.17.00.00

### 17.05.00 GENERAL

**05.01 Purpose.** To encourage and facilitate participation in planning and policy making; to set up formal channels for recommendations and action thereon; to facilitate coordination between field services and headquarters staff agencies; and to increase interregional uniformity in policy and procedure in the execution of programs by exchanging information, DPS management meetings, field staff workshops, and laboratory workshops will be held as authorized in this chapter.

**05.02 Categories.** The prescribed DPS management meetings will be conducted in five categories with attendants as shown:

1. **Service Commanders' Meetings.** Uniformed field captains, Criminal Investigations Division field captains, DLD Managers, and Communications Area Managers.

2. **Field Staff Workshop.** Adjutants.

3. **Laboratory Workshops.** Chemists, polygraph examiners, and technical supervisors.

4. **Division Staff Meetings.** Highway Patrol Majors, Criminal Investigation Division Majors.

5. **Director's Staff Meetings.** These meetings will be held on the first and third Tuesday of each month or when called at the discretion of the Director and include the appropriate management personnel necessary to consider the issues or topics of discussion.

**05.03 Attendance.** Assistant Directors, Deputy Assistant Directors, and Regional commanders shall be responsible for having the designated personnel (or appropriate representative) in attendance at the scheduled meetings.

### 17.10.00 SERVICE COMMANDERS' MEETINGS

**10.01 Purposes.** In order to accomplish the general objectives enumerated, the specific purposes of the service commanders' meetings shall be:

1. To promote coordination between regions, districts, and companies and to promote coordination between field services and headquarters staff agencies.

2. To identify problems and to explore solutions to same.

3. To exchange ideas for the improvement of the work.

4. To recommend rules, policies, and procedures to higher command for adoption.

**10.02 Officers and Duties.** At each meeting the group shall elect a chairman and a secretary on a rotating basis who will direct and report the work of the next meeting.

1. The specific duties of the chairman shall be:

a. To prepare the agenda.

1) The agenda shall include estimated time for clearing old business.

2) The agenda should include estimated time for new business.

3) The chairman should consult all line and staff supervisors involved in the work, and any other appropriate sources of information, for appropriate subject matter for the agenda.

b. To distribute the agenda to all participants well in advance of the meeting.

c. To arrange for staff personnel to attend and assist in the meeting as may be deemed desirable or necessary.

d. To preside over the meeting.

e. To assist the secretary.

f. To present or make arrangements for the presentation of the report to the division staff meeting.

2. The specific duties of the secretary shall be:

a. To record a summary of the significant business of the meeting.

b. To prepare from his record a concise report organized and written so as to convey an adequate summary of the meeting.

c. To reproduce and distribute the report to the participants, the Director, Deputy Director, division staff, and to any other Department person for which the business of the meeting is particularly appropriate.

**10.03 Staff Participation.** Appropriate personnel from the Office of Audit and Inspection will participate in the service commanders' meetings applicable to their work except during executive sessions. Appropriate personnel from other staff agencies will participate upon invitation. Staff personnel in any of the staff agencies may submit program suggestions for consideration on the agenda.

**10.04 Executive Session.** The chairman will schedule, if it be deemed necessary, an executive session during each meeting to allow an opportunity for discussion by field personnel only.

**10.05 Director's Participation.** The Director and/or Deputy Director and/or Assistant Director or their designee will participate in or audition service commanders' meetings as they desire. They will not, however, assume immediate responsibility for the direction or control of these meetings.

## **17.15.00 DIVISION STAFF MEETINGS**

**15.01 Purposes.** In order to accomplish the general objectives enumerated, the specific purposes of this meeting shall be:

1. To review recommendations from the service commanders' or bureau managers' meeting and to make recommendations on same to the Director's Staff Meeting.
2. To originate and recommend rules, policies, and procedures to the Director.
3. To promote coordination between field and headquarters.
4. To promote close liaison with each service.
5. To exchange ideas for the improvement of the work.

**15.02 Division Staff Meeting.** The Assistant Director will preside over this meeting.

1. The responsibilities of the assistant director shall be:

a. To prepare the agenda.

1) The agenda should include estimated time for clearing old business.

2) The agenda should include estimated time for presentation, discussion, and action on reports of service commanders or bureau managers.

3) The agenda should include estimated time for new business.

4) The assistant director may consult with any appropriate source to determine the need for the consideration of business not expected to be channeled through the next meeting of service commanders or bureau managers.

b. To distribute the agenda in advance of the meeting to all participants.

c. To arrange for staff personnel to attend and assist in the meeting as may be deemed desirable or necessary.

d. To present or make arrangements for the presentation of the report to the Director's Staff Meeting.

e. To record a summary of the significant business of the meeting.

f. To draw the recommendations for the Director's Staff Meeting.

**15.03 Staff Participation.** Assistant Directors, inspectors, and other appropriate personnel will participate in the field division staff meetings upon invitation. Service commanders and bureau managers or their alternates will present the reports of their meetings when scheduled.

**15.04 Director's Participation.** The Director and/or Deputy Director will participate in or audit division staff meetings as they desire. They will not, however, assume immediate responsibility for the direction or control of these meetings.

## **17.20.00 DIRECTOR'S STAFF MEETINGS**

**20.01 Purpose.** In order to accomplish the general objectives, the specific purposes of this meeting shall be:

1. To consider and/or act on the information and recommendations channeled to the Director from service commanders' meetings and from division staff meetings.
2. To consider and/or act on any other matters presented to the Director or Deputy Director.
3. To exchange ideas to efficiently and effectively achieve the Department's mission.

**20.03 Action.** The Director, after discussion and consultation with participants, will act on recommendations. This action will usually take one of the following forms:

1. **Approval.** When necessary, the items will be referred to an appropriate staff agency to prepare orders and other materials for implementation.
2. Disapproval.
3. Referral to appropriate agency for further study and report.
4. Defer action and take the recommendation under advisement.

#### **20.04 Officers and Duties**

1. A formal agenda for the meeting will be at the discretion of the Director.
2. The Director or a Deputy Director will preside over the Director's Staff and Command Meeting.
3. A Deputy Director will follow up on items referred to a staff or other agency to see that necessary action has been taken.

#### **17.25.00 FIELD STAFF WORKSHOP AND/OR LABORATORY WORKSHOPS**

**25.01 Workshop Groups.** Chemists, polygraph examiners, technical supervisors, and adjutants will conduct workshops as prescribed.

**25.02 Purposes.** In order to accomplish the general objectives as applicable to these groups, the specific purposes of these workshop groups shall be:

1. To receive instructions in policy and procedure.
2. To participate in planning.
3. To provide for the exchange of ideas and to acquire new information concerning their field of activity.
4. To encourage coordination between the field staff activities and headquarters staff services.
5. To increase interregional uniformity in procedures.

#### **25.03 Officers and Duties.**

1. **Field Staff Workshop.** The chairman of each field staff workshop will be appointed by the appropriate division. The chairman will select a secretary.



2. **Laboratory Workshops.** The chairman of each Laboratory staff workshop will be elected by the staff members prior to the meeting. The chairman will select a secretary.

3. **Chairman.** Specific duties of the chairman shall be:

- a. To prepare the agenda.
- b. To contact each participant for items for consideration on the agenda.
- c. To distribute the agenda to all participants well in advance of the workshop.
- d. To arrange for staff personnel to attend and assist in the meeting as may be deemed desirable or necessary.
- e. To preside over the meeting.
- f. To assist the secretary.
- g. To present or make arrangements for the presentation of the report to the division staff meeting.

4. **Secretary.** Specific duties of the secretary shall be:

- a. To record a summary of the significant business of the meeting.
- b. To prepare from the record a concise report organized and written so as to convey an adequate summary of the meeting.
- c. To reproduce and distribute the report as prescribed by workshop groups.

1) Field Staff Workshop: Each participant, the Director, Deputy Director, Assistant Director of Texas Highway Patrol, Assistant Director of Administration, Assistant Director Regulatory Licensing, and regional commanders.

2) Laboratory Workshop: Each participant, the Director, Deputy Director, Assistant Director of Law Enforcement Support, Deputy Assistant Director of Crime Laboratory Service, and appropriate managers.

**25.04 Headquarters Staff Participation.** Appropriate personnel from the Office of Audit and Inspection will participate in the field staff workshop. Staff personnel may submit program suggestions for consideration on the agenda or participate in field staff workshop upon invitation.

**25.05 Director's Participation.** The Director and/or Deputy Director and/or Assistant Director of Texas Highway Patrol Division or designee will participate in or audition the field staff workshop as they desire. They will not, however, assume immediate responsibility for the direction or control of the meeting.

The Director and/or Deputy Director and/or Assistant Director of Law Enforcement Support or designee will participate in or audition the Laboratory workshops as they desire. They will not, however, assume immediate responsibility for the direction or control of these meetings.

# EQUAL EMPLOYMENT OPPORTUNITY

## 01.18.00.00

### 18.05.00 POLICY

**05.01 Equal Employment Opportunity Policy.** It is the policy of the Texas Department of Public Safety to hire qualified people to perform the many tasks necessary in providing high quality service in the field of law enforcement administration and other areas of public safety. An integral part of this policy is to provide equal employment opportunity for all persons; to recruit and administer hiring, working conditions, benefits and privileges of employment, compensation, training, appointments for advancement including upgrading and promotion, transfers, and terminations of employment within the framework provided by statutes of the state of Texas and the United States without discrimination because of race, color, religion, national origin, sex, age, or disability.

### 18.10.00 OBJECTIVE STATEMENT

**10.01 Purpose.** The Recruitment Plan is established to comply with §21.502 of the Texas Labor Code and is designed to provide positive guidelines for fostering and promoting a continuous equal employment opportunity program for all Department of Public Safety employees and applicants. The objective of the Recruitment Plan is to:

1. State the Department's commitment to equal employment opportunity;
2. Update data on the current utilization of minorities and females in the work force;
3. Establish reasonable and measurable equal employment opportunity goals in compliance with state and federal law; and
4. Publicize the discrimination, harassment and unprofessional conduct complaint process set forth in Section 18.25 of this chapter.

**10.02 Management Commitment.** The Texas Department of Public Safety is firmly committed to the aims and objectives of providing equal employment opportunity for all employees and applicants. Preventing discrimination in employment because of race, color, religion, sex, national origin, age, or disability is an important objective of the Department of Public Safety management policy, but it goes far beyond this passive approach. To demonstrate its commitment, Department management will take the following actions:

1. Develop a Recruitment Plan that expresses the positive steps the Department will take to give all employees the opportunity to develop and advance as far as their abilities can take them.
2. Impress on all managers and employees that the plan is applicable to all employees and that each of them has responsibilities and opportunities in furthering equal employment opportunity within the Department.
3. Encourage all employees to participate fully in the spirit of furthering equal employment opportunity for themselves, their coworkers, and their subordinates.

### 18.15.00 IMPLEMENTATION RESPONSIBILITIES

**15.01 General.** Compliance with this program and assurance of nondiscrimination is the responsibility of every employee of the Texas Department of Public Safety.

Responsibilities for accomplishing the objectives of this program extend from the Director through all levels of management and supervision and encompass the cooperation of all employees.

**15.02 Director.** The Director has established an equal employment opportunity policy within the Recruitment Plan. Adherence to the policy by all personnel is essential in the fulfillment of the plan's objectives. Responsibility for implementation of the equal employment opportunity goals established in the plan may be delegated by the Director as he deems appropriate.

**15.03 Assistant Director.** The Assistant Director shall be responsible for assisting the Director with the successful implementation, operation, and follow up of the Department's policies and procedures for fostering equal employment opportunity and administering the Department's Recruitment Plan.

#### **15.04 Equal Employment Opportunity Officer**

1. Coordinate the development, implementation, and evaluation of the Department's policies and procedures concerning equal employment opportunity, develops the Department's Recruitment Plan, and communicates the Department's equal opportunity policy internally and externally.

2. Analyzes employment data identifying problem areas and works with Department management to develop a plan of action to address problem areas. The plan will include specific recommendations to eliminate discriminatory practices, if any, discovered in the employment system.

3. Coordinates with the Human Resources commander in designing, implementing, and monitoring program effectiveness and determines where progress has been made and where further action is needed.

4. Coordinates with the Commander of Training in providing training sessions for supervisory and managerial personnel in the equal employment opportunity laws and policy.

5. Reports to management on the status of the program, as needed.

6. Informs management of developments in the equal employment opportunity area.

7. May make discreet, appropriate inquiries into matters of alleged discrimination.

8. Serves as a liaison for the Department with minorities, non-minorities, women, disabled persons, interest groups, and federal, state, and local government entities.

9. May liaison with field recruiters and Human Resources recruiting staff for the purpose of encouraging and assisting in furthering the equal employment opportunity goals.

#### **15.05 Division Chiefs, Special Section Heads, Service Commanders, Regional Commanders, and District Captains**

1. Evaluate the Recruitment Plan for their individual areas of responsibility to identify areas where employment of under represented groups can be improved and recommend needed improvements through channels. Assists in the recruiting and promoting of qualified persons.

2. Share with the Director the responsibility of developing and implementing an effective agency wide equal employment opportunity program.

3. Participate with colleges and public and private groups in cooperative action to improve awareness of the Department's equal employment opportunity program.

4. Continually review qualifications of all employees to ensure that all employees are given equal opportunities for transfers and promotions.

5. Hold periodic discussions with subordinate supervisors and employees to ensure the Department's equal employment opportunity policies are being followed.

6. Ensure that supervisors' job performance, where applicable, are evaluated in part on the basis of their equal employment opportunity efforts.

7. Assure appropriate postings on official bulletin boards of information about the equal employment opportunity policies and procedures.

8. Headquarters division chiefs are responsible for the implementation of the Recruitment Plan in their respective divisions. Each division chief will assign a current employee to serve as Division EEO Officer. The division representative will assist the Department's EEO Officer in administering and communicating the Department's equal employment opportunity policy.

#### **15.06 Managers and Supervisors**

1. Provide personal leadership in maintaining an effective equal employment opportunity program.

2. Assist in problem identification and the accomplishment of goals and objectives.

3. Provide career counseling to employees when required or requested.

4. Review employee qualifications.

5. Document that selection decisions were based solely on job-related factors.

#### **15.07 Human Resources Bureau**

1. Periodically reappraise and evaluate employment practices, job structure, and qualification requirements with respect to established procedures.

2. Communicate the Department's equal employment opportunity policy to recruitment sources when soliciting assistance in formulating a qualified applicant pool which includes a diverse group of applicants.

3. Coordinate with the EEO Officer in the distribution of the Recruitment Plan to inform all employees of their rights and responsibilities under EEO laws and Department policy.

4. Provide assistance to administrators and line supervisors in order that they might fully recognize and utilize the talents of all employees without regard to race, color, religion, sex, national origin, age, or disability. Actively promote the goals of the Recruitment Plan.

5. Consult regularly with divisional and EEO office staff to ensure that all Human Resources policies and practices conform to federal, state, and departmental EEO policies.

## **15.08 Employees**

1. Maintain an attitude of respect, courtesy, and cooperativeness toward other employees.
2. Provide fair and courteous treatment and service in the official performance of duty to all persons with whom they come in contact.
3. Utilize established internal procedures under Section 18.25.00 of the General Manual when alleging discriminatory acts.
4. All new employees will be required to complete training on agency EEO policies, including sexual harassment, within 30 days of initial hire. An acknowledgement of training for each employee will be kept in Human Resources.
5. All employees will be required to complete supplemental training on agency EEO policies, including sexual harassment, every two years. An acknowledgement of training for each employee will be kept in Human Resources.

## **18.20.00 TRAINING AND CAREER DEVELOPMENT**

The Department is committed to providing necessary job-related training for its employees by conducting in-house training and by providing the necessary resources to permit its employees to attend outside schools when possible.

All employees without regard to race, color, religion, national origin, sex, age or disability, will be made aware of and encouraged to participate in training and career development opportunities. Supervisors will be responsible for encouraging employees to participate in training and will arrange work schedules, when possible, so as to permit such participation.

## **18.25.00 DISCRIMINATION, SEXUAL HARASSMENT AND UNPROFESSIONAL CONDUCT POLICY**

**25.01 Policy.** Inappropriate conduct of a discriminatory or sexual nature that interferes with an individual's work or creates an intimidating, hostile, or offensive environment will not be tolerated or condoned by the Department. The Department has "zero tolerance" towards inappropriate comments, gestures, jokes, and behavior regarding a person's or class of persons' sex, race, color, national origin, religion, age, disability, or sexual orientation. The intent behind the words or action is irrelevant; such behavior will not be tolerated.

It is the policy of the Department that:

1. No employee shall be subjected to employment decisions based on sex, race, color, national origin religion, age, disability, or sexual orientation.
2. No employee shall use the Department's authority to subject members of the public to decisions based on sex, race, color, national origin, religion, age, disability, or sexual orientation.
3. Unprofessional conduct, as defined by this section, will not be tolerated and is prohibited.
4. Discrimination, as defined by this section, will not be tolerated and is prohibited.
5. Sexual harassment, as defined by this section, will not be tolerated and is prohibited.
6. Any form of harassment, as defined by this section, will not be tolerated and is prohibited.

7. Retaliation, as defined by this section, will not be tolerated and is prohibited.

8. All Department rules and practices will, at a minimum, comply with applicable state and federal anti-discrimination laws and guidelines.

The Department will take corrective and/or disciplinary action, up to and including termination of employment, for violations of this policy whether or not the conduct at issue meets the legal definitions(s) of discrimination, sexual harassment or retaliation. The severity of such action will be determined on a case-by-case basis.

## **25.02 Definitions**

1. "Discrimination" means any of the following:

a. Consideration of a person's sex, race, color, national origin, religion, age or disability as a factor in decisions concerning hiring, firing, compensation, promotion, discipline, training, benefits or other terms, conditions or privileges of employment when such quality bears no objective relationship to the matter being decided.

b. Adoption of rules or practices regarding hiring, firing, compensation, promotion, discipline, training, benefits or other terms, conditions or privileges of employment that are more restrictive than necessary to accomplish legitimate objectives and that have a disproportionate adverse impact on persons of a particular sex, race, color, national origin, religion, age or disability.

c. Interference with the exercise of a person's legal rights or privileges due to the person's sex, race, color, national origin, religion, age or disability.

d. Adoption of rules or practices that are not justified by a compelling need and that have an adverse impact on the exercise of legal rights or privileges by a disproportionately high number of persons of a particular sex, race, color, national origin, religion, age or disability.

It is not a defense that the violator of this policy is of the same sex, race, color, national origin, religion, age or disability as the subject of the discrimination.

2. "Harassment" means any or all of the following that is based on a person's sex, race, color, national origin, religion, age or disability and has the purpose or effect of interfering with a person's work performance and/or creating a hostile, intimidating or offensive working environment :

a. unwarranted criticism of one's job performance or work habits ;

b. unsolicited and unwanted comments regarding one's personal life and/or habits ; or

c. unwelcome and unnecessary physical contact.

3. "Sexual harassment" is a form of discrimination based on sex and means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when :

a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

c. the severity or pervasiveness of such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

4. "Retaliation" means instigating, implementing or condoning adverse treatment of a person because the person:

- a. opposed, or reported, a suspected violation of this policy or any state or federal law regarding discrimination, harassment, or retaliation;
- b. provided information related to complaints under this policy or any state or federal law regarding discrimination, harassment, or retaliation; or
- c. participated in the investigation of complaints under this policy or any state or federal law regarding discrimination, harassment, or retaliation.

Some examples of actions which might be considered by the Department to be adverse treatment include, but are not limited to: inconsistently taking corrective actions against employees, unjustifiably changing an employee's work assignment, refusing to cooperate or discuss work-related matters with an employee, or providing ratings on an employee's performance evaluation which are below the employee's actual job performance. Retaliation does not exist if it can be shown that there was a legitimate and nondiscriminatory reason for the action taken.

5. "Unprofessional conduct" refers to any conduct, comments, humor, jokes, or other behavior involving sex, race, color, national origin, religion, age, disability, or sexual orientation which may not meet the legal definitions of discrimination, sexual harassment, or hostile work environment but nevertheless reflect negatively on the Department, regardless of the sex, race, color, national origin, religion, age, sexual orientation or disability of those involved.

Some examples of actions which might be considered by the Department to be unprofessional conduct include, but are not limited to: telling racial or sexual jokes or making fun of, demeaning, harassing, or belittling another because of his or her sex, race, color, national origin, religion, age, disability, or sexual orientation.

**25.03 Persons Covered By This Policy.** This policy applies to every person connected to the Department, including but not limited to:

1. Every full-time, part-time, and temporary employee of the Department;
2. Each person volunteering or interning with the Department; and
3. Non-employees connected to the Department (e.g., contractors, vendors, staff of other governmental agencies);

An individual who is not certain whether he or she has grounds to submit a complaint alleging a violation of this policy is encouraged to contact the Equal Employment Opportunity Officer to discuss his or her questions or concerns.

#### **25.04 Prevention of Discrimination and Sexual Harassment.**

Each employee should be aware that certain conduct might be offensive or unwelcome even if others do not openly object to it.

All employees have the right and are encouraged to immediately inform the person engaging in behavior prohibited by this policy that his or her behavior is unwelcome and that such behavior should cease immediately. All employees, especially those in supervisory positions and those responsible for coordinating or monitoring contracts or work assignments for non-employees, are responsible for properly reporting prohibited behavior.

Supervisors and managers are in the best position to protect employees and the Department against unprofessional conduct, discrimination, sexual harassment, retaliation and their consequences.

Management must be aware of employee interactions, work problems, performance, and the office work environment. They are in daily contact with their staff and have the responsibility for supervising their immediate employees and for applying the Department's policies to prevent unprofessional conduct, discrimination, sexual harassment, and retaliation.

1. **Supervisors and Managers must:**

- a. Be always alert for signs of unprofessional conduct, discrimination, sexual harassment, retaliation or other behavior which violates this policy.
- b. Treat all reports of discrimination, sexual harassment, retaliation or other policy violations seriously and immediately address and report such information as required by this policy.
- c. Set an appropriate example of professional work behavior, that is, not engage in inappropriate behavior or misconduct themselves.

## **2. Examples of Prohibited Conduct:**

a. Physical acts such as intentional physical conduct that can be construed as sexual in nature or that a reasonable person would find offensive.

Examples of such acts include but are not limited to: intentional touching, jabbing, pinching, grabbing, rubbing, pressing, or brushing against a person's body.

b. Sexual advances, propositions, or comments, such as gestures, remarks, or jokes of a sexual nature which are unwelcome or which a reasonable person would find offensive.

c. Displaying, reading, publicizing, or bringing any materials of a sexual or racist nature into the workplace, such as pictures, posters, calendars, objects that depict sexual poses, videos, movies or sound recordings, screen savers, or other materials that a reasonable person would regard as inappropriate in a professional work environment. This includes any such material obtained from the Internet, displayed on one's computer monitor, or distributed via e-mail.

## **25.05 Reporting Options.**

1. **Internal Reports.** Employees are encouraged to use the Department's internal procedures for addressing complaints under this policy in order to facilitate and encourage early resolution. The internal procedures are outlined in sections 18.25.07 through 18.25.12.

2. **External Reports.** The Federal Equal Employment Opportunity Commission and the Texas Workforce Commission are agencies established by the federal and state governments, respectively, to handle complaints of discrimination and sexual harassment. Employees or applicants for employment with the Department are entitled to contact either of these agencies if they feel they have been subjected to discrimination, sexual harassment, or retaliation. A complaint received from the EEOC or TWC shall be investigated and coordinated as appropriate by the Equal Employment Opportunity Office according to the procedures set out in this chapter for investigations.

**25.06 Equal Employment Opportunity Office.** The Equal Employment Opportunity Office coordinates all complaints filed, conducts investigations, and maintains the files on all applicable files under this policy. Upon the completion of any investigation and review by the respective assistant director, special section head, or director's office, the investigation file and copies of all correspondence must be submitted to the Equal Employment Opportunity Office. The complaints and files maintained by the Equal Employment Opportunity Office will be confidential to the extent allowed by state and federal law.

**25.07 Reporting Requirements.** To ensure that a discrimination free work environment is maintained for all employees, it is essential that each member of the Department report suspected violations of this policy as soon as possible.

Employees do not need supervisory approval to contact a supervisor higher in their chain-of-command than their immediate supervisor, the Equal Employment Opportunity Officer or the Office of Inspector General (OIG) to file a report of misconduct under this section (e.g., discrimination, sexual harassment, or retaliation).

The Department takes all reports seriously. Every person reporting a suspected violation shall be treated with dignity and respect. Failure to do so is a violation of this policy for which corrective or disciplinary action may be taken.



1. Any employee who believes he or she has been subject to discrimination, harassment, sexual harassment or retaliation must inform the Department as soon as possible after the occurrence.

The employee may notify:

- a. his or her immediate supervisor, or
- b. anyone in his or her chain-of-command, up to and including the division chief or special section head,
- c. the Equal Employment Opportunity Officer, or
- d. the Office of Inspector General.

2. Any employee who reasonably believes another employee has been subject to discrimination, harassment, sexual harassment, unprofessional conduct or retaliation, whether that belief is based on personal observation or a report from another employee, must inform the Department as soon as possible after learning of the possible violation.

The employee may notify:

- a. his or her immediate supervisor, or
- b. anyone in his or her chain-of-command, up to and including the division chief or special section head,
- c. the Equal Employment Opportunity Officer, or
- d. the Office of Inspector General.

3. Any supervisor who observes, receives a report pursuant to this policy, or learns information through alternate means that leads him or her to believe there is a potential violation of this policy's prohibition against discrimination, harassment, sexual harassment, unprofessional conduct or retaliation, must immediately report such information to the Equal Employment Opportunity Officer regardless of whether the supervisor is in the chain of command of the affected employee. Supervisors in the employee's chain-of-command must immediately report this information to both their chain of command and to the Equal Employment Opportunity Officer.

Supervisors not in the employee's chain-of-command must immediately report this information to an appropriate person in the employee's chain-of-command and to the Equal Employment Opportunity Officer.

Supervisors who fail to properly report complaints or suspected violations will be subject to corrective or disciplinary action.

Reports or complaints can initially be made either orally, by telephone or in person, or in writing, including e-mail. A written statement may be requested to ensure full review of the individual's complaint.

The Equal Employment Opportunity Officer will notify the appropriate individual in the chain-of-command of all alleged violations of this policy necessitating an appointed investigator.

**25.08 Prohibition Against False Reporting.** Employees are encouraged to report any conduct they believe is in violation of this policy. Employees unsure if a particular incident or behavior falls under this chapter are encouraged to obtain clarification as set forth in section 18.25.03 by contacting the Equal Employment Opportunity Officer.

Employees are prohibited from maliciously, knowingly, and deliberately providing false information to any individual or in any report, fact-finding investigation, or hearing regarding conduct prohibited by this chapter. This prohibition includes maliciously, knowingly, and deliberately filing a complaint under this policy that the employee knows is false.

**25.09 Processing of Complaints.** All complaints filed under this policy will be promptly reviewed.

The Equal Employment Opportunity Officer may informally interview those involved and may request that the complainant submit a written and signed statement (EEO Section 18.25 complaint form) specifying the details of the

events leading the complainant to believe a violation of this policy has occurred. The written statement must fully describe the nature of the complaint and provide sufficient details to enable the reviewer to have a thorough understanding of what is alleged to have occurred. If the written statement is insufficient, additional information may be requested from the complainant or others.

1. If the Equal Employment Opportunity Officer determines that the alleged behavior does not fall within this policy the complaint may be forwarded to the chain-of-command for appropriate resolution.

2. Complaints of “unprofessional conduct,” as defined by this policy, may be referred by the Equal Employment Opportunity Officer to the respective assistant director or special section head for investigation and resolution by the chain-of-command (Division Referral). Interest-based problem solving may be used in appropriate situations to resolve the issues. The report and findings by the chain shall be copied to the Equal Employment Opportunity Officer who will determine if a more in depth investigation is warranted. The complainant shall be notified of the outcome of the investigation or resolution.

3. After investigation into the allegations by the Equal Employment Opportunity Officer, the Equal Employment Opportunity Officer may refer the complaint file to the Office on Ombudsman to determine if referral to a dispute resolution process is appropriate.

4. If it is determined that further investigation is required by a special investigator, the Equal Employment Opportunity Officer (under the investigation approval authority of the Office of Inspector General) will advise the respective assistant director or special section head that an investigation will be conducted.

a. Investigations will be assigned by the Equal Employment Opportunity Officer or the Office of Inspector General to qualified independent Department employees trained in the investigation of discrimination or sexual harassment complaints who have the skills required for interviewing witnesses and evaluating their credibility and the ability to conduct a thorough, detailed, analytical and objective investigation.

b. In order to give confidence to the complainant of the independence and impartiality of the investigator, the appointed investigator, when possible, should not be in the chain-of-command of the alleged violator. The investigator may, at the discretion of the Equal Opportunity Employment Officer or the Office of Inspector General, be from a service or division other than that involving the parties to the complaint.

c. The alleged violator shall not have any supervisory authority over or be in the chain-of-command of the investigator and may not have any direct or indirect control over the investigation.

5. Once a formal investigation is approved, and the investigator assigned by the Equal Employment Opportunity Office or the Office of Inspector General, the investigation shall begin immediately.

6. The chain-of-command shall notify the parties of the investigation and shall undertake any intermediate remedial measures as may be determined appropriate. Examples of such temporary measures include making scheduling or work assignment changes or placing the alleged violator on suspension pending the conclusion of the investigation.

The complainant should not be involuntarily transferred or otherwise burdened, since such measures could constitute unlawful retaliation.

## **25.10 The Investigation**

1. **The Investigator.** The investigation shall be the top priority of the investigator and completed as thoroughly and quickly as possible. The purpose of the investigation is to seek out the truth and ascertain the facts. The importance

of conducting a thorough, accurate, and objective investigation and preparing an accurate, complete, and detailed report cannot be overemphasized. The decision(s) made as a result of the investigation may affect the future or good name of the accused, the complainant, and the Department. The investigator should interview the complainant, the alleged violator, and any other parties who could reasonably be expected to have relevant information. All and any supporting documentation, physical evidence, and other information that may help establish the facts and assist the investigator in determining the credibility of those interviewed should be reviewed and noted in the investigator's report.

The investigator shall ensure that each employee interviewed has a copy of or access to a copy of this policy. Those interviewed will also be instructed that the investigation is confidential and should not be discussed with fellow employees or with any other person who may be involved in the investigation that all personnel are required to honestly participate in the investigation, and that retaliation is strictly prohibited.

All employees must be advised to report retaliation immediately. Retaliation can be reported to the investigator, the Equal Employment Opportunity Officer or OIG.

**2. Participation in Investigations.** Upon request, all employees of the Department of Public Safety are required to participate in investigations conducted under this chapter. All employees shall cooperate fully and shall answer all questions truthfully and thoroughly. Employees shall not obstruct or interfere with the filing of a report or complaint or with any aspect of the investigation.

**3. Confidentiality.** Employees are required to keep information learned or shared during an investigation confidential. All employees involved in the investigation process shall be informed that the investigation is confidential and not to be discussed with others. This requirement of confidentiality extends not only to what the employee told the investigator, but also to anything the investigator may have told the employee. This serves to protect the integrity of the investigation and the privacy of persons involved.

All names, records, and information concerning the investigation of or reporting of allegations of violations of this policy will be confidential to the extent allowed under Texas and federal law. Internally, information will be shared only with those who have a need to know. Completed investigations may be available to the public under state law. However, reports may be edited before release if they contain highly intimate or embarrassing information about specific individuals.

**4. Actions and Timelines.** Prompt investigation of all reports of violations of this policy is required.

a. A determination of whether an investigation is conducted should be made within five (5) working days of the Equal Employment Opportunity Officer's receipt of a formal complaint or the written statement from the employee.

b. The amount of time it will take the investigator to complete a thorough investigation will vary based on the circumstances and complexity of the complaint. However, the investigation should be completed within fifteen (15) working days from the initiation of the investigation. Any extension of this deadline must be obtained from the EEO Officer or his/her designee by the investigator.

c. Upon completion of the investigation, the investigator shall prepare a detailed report fully addressing all allegations. The report shall set forth the investigator's review of the evidence, assessment of the veracity and credibility of those interviewed, and conclusions as to what actually occurred. The Equal Employment Opportunity Officer may request additional investigation in cases as determined.

An original of the report shall be given to the Equal Employment Opportunity Office by the investigator upon completion of the investigation.

d. Within five (5) working days of receipt of the investigator's report the Office of General Counsel shall respectively review the investigation and provide a memorandum to the Equal Employment Opportunity Officer regarding the sufficiency of the evidence and what, if any, sections of this policy have been violated.

e. Within three (3) working days of the receipt of the aforementioned memoranda, the Equal Employment Opportunity Officer will forward the investigation report and memoranda with a cover memorandum addressing the sufficiency of the evidence and findings to the respective assistant director, special section head, or Director's office as appropriate.

f. Within three (3) working days of receiving the investigation report the assistant director, special section head, or Director's office will make the final determination regarding the alleged policy violation and issue a written decision. Additional investigation may be requested if necessary. Any additional investigation by the investigator must take place promptly.

**25.11 Outcome of Investigation.** All involved parties, including the complainant and the alleged violator, will be informed in writing of the decision and any corrective or disciplinary action taken. Notice will also be sent to the Equal Employment Opportunity Officer.

1. **Sustained Violations.** If the investigation reveals that violations of this policy occurred, immediate and appropriate corrective or disciplinary action will be instituted by the respective assistant director or special section head and documented in the Equal Employment Opportunity Office file.

For any violation of this policy, the violator may be subject to one or more of the following disciplinary actions:

- a. formal written reprimand,
- b. disciplinary probation,
- c. time off without pay,
- d. reduction in salary rate,
- e. demotion; and
- f. discharge.

If the violator is not discharged, in addition to any corrective or disciplinary action taken, the violator will be required to attend the next scheduled training on diversity, sexual harassment, equal employment, or other remedial training as may be appropriate based on the sustained violation(s) against the employee.

The training should be coordinated through the Equal Employment Opportunity Office. The memo or letter notifying the violator of corrective or disciplinary action will be placed in his or her personnel file.

If the respective assistant director or special section head determines that the appropriate disciplinary action is discharge, the complete investigative file and discharge recommendation will be promptly referred to the Director for final review and determination. A final determination by the Director should be made within ten (10) working days of receipt of the recommendation from the division chief or special section head.

2. **Violation(s) Not Sustained.** If it is determined that no violation has occurred or that there is insufficient evidence of a violation of this policy, the respective assistant director or special section head will notify all parties of such. No record of the investigation or process will be made in the employees' personnel file. If appropriate, the complainant may elect to utilize the established grievance procedures contained in Chapter 7A regarding the mediation of disputes. If no determination can be made because the evidence is inconclusive, management should nevertheless continue to undertake preventive measures, such as additional training and monitoring.

## **25.12 Appeal of Determination or Disciplinary Action**

Notwithstanding any other provisions in Chapter 7A regarding appeal rights, an employee found to have violated this policy may appeal the determination or disciplinary action resulting from this process. The employee may request an administrative review before the division chief or special section head. An employee desiring this review must submit a written request to the assistant director or special section head with notification to in-line supervisors and the Equal Employment Opportunity Officer within five (5) working days following notification of the determination. The assistant director or special section head's final decision should be reported in writing to the employee within three (3) working days of the date of the administrative review.

If the employee is not satisfied with the results of the review by the assistant director or special section head, the employee may request a review by the Director. This request must be submitted to the Director within five (5) working days following the receipt of the decision of the respective assistant director or special section head. The Director will make a decision regarding appropriate corrective or disciplinary action and should notify the employee of that decision in writing within five (5) working days of the date of the administrative review. The Director's determination is subject to no further departmental review.

If the violation of this policy results in termination of employment, discharged DPS employees who have completed their initial probationary period of employment prior to the effective date of discharge are entitled to a hearing before the Public Safety Commission. DPS employees desiring a hearing before the Public Safety Commission must comply with the provisions of General Manual, Chapter 7A, Section 07.46.02(1).

## **18.30.00 AMERICANS WITH DISABILITIES ACT (ADA) AND EMPLOYMENT OF PERSONS WITH A DISABILITY**

### **30.01 Policy.**

1. Pursuant to the Americans with Disabilities Act (ADA) and Americans with Disabilities Amendments Act of 2008 (ADAAA), no qualified individual with a disability shall be subjected to unlawful discrimination in selection, promotion, discharge, compensation, training or other terms or conditions of employment on the basis of having a disability through stereotyping or assumptions about physical or mental conditions, real or perceived.

2. DPS will make reasonable accommodations to known physical or mental limitations of a qualified employee having a disability, which would enable the individual to perform the essential functions of their desired or current position, as long as the accommodation can be provided without undue hardship to the Department of Public Safety and the physical or mental condition does not pose a direct threat to health or safety.

3. Persons who wish to be accommodated under this policy must inform the ADA Coordinator of their disability and the functional limitations for which the accommodation is requested. Requests for an accommodation are voluntary.

4. Each request for accommodation will be addressed on a case-by-case basis. Requests for accommodation will be addressed by the ADA Coordinator.

### **30.02 Definitions.**

1. "ADA" – Americans with Disabilities Act of 1990.

2. "ADA Coordinator" – An employee within Human Resources responsible for processing requests from applicants and employees for a workplace accommodation due to a temporary or permanent medical condition.

3. “Applicant” – A person who applies for a position. This includes individuals: (a) not employed by the Department or state government, (b) employed by state government, but not employed by the Department, and (c) employed by the Department, but applying for another position within the agency.

4. “Direct Threat” – a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

5. “Employee” – A person employed with the Department of Public Safety. For purposes of this policy, this does not include individuals employed by DPS applying for another position within the agency.

6. “Essential Job Functions” – duties critical to the position in question; the position exists for the purpose of performing these duties; there are a limited number of employees among whom that function can be distributed; or the function is highly specialized and the incumbent was hired to perform that function.

7. “Individual with a Disability” – a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or who is regarded as having such an impairment.

8. “Major Life Activities” – an activity, including but not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating, working and speaking.

9. “Marginal Job Functions” – those duties that are not critical to the position; the position would exist without these duties.

10. “Mental Impairment” – any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

11. “Physical Impairment” – any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.

12. “Qualified Individual with a Disability” - an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job.

13. “Reasonable Accommodation” – any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions.

14. “Substantially Limits” – unable to perform a major life activity that the average person in the general population can perform; or significantly restricted as to the condition, manner or duration under which an individual can perform a major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that major life activity.

15. “Undue Hardship” – an action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

### **30.03 General Provisions**

Title I of the ADA prohibits discrimination in all employment practices including: application procedures, hiring, evaluation, disciplinary action, training, promotion, dismissal, medical examinations, compensation, other terms, conditions and privileges of employment.

This policy and procedures cover all aspects of the employment process and apply to the following:

1. All applicants for employment with the Department of Public Safety,
2. Applicants currently employed by the Department of Public Safety applying for promotion, lateral transfer, or reassignment, and
3. Current employees who due to a physical and mental condition may be unable to continue performing the duties and responsibilities of their position, with or without a reasonable accommodation.

### **30.04 Employment**

The employment process includes the following steps:

#### **1. Pre-Recruitment Process**

Prior to recruiting for a vacant position, managers are responsible for periodically reviewing position descriptions to ensure that essential job functions have been identified and are clearly set forth. Position descriptions should be reviewed when a vacancy occurs or when a vacancy is anticipated (i.e., a current employee will be retiring in 30 days, etc.), but prior to recruitment for that vacant position, to ensure that the position description accurately reflects the job duties and responsibilities. This review will also ensure that the essential job functions are accurately reflected.

#### **2. Recruitment Process**

Refer to the Department's posting policy in the General Manual for specific instructions related to advertising positions. It is recommended that as much detailed information as possible related to the essential job functions of the position being advertised be included.

#### **3. Interview Process**

During the interview process, the applicant shall be provided a list of essential job functions for the position they are interviewing for. It is recommended that the hiring manager provide a copy of the job posting to the candidate to ensure that they understand and can perform the functions of the position.

Those responsible for interviewing applicants for employment shall not, under any circumstances, inquire about disabilities nor require applicants to undergo preemployment medical examinations.

#### **4. Selection Process**

Qualified individuals shall ultimately be selected based on job-related criteria unrelated to the existence or potential for a disability. However, following interviews and after the applicants have been ranked according to policy in the General Manual, prior to making a final selection and extending a conditional offer of employment, hiring officials may ask an applicant to demonstrate performance of a particular job function to ensure that the applicant has the ability to complete the task consistent with the requirements of the particular essential job function (i.e., time frames, etc).

This request to demonstrate performance of a particular job function shall be made on a case-by-case basis and may be made regardless of whether the individual is external to the agency or is a current employee seeking another position within the agency.

Refer to 07.26.00, Promotion and Selection Policies and Procedures of the General Manual for specific employment procedures regarding the employment process.

### **30.05 Reasonable Accommodation**

Reasonable accommodation, as defined previously in this policy, is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions.

The ADA requires reasonable accommodation to:

1. Ensure equal opportunity in the application process:

2. Enable a qualified individual with a disability to perform the essential functions of a job; and

3. Enable an employee with a disability to enjoy equal benefits and privileges of employment. The obligation to provide a reasonable accommodation applies to all aspects of employment, is ongoing, and may arise any time an individual's disability or job changes.

In cases where an individual has been on the Return to Work Program for the maximum period of six (6) months or been out on Family Medical Leave for their own serious medical condition and is unable to perform one or more of the essential job functions because of limitations caused by a disability, the Department shall consider whether the individual could perform the essential functions with some reasonable accommodation.

An accommodation may be made for an applicant selected for a position for which he/she is unable to perform all essential job functions without an accommodation or an accommodation may be made to a current employee, who, due to a physical or mental condition, has become unable to perform the essential job functions of his/her current position.

In considering an individual's disability and an accommodation, DPS must ensure that the accommodation would not pose an undue hardship to the agency.

### **30.06 Health or Safety Issues**

The Department may require that an employee or applicant not pose a substantial risk to health and safety to employees around them before accommodating a request. Each case is reviewed on its own merit.

### **30.07 Procedures**

It is the responsibility of the applicant or employee, to inform the appropriate person of the disability and to request an accommodation. However, managers or supervisors may inquire of an employee or an applicant whether an accommodation is needed, but only when it becomes apparent due to job performance or by other means that the employee is unable to perform his/her job duties without an accommodation.

#### **1. Requests for Reasonable Accommodation**

Requests for an accommodation(s) shall be initiated in writing by the employee by submitting it through the appropriate chain-of-command. The chain-of-command will forward the request to the ADA Coordinator for review and final approval. All requests shall be initiated on the HR-32, the Request for Accommodation Packet.

However, when it becomes apparent due to job performance or other means that the individual is unable to perform the essential job functions without a reasonable accommodation, a supervisor may inquire of an employee or



applicant whether an accommodation is needed. If the individual indicates that they need an accommodation to perform the essential job functions, the supervisor shall then advise the individual of the procedures for requesting a reasonable accommodation.

If the individual states that an accommodation is not needed to be able to perform the essential functions of the job, the supervisor should document the conversation for our records.

**a. Pre-Employment Testing**

The Department requires that each employee be able to read and write at a level sufficient to perform the essential functions of the employee's position. An applicant, including a current employee applying for another Department position, who has dyslexia or other, learning impairment is responsible for requesting an accommodation prior to a pre-employment testing process. The Department shall accept documentation from a health care provider or verification from a diagnostician verifying the condition.

An applicant shall make the need for an accommodation known prior to pre-employment testing. The employee to whom an applicant makes known the need for a preemployment test accommodation shall ensure the ADA Coordinator is notified of the request.

**b. Interview Process**

An applicant shall make the need for an accommodation known prior to any interview process. The employee to whom the applicant makes the need for interview process accommodation known shall ensure the ADA Coordinator is notified of the request.

**c. Selected Candidates for Posted Department Positions**

**1) Candidate Responsibilities**

Upon being given a conditional offer of employment, it is the selected candidate's responsibility to notify the contact person, or other Department representatives issuing the conditional offer of employment, of any workplace accommodation that may be required to perform the essential functions of the job because of a medical condition.

**2) Contact Person or Other Department Representative Responsibilities:**

If the selected candidate makes the need for an accommodation known when the contact person or Department representative makes the conditional offer of employment, the contact person or representative shall:

- a) Proceed with advising the selected candidate of the pre-employment background check and preemployment drug test (commissioned staff); and
- b) Notify the ADA Coordinator of the selected candidate's request for a workplace accommodation.

**d. Candidates for Commissioned Positions**

Upon receiving a conditional offer of employment for a Commissioned position, it is the candidate's responsibility to notify the Department Representative of any workplace accommodation that may be required to perform essential functions of the job because of a medical condition.

**e. Employee with a Work Related Injury or Illness**

When an employee sustains a work related injury or illness for which compensation is payable under the Texas Workers' Compensation Act, the employee shall not be eligible for a workplace accommodation until the employee's attending health care provider:

- 1) Provides the employee with a maximum medical improvement evaluation (MMI) via:
  - a) a DWC-73, "Texas Workers' Compensation Commission Work Status Report," or
  - b) a HR-32A, "Employee ADA Medical Certification;"
- 2) Issues an MMI rating; or
- 3) Releases the employee to return to work, with or without restrictions.

Upon submitting the HR-32, Request for Accommodation Packet, the employee shall also provide a copy of the MMI evaluation, the impairment rating, and the release to return to work. No determination shall be made regarding the employee's eligibility for the program until these documents have been received and reviewed.

## **2. Review of Requests for Accommodation(s) and Determination of Coverage Under ADA**

a. Upon receipt of the completed HR-32, Request for Accommodation Packet, the supervisor/manager shall send the packet to the ADA Coordinator. Upon receipt of the information, the ADA Coordinator shall review it for appropriate information.

1) If the packet is complete, the ADA Coordinator shall notify the employee of receipt of their request by completing the appropriate documents and sending the information to the employee/applicant. The ADA coordinator will determine:

- a) If the packet was submitted by an applicant for employment, whether the applicant is an eligible individual with a medical condition
- b) If the packet was submitted by a current employee, whether there is a medical condition impairing a major life activity based on ADA Medical Certification and statements from the employee;
- c) Whether an appropriate workplace accommodation would be for equipment, a modification in the workplace, or a position reassignment for a current employee; and
- d) Whether the requested workplace accommodation constitutes an undue hardship to the Department.

During the interim period between the initial request, a final decision, and implementation of an accommodation, an employee may be granted a temporary accommodation if one is available.

In determining if the individual has a disability as recognized under ADA, additional information, i.e., medical evidence, may be necessary. Generally, medical information/evidence shall be requested from the physician who is treating the individual's condition. The individual's physician shall be given the HR Essential Functions Analysis which contains the individual's essential job functions along with the HR-32A, Employee ADA Medical Certification for completion.

b. Once it has been determined that the individual possesses a disability as recognized under ADA, the ADA Coordinator shall consider the employee's request for an accommodation. This consideration may include:

- 1) Additional consultation with the individual requesting an accommodation,
- 2) Consultation with the employee's supervisor, and

3) Conducting research to determine the cost of the accommodation, availability of other positions for a current employee, alternate accommodations, how many accommodations are already being made at the specific work location.

Reasonable accommodation may also include reassignment to a vacant position for which they are qualified if the person becomes disabled and is unable to perform the essential job functions of the original position. The chosen accommodation may be one different than the one initially requested by the employee.

The Department is not obligated to provide a reasonable accommodation that causes an undue hardship. Generally, whether a particular accommodation will impose an undue hardship to the Department shall be determined by the ADA Coordinator on a case-by-case basis. Undue hardship includes those accommodations that are unduly extensive or disruptive, that would fundamentally alter the nature or operation of the business functions, or present financial difficulty. In analyzing the request, the nature and cost of the accommodation in relation to the size, financial resources, number of employees, nature and structure of the operation will be considered.

### **3. Health/Safety Issues**

In determining whether an individual would pose a risk, the factors to be considered include:

- a. The duration of the risk;
- b. The nature and severity of the potential harm; and
- c. The likelihood that the potential harm will occur;

If it is determined that an individual would pose a risk because of a disability, the Department must then try to eliminate or reduce the risk to an acceptable level with reasonable accommodation when possible.

### **4. Notification of Final Decision**

The individual shall be advised in writing of a final decision to the request for an accommodation within thirty (30) calendar days after all information necessary for review has been received.

#### **Employees Unable to Perform Essential Job Functions of Current Position**

If the requesting individual is a current employee and a reasonable accommodation is approved, it shall be implemented as soon as possible or at least within thirty (30) calendar days from the date of approval unless, the employer informs the employee in writing concerning a reasonable schedule for implementation of the accommodation.

Should the requested accommodation be disapproved, but an alternate reasonable accommodation approved, the employee shall be advised in writing of the reasons supporting the action, asked to indicate in writing within thirty (30) calendar days whether the approved reasonable accommodation is satisfactory to him/her, and advised of the grievance procedure the employee may use if the employee is dissatisfied with the approved accommodation.

#### **a. Applicants**

This category also includes individuals currently employed applying for positions within the agency.

If the requesting individual is an applicant, the reasonable accommodation shall be implemented consistent with the effective date of the Human Resources Action (i.e., date of employment, lateral transfer, promotion, reassignment, etc). Should the requested accommodation be disapproved, but an alternate reasonable accommodation approved, the applicant shall be advised in writing within thirty (30) calendar days whether the approved accommodation is satisfactory to them.

If an applicant is unable to perform the essential job functions of the position applied for with or without reasonable accommodation, he/she is therefore, not qualified for that position. As a result, the agency is under no obligation to employ the applicant in that position.

#### Search Period for a Reasonable Workplace Accommodation

From the date it is determined a current employee has a disability and is eligible for an accommodation, the ADA Coordinator shall initiate a search for a reasonable workplace accommodation. If the Department determines that a reasonable workplace accommodation has been offered and refused, the request shall be administratively closed. A refusal by a current employee includes, but is not limited to, declining to be reassigned to a position for which the employee meets the minimum qualifications.

### **5. Equipment, Structural Changes, or Modifications**

If the ADA Coordinator determines the appropriate workplace accommodation is equipment, structural changes, or modifications, the ADA Coordinator shall confer with the Division Manager to discuss possible recommendations. If the accommodation requires structural changes, the request is submitted to the Division Director and Facilities Deputy Assistant Director for consideration.

### **6. Position Reassignments**

The Department might also consider a reassignment to a vacant position within the Department. In order to be reassigned to another position, an employee shall meet the minimum qualifications of a vacant position and be able to perform the essential functions of the position with or without reasonable accommodation. If the ADA Coordinator determines that a job reassignment is a reasonable workplace accommodation, the search for a job reassignment shall be conducted in accordance with the procedures in this section.

a. The ADA Coordinator shall contact the employee and request the employee to submit an electronic job application that includes the employee's most recent work history to include appropriate employment information. The additional requirements of the position listed on the job description shall be compared to the employee's limitations and restrictions as stated on the medical certification provided with the claim.

b. The ADA Coordinator shall review all existing vacancies within the Department.

c. If the ADA Coordinator finds a position matching the employee's knowledge, skills and abilities, the ADA Coordinator will make every effort to place the employee in the vacant position.

d. If all parties, the employee and hiring manager, agree on the terms of the position, all documents are prepared to finalize the agreement.

### **30.08 Confidentiality**

Information regarding an individual's permanent medical condition is provided voluntarily by the applicant or employee; however, any request for a workplace accommodation is subject to verification. Such information is confidential and shall be maintained accordingly.

### **30.09 Fraudulent Information**

Intentional submission of fraudulent information may be grounds to discontinue the accommodation process.

1. An outside applicant who submits fraudulent information shall also be disqualified from employment consideration for any other Department position for a minimum period of one year from the date of application.

2. A current employee who submits fraudulent information may be subject to disciplinary action in accordance with the General Manual.

## **18.35.00 AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURES (Rule §1.41)**

### **35.01 Policy**

1. The Texas Department of Public Safety has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act (ADA). Title II states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination” in programs or activities sponsored by a public entity.

2. Complaints should be addressed to: Commander, Human Resources Bureau, 5805 North Lamar Blvd., PO Box 4087, Austin, Texas 78773-0001, 512-424-5901, who has been designated to coordinate ADA compliance efforts.

3. The ADA Coordinator shall maintain the files and records of the Texas Department of Public Safety relating to the complaints filed.

4. The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person’s pursuit of other remedies such as the filing of an ADA complaint with the responsible federal or state department or agency. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

5. This policy shall be construed to protect the substantive rights of interested persons to meet appropriate due process standards, and to assure that the Texas Department of Public Safety complies with the ADA and the implementing regulations.

### **35.02 Complaint Procedures for Program Compliance**

1. A complaint should be filed in writing or verbally, containing the name and address of the person filing it, and briefly describe the alleged violation of the regulations.

2. A complaint should be filed within 30 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before adoption of this administrative rule will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, shall follow a filing of complaint. The investigation shall be conducted by an employee designated by the Assistant Director. The designated investigator may not be a member of the same service or bureau administering the program or activity complained of. This procedure contemplates informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint. A copy of the investigative report will be forwarded to the major division chief in charge of the program or activity complained of.

4. A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the major division chief and a copy forwarded to the complainant no later than 30 days after its filing.

5. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made to the Assistant Director within 10 days of the date of the written determination issued by the major division chief. Based on his review of the investigation, the Assistant Director may alter the determination of the major division chief.

6. The ADA Coordinator will advise the Chief of Legal Services, as necessary, about complaints received and the resolution of such complaints. The Chief of Legal Services shall assist the coordinator as the need arises.

### **35.03 Complaint Procedure for Employment Compliance**

1. An applicant for employment may file a complaint in writing or verbally. The complaint should contain the name and address of the person filing it. A complaint should be filed within 30 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before adoption of this administrative rule will be considered on a case-by-case basis.)

2. A board consisting of the Equal Employment Opportunity (EEO) Officer and two other members to be named by the Director has been established to receive, review, and make determinations as to validity on complaints of discrimination. Upon receipt of the complaint, the ADA Coordinator will forward the complaint to the EEO Officer.

3. The complaint must fully describe the nature of the complaint and provide sufficient details to enable the board to arrive at a thorough understanding of what has occurred. The board may request additional information.

4. A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the EEO Officer and a copy forwarded to the complainant, the Chief of Legal Services, and the ADA Coordinator no later than 30 days after its filing.

5. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made to the Assistant Director within 10 days of the date of the written determination issued by the EEO Officer. Based on his review of the investigation, the Assistant Director may alter the determination of the EEO Officer.

## **STAFF INSPECTION PROGRAM**

### **01.19.00.00**

#### **19.10.00 MISSION OF THE OFFICE OF AUDIT AND INSPECTION**

Our mission is to assist Department management in achieving their operating goals by using innovative and disciplined work methods to objectively evaluate the effectiveness, efficiency, and integrity of Department operations and governance processes. Making recommendations to improve the performance of operational and governance processes.

#### **19.15.00 STAFF INSPECTION PHILOSOPHY**

Inspection is an inherent responsibility of the top executive within all organizations. Inspection authority in the Department of Public Safety is a right of command of the Director to require accountability from his subordinates for their performance. This right of inspection is exercised through the staff inspection program.

The success or failure of the inspection program as a management tool varies directly with the Director's use of his inspectors to keep him and his staff informed of any significant item of performance warranting commendation or requiring corrective action.

Findings and observations resulting from inspection shall be factual, objective and impartial. They shall:

- 15.01** Identify existing problems.
- 15.02** Determine their cause and effect.
- 15.03** Develop recommendations for improvement.
- 15.04** Identify items warranting commendation.
- 15.05** Provide facts to managers on which to base corrective action.
- 15.06** Analyze corrective actions. If problems are of significant magnitude they shall be kept under surveillance and follow-up inspections conducted as necessary.
- 15.07** Provide the Public Safety Commission with information relevant to its oversight of the Department.

#### **19.20.00 INSPECTION GOAL**

The goal of the Texas Department of Public Safety inspection program is to provide the Public Safety Commission, the Director, the Assistant Director, and all chiefs, commanders, and supervisory personnel with:

- 20.01** A capability to have continuous third-party nonbiased appraisal of performance of the Department and all areas of responsibility.
- 20.02** A measure of the effectiveness and efficiency of management and its related systems.

**20.03** Factual information upon which to base and/or measure effectiveness of a unit when a manager or a management system is not achieving desired results.

**20.04** Factual information commending managers, organizations, or individuals who are performing in an outstanding manner.

**20.05** A means of disseminating and exchanging ideas or practices that have been proven most effective for the organization or unit.

**20.06** Advise in the development and evaluation of the Department’s performance measures.

**19.25.00 INSPECTION SCOPE**

The inspection program is charged with the responsibility to provide factual inspections and evaluations of the effectiveness and economy of DPS policies, plans, operations, procedures, and other programs. Inspections will be oriented to both management effectiveness and compliance with directives. Inspection frequencies will be determined by the workload of the inspection unit. Normally, inspections will be conducted on a prior notice basis; however, no notice inspections may be used. A team inspection concept will be used when deemed feasible. Inspection techniques may include personal interviews, records reviews, exercises, demonstrations, response evaluations, survey results, statistical analysis, or whatever techniques are necessary to determine effectiveness.

In compliance with Government Code, Section 411.243, the staff inspection program extends into every field of DPS affairs including headquarters staff operations. The program shall include but not be limited to inspection of:

**25.01** Department of Public Safety adequacy and preparedness to fulfill its assigned tasks in its assigned role as a state agency.

**25.02** The state of training and preparedness to carry out service missions and related support activities.

**25.03** The ability of units and individuals to perform their service missions and functions effectively and economically.

**25.04** The discipline, morale, health, and welfare of units and individuals.

**25.05** The effectiveness and economy of practices and procedures (includes identifying those meriting recognition or consideration for use by other DPS units).

**25.06** The economical and effective use of personnel, material, installations, facilities, and funds.

**25.07** Compliance with laws, policies, and directives.

**25.08** Determining the effectiveness of policies, directives, and publications.

**19.30.00 INSPECTION GUIDELINES**

**30.01 Basic Tasks**

<b>ACTIVITY</b>	<b>METHOD</b>	<b>STANDARD OF MEASUREMENT</b>
1. Communications Service a. Transmission and receipt of	1. Observations, oral questions	1. Written guidance (policies – procedures – regulations)



<p>Department messages</p> <p>b. Transmission and receipt of emergency-type messages for other police agencies</p> <p>c. Other special assistance to departmental operations</p>	<p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials</p> <p>Evaluation – statistical data</p> <p>Demonstrations</p>	<p>Established performance level</p> <p>Program evaluation by the inspector based on experience and training</p>
<p>2. Driver License Division</p> <p>a. Examination of drivers</p> <p>b. Improvement and control of problem drivers</p> <p>c. Commercial driver training school regulations</p> <p>d. Limited traffic and general law enforcement on rural highways</p>	<p>2. Observations, oral questions</p> <p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials, public</p> <p>Check rides</p> <p>Evaluation – statistical data</p> <p>Demonstrations</p>	<p>2. Written guidance (policies – procedures – regulations)</p> <p>Established production level</p> <p>Expert program evaluation by the Inspector based on experience and training</p>
<p>3. Highway Patrol Division</p> <p>a. Police traffic supervision on rural highways</p> <p>b. General police work – primarily on rural highways</p> <p>c. Supervision of commercial vehicle traffic</p> <p>d. Public traffic safety and crime prevention education</p>	<p>3. Observations, oral questions</p> <p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials</p> <p>Evaluation – statistical data</p> <p>Demonstrations</p> <p>Observation of safety programs</p>	<p>3. Written guidance (policies – procedures – regulations)</p> <p>Established performance level</p> <p>Program evaluation by the Inspector based on experience and training</p>
<p>4. Vehicle Inspection</p> <p>a. Inspection station supervisor</p>	<p>4. Observations, oral questions</p> <p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials</p> <p>Inspection station contacts</p> <p>Check rides</p> <p>Evaluation – statistical data</p> <p>Demonstrations</p>	<p>4. Written guidance (policies – procedures – regulations)</p> <p>Established performance level</p> <p>Program evaluation by the Inspector based on experience and training</p>
<p>5. Regional Crime Laboratory</p>	<p>5. Observations and interviews of co-workers, supervisors, officials</p>	<p>5. Expert evaluation by the Inspector and augmentor evaluation</p>

<p>a. Examination of potential evidentiary materials</p> <p>b. Collection, preparation, and transmission of potential evidentiary materials for more complex examination</p> <p>c. Expert opinions on and photographic recording of potential evidentiary materials and situations</p>	<p>Surveys</p> <p>Augmentor evaluation</p> <p>Demonstrations</p>	<p>of accepted practices, written guidelines, and operating procedures</p> <p>Scientific bulletins</p>
<p>6. Criminal Intelligence Service</p> <p>a. Develop intelligence data relating to organized crime and criminal activity</p> <p>b. Identify crime problems and persons involved</p> <p>c. Analyze criminal cartels</p> <p>d. Provide necessary data to investigate criminal and organized crime activities</p>	<p>6. Observations, oral questions</p> <p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials</p> <p>Case review</p> <p>Evaluation – statistical data</p> <p>Demonstrations</p>	<p>6. Written guidance (policies – procedures – regulations)</p> <p>Established performance level</p> <p>Program evaluation by the Inspector based on experience and training</p>
<p>7. Motor Vehicle Theft Service</p> <p>a. Planning, designing, and implementing statewide programs in vehicle theft control activities</p> <p>b. Prompt apprehension of fugitives and other persons involved in motor vehicle thefts</p>	<p>7. Observations, oral questions</p> <p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials</p> <p>Case review</p> <p>Check rides</p> <p>Evaluation – statistical data</p>	<p>7. Written guidance (policies – procedures – regulations)</p> <p>Established performance level</p> <p>Program evaluation by the Inspector based on experience and training</p>
<p>8. Narcotics Service</p> <p>a. Identify and eliminate illegal trafficking of controlled substances and drug abuse</p> <p>b. Assist regulatory boards in regulating the dispensing and prescribing of controlled substances and dangerous drugs</p> <p>c. Controlled substance</p>	<p>8. Observations, oral questions</p> <p>Surveys</p> <p>Observations and interviews of co-workers, supervisors, officials</p> <p>Case review</p> <p>Evaluation – statistical data</p>	<p>8. Written guidance (policies – procedures – regulations)</p> <p>Established performance level</p> <p>Expert program evaluation by the Inspector based on experience and training</p>

registration	Demonstrations	
9. Texas Ranger Division  a. Conduct criminal and special investigations  b. Apprehending wanted felons  c. Suppressing riots, mobs, and other major disturbances  d. Render assistance to local law enforcement officials	9. Observations, oral questions  Surveys  Observations and interviews of co-workers, supervisors, officials  Case review  Evaluation – statistical data  Demonstrations	9. Written guidance (policies – procedures – regulations)  Established performance level  Program evaluation by the Inspector based on experience and training

### 30.02 Administration and Supervision

ACTIVITY	METHOD	STANDARD OF MEASUREMENT
1. Planning	1. Written plans, interviews, exercises, demonstrations  Surveys	1. Professional accepted planning procedures
2. Organizing	2. Interviews, observations, written guidelines	2. Job description, delegation, authority, expert evaluation of effectiveness of guidelines
3. Coordinating	3. Interview and observation – individuals, schedules, other agencies	3. Written guidelines and evaluation by the Inspector
4. Directing	4. Interview subordinates, observation, written orders and directives	4. Written evidence of directives, organization charts, duty assignments
5. Controlling	5. Check rides, observation, interviews, testing, demonstrations, personnel evaluations	5. Written procedures – training manual, training consistent with need, evaluation

### 30.03 Human Relations

ACTIVITY	METHOD	STANDARD OF MEASUREMENT
1. Morale	1. Interview and observation	1. Employee satisfaction, attitude, discipline, cooperation
2. Motivation	2. Surveys	2. Progressive outlook, pride, degree of effort to complete task
3. Communications		3. Evaluation by the Inspector

### 30.04 Equipment and Facilities

ACTIVITY	METHOD	STANDARD OF MEASUREMENT
1. Office and building 2. Equipment 3. Inventory Control	1. Observation and interview 2. Augmentor evaluation 3. Review of existing data	1. Evaluation by the Inspector for adequacy, maintenance, safety, security, service manuals, maintenance schedules, and service records  2. Written guidelines, supporting documents

## **CRIME LABORATORY SERVICE**

### **01.20.00.00**

#### **20.05.00 CRIME LABORATORY SERVICE**

**05.01 Objective.** The overall objective of the Crime Laboratory Service is to provide, within the limits of its capability, expert forensic laboratory services to the law enforcement agencies within the State of Texas. These services shall include the scientific examination and analysis of evidentiary material, assistance in scientific investigations and collection of evidence, expert testimony concerning the analysis of evidentiary material and interpretation of technical data and laboratory findings, and other related forensic services and activities.

**05.02 Organization.** For the purpose of administration, the Crime Laboratory Service shall consist of the following major bureaus:

1. **Headquarters Laboratory Bureau.** The Headquarters Laboratory Bureau shall consist of those laboratory sections located in the headquarters complex in Austin. The sections contained in this bureau shall be as follows: Criminalistics, Toxicology, Drugs, Serology/DNA, Photography, Latent Fingerprints, Questioned Documents, and Firearms.

2. **Field Laboratories Bureau.** The Field Laboratories Bureau shall consist of all laboratory services which are located outside of the Austin headquarters area. This bureau shall consist of the field crime laboratories. Services provided include Criminalistics, Drugs, Serology/DNA, Blood Alcohol, and Firearms, but not all services are provided in all locations.

#### **05.03 Responsibilities**

1. The Crime Laboratory Service Director, through the Manager of Field Laboratories and the Manager of Headquarters Laboratory, will be responsible to the Chief of Criminal Law Enforcement for Crime Laboratory Service operations, and for direction and supervision of laboratory personnel on all matters. He shall be responsible to the Chief of Criminal Law Enforcement for the enforcement of all policies and procedures promulgated relative to laboratory personnel and operations.

2. The Crime Laboratory Service Director will exercise complete administrative and technical direction of the programs of the bureaus. He shall be responsible for quality control of the work of the laboratories and personnel through periodic checks, at least semiannually, but more often if necessary. He shall be responsible to the Chief of Criminal Law Enforcement for developing and recommending to the Director for implementation all policies and procedures governing the professional operation of the laboratories, including the selection of facilities; the purchase of equipment, operating supplies, and other items; and the recruitment, selection, training, and technical evaluation of laboratory personnel. He will also be responsible, in cooperation with Inspection and Planning personnel, for continued planning for laboratory improvement.

a. The Manager of Field Laboratories and Manager of Headquarters Laboratory will be responsible to the Crime Laboratory Service Director for the administrative and technical direction, evaluation, coordination, and quality control of the work of the field laboratories and headquarters laboratory, respectively, along with their respective personnel.

b. In budget matters involving the expenditure of federal project funds in connection with the operation of the bureaus, the designated project director shall have complete control.

3. The Chief Inspector, Office of Audit and Inspection, through appropriate personnel, by regular inspections, will inspect the total operations of the laboratories utilizing personnel for technical assistance from the laboratory as designated by the Crime Laboratory Service Director. He will cooperate fully with the Crime Laboratory Service Director on continued planning for laboratory improvement.

**05.04 Operations.** It is intended that the Department of Public Safety laboratories be utilized effectively and economically in the furtherance of the missions of the Department and for discharging its statutory obligation to conduct such laboratory examinations for all law enforcement officers in the state. The primary duties of the laboratory bureau personnel will be to make scientific and technical analyses and examinations of evidentiary items in criminal cases, give court testimony in connection with the examinations at trials of subsequent criminal cases, and provide limited instruction in police training schools and limited liaison with other police agencies. All such operations will be conducted in compliance with promulgated policies and procedures.

Officers are asked to use the laboratory nearest them. Annex #2 and #3 of this chapter show the location of all Department laboratories. Also, these maps show the geographic area serviced by each laboratory. Note that while all Department laboratories (Annex #2) examine drug evidence, only the laboratories shown in Annex #3 examine bloodstains and other non-drug evidence.

**05.05 Regulations.** Personnel of the Department of Public Safety crime laboratory bureaus will conduct examinations and analyses for any government agency involved in the criminal justice process in connection with matters involving deceased persons or investigations which may result in criminal prosecution.

#### **20.10.00 EVIDENCE SUBMITTED TO A CRIME LABORATORY**

It is the policy of the Department that all controlled substances and dangerous drugs that come into a DPS officer's possession, for any reason, be submitted to a crime laboratory for analysis and/or destruction. The one exception to this is that some excess quantities of drugs, and certain hazardous chemicals seized in clandestine drug laboratories, may be summarily destroyed.

#### **20.15.00 DESTRUCTION OF CONTROLLED SUBSTANCES**

DPS crime laboratories must be registered with both the U.S. Drug Enforcement Administration and the DPS Narcotics Service to analyze and store controlled substances. To be registered, the laboratories are required to maintain effective controls against diversion of drugs. To achieve effective control, it is imperative that drug evidence be disposed of as soon as it is no longer needed for prosecution of defendants. It shall be the policy of the Department that all officers submitting evidence to a laboratory must notify that laboratory in writing, as soon as possible, when learning that the prosecuting attorney has closed a case and no longer needs the evidence.

Further, on cases involving excess quantities of controlled substances (such as any marijuana over 50 pounds), it shall be the policy of the Department that the submitting officer attempt to obtain authorization from the prosecuting attorney to destroy the excess quantity, in accordance with existing statutes (HSC 481.160). Refer to Subchapter H, Chapter 13, DPS Administrative Rules for detailed instructions.

#### **20.20.00 DESTRUCTION OF HAZARDOUS MATERIALS**

**20.01** All hazardous raw materials seized at illegal laboratories or in other drug-related seizures and as a result of THP traffic stops will be handled in compliance with Chapter 5, section 05.83.00 of the General Manual.

**20.02** Hazardous materials are those which pose a risk to life or property if transported or stored by law enforcement agencies.

**20.03** DPS labs will not accept or store any hazardous materials other than controlled substances and small quantities of precursor materials seized as sampling from illegal labs. The DPS chemist may in his discretion determine what amount may be safely stored.

**20.04** Destruction of hazardous materials must be accomplished in a safe and responsible manner in compliance with all local, state, and federal regulations. Hazardous materials containing controlled substances may be transferred to, and destroyed by, a licensed contractor who has a DEA controlled substance registration number and who is fully permitted by EPA to be a hazardous waste transportation, storage, and/or disposal facility, as required.

#### **20.25.00 REIMBURSEMENT FOR COST OF CONFISCATION, ANALYSIS, STORAGE, OR DISPOSAL**

**25.01** The cost incurred in the confiscation, analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials in connection with a violation of Chapter 481, Health and Safety Code, may be reimbursed.

**25.02** The law enforcement agency incurring these costs may petition a court granting probation to require reimbursement of these costs as a condition of probation.

#### **20.30.00 PROCEDURES FOR REIMBURSEMENT OF COST**

**30.01** Crime Laboratory Service personnel will automatically request reimbursement for analysis cost utilizing the Petition for Restitution form HQ-46A as follows:

1. List all defendants on the LAB/c-1 evidence submission form in the Texas vs. \_\_\_\_\_ on the petition.

2. Enter the DPS Laboratory number in the appropriate space.

3. Enter the DPS or other agency file or case number in the appropriate space.

4. The Accounting Division has designated the "Restitution Accounting Section" to handle petition responses. (See Annex #1.)

NOTE: Accounting will receive the necessary data (petition and copy of court order) from the court or probation department in order to track any reimbursement cost for proper deposit in the Crime Laboratory budget. Accounting should be contacted for financial information only; other questions should be directed to the appropriate laboratory.

**30.02** Other DPS employees should consider all activities and related expenditures when compiling the total cost for which reimbursement is requested. The following list, which is not all inclusive, should serve as a guide for this purpose.

1. Mileage @ \_\_\_\_\_ per mile for DPS vehicle

2. Salaries @ \_\_\_\_\_ per hour of investigative effort

NOTE: Current figures for No. 1 and No. 2 can be obtained from Accounting and Budget Control.

3. Rental cost (vehicle, storage space, other equipment)
4. Towing cost
5. Postal cost
6. Mechanic cost (repairs, disassembly, reassembly, etc).
7. Storage/disposal cost for hazardous waste (Contact Narcotics Service Assistant Commander for information on current private contractor costs)
8. Public Scales cost
9. Other Miscellaneous cost (maintain receipts)

**30.03** DPS employees requesting reimbursement for the cost of confiscation, storage, or disposal of substances listed in subsection 35.01 will prepare the HQ-46B, Petition for Restitution, as follows:

1. Enter the names of all defendants in the Texas vs. \_\_\_\_\_.
2. Enter "Department of Public Safety, (appropriate) Service" in the "law enforcement agency" space.
3. Mark through categories #1 - #4 that do not apply.
4. Enter the total sum (category #5) in the "cost to be reimbursed" space.
5. Enter the total cost for each of the applicable categories #1 - #4 that were not marked through.
6. Enter the total cost in space #5 which will be the same figure as shown in the "cost to be reimbursed" space.
7. Enter DPS Laboratory number, if applicable; otherwise, N/A.
8. Enter the DPS case or file number in appropriate space.

**30.04** Upon completion of the Petition for Restitution, HQ-46B, it must be transmitted quickly to the appropriate prosecuting attorney in order that timely consideration may be given to the reimbursement request.

**30.05** Should there be any problems in connection with sending the court-ordered reimbursement to the DPS, the Restitution Accounting Section should be contacted by the court, the prosecuting attorney, or the probation office.

**30.06** Restitution Accounting will obtain the name(s) of probationers, cause number, amount to be reimbursed, method of payment, amount of payment, and any additional pertinent information required.

**30.07** Copies of bills, receipts, manifests, or other documentation used to justify all costs shown on the Petition for Reimbursement will be maintained on file and be readily retrievable should the courts or Accounting need such documentation.

Note: Accounting and Budget Control will establish a tracking procedure whereby the reimbursed monies will go to the proper budgetary fund.



# RECORDS AND INFORMATION POLICIES

## 01.21.00.00

### 21.01.00 RECORDS MANAGEMENT

#### 01.01 GENERAL POLICY

The Department recognizes the need for orderly management and retrieval of all official records and for a documented records retention schedule in compliance with all state and federal laws and related regulations. All official records will be retained for the minimum periods stated in the Department's records retention schedule as approved by the Texas State Library and Archives Commission and the Texas State Auditor's Office in compliance with Gov't Code Ch. 441. After the specified period of time and the satisfaction of any other legal requirements, official records must be disposed of in a manner that is consistent with, and systematically carried out in accordance with, prescribed records and information management guidelines and procedures. Convenience copies shall in no case be kept longer than the official record copy and should follow the retention period of the original record listed in the records retention schedule. Each Department employee should be familiar with the retention schedule applicable to the records for which that employee is responsible. Removal of records, including convenience copies, from the custody of the Department is prohibited unless the record is transferred to another governmental body in accordance with state or federal laws. Links to laws and rules pertaining to records management are provided in this chapter.

#### 01.02 DEFINITIONS

1. **Official Record.** Any written, photographic, machine-readable, or other recorded information, regardless of medium or characteristics, including any paper; email; book; letter; document; mylar; linen; silk; vellum; photograph; film; photostat; tape; microfiche; microfilm; card; disk; map; drawing; magnetic, optical, or solid state device that can store an electronic signal; collection of related data fields in a database; sound recording; voice, data, or video representation held in computer memory; or any copy or printout that has been collected, assembled, or maintained by or on behalf of the Department under a law or ordinance or in connection with the transaction of official business. If an original record is transferred to another governmental body in accordance with state or federal laws, a copy of the original record shall be deemed to be the official record.

2. **Record Copy.** The original or sanctioned copy of an official record. Official records may include electronic mail and facsimiles when there is no other official record or when an electronic format has been identified as the original or sanctioned record.

3. **Convenience Copy.** Record where the original document exists in another area or is in the possession of another department and is being maintained only for convenience or reference purposes. Electronic records that are not official record copies are convenience copies.

Care must be taken in determining if duplicate records are indeed convenience copies or if two or more copies of the same document must be considered an official record. The same document may be present in two or more divisions in the agency and serve a different function for each. This would result in both divisions owning separate original records.

#### Example

A complaint is filed with the Equal Employment Opportunity office regarding a DPS employee. At the close of the complaint investigation, an open records request is filed with the Office of General Counsel requesting the entire EEO

investigation file. EEO holds the official record and is required to maintain the investigation file for the retention period listed in the records retention schedule specific to EEO/Sexual Harassment Employee complaints. However, OGC must maintain the file for the retention period listed in the records retention schedule specific to an open records request. Both EEO and OGC hold an official record and must dispose of the record in accordance with the individual retention period. If the division keeps a copy of the investigation file, they hold a convenience copy and must dispose of it in accordance with the retention period listed for EEO/Sexual Harassment Employee complaints.

4. **Archival Record.** Any official record of enduring value that will be preserved on a continuing basis by the Texas State Library and Archives Commission until the state archivist indicates, that based on a reappraisal of the record, it no longer merits further retention. Records that require archival review or transfer to the Texas State Library and Archives Commission (TSLAC) are identified on the Department's records retention schedule. All personnel should contact the Records Management Officer (RMO) prior to fulfilling TSLAC archival requirements.

5. **Confidential Record.** Any official record to which public access is or may be restricted or denied under Gov't Code Chapter 552 or other state or federal law. Convenience copies may be confidential records.

6. **Vital Record.** Any official record necessary to the resumption or continuation of Department operations in an emergency or disaster, recreation of the legal and financial status of the Department, or protection and fulfillment of the Department's obligation to the people of the state. Convenience copies of vital records should be stored in a location remote from the record copies.

7. **Records Series.** A group of identical or related records with the same function and the same retention period that is evaluated as a unit for retention scheduling purposes.

8. **Electronic mail record.** An electronic document, meeting the definition of a state record, sent or received in the form of a message on an electronic mail system, including any attachments transmitted with the message.

9. **Agency Number.** A DPS assigned number that is found on the record retention schedule next to the record series title. This number is subject to change upon recertification and amendments to the existing retention schedule.

10. **Retention Period.** The amount of time an official record or records series must be retained before final disposition.

11. **Final Disposition.** The final processing of official records by either destruction or archival preservation.

12. **Disposition Log.** A log of the final disposition of all record copies which are disposed of in accordance with the retention schedule. The log must include the records series title, the applicable retention period, the disposition date, the method of disposition, verification that the record is not currently pending litigation or an open records request, and approval from the RMO. Employees must obtain final approval from the RMO prior to disposing of records. A disposition log does not need to be filled out when disposing of convenience copies, transitory information, blank forms, and museum materials.

### 01.03 RESPONSIBILITIES

1. The Director is responsible for the proper management of official records as outlined in Gov't Code Ch. 441.

2. The records management officer (RMO) acts as the Director's representative in all issues of records management policy, responsibility, and statutory compliance. An employee must be appointed as the Department's records management officer by the Director. The RMO ensures that the Department's records management policies and procedures are documented and that Department staff is kept aware of the program and its requirements. The records management officer conducts periodic inspections of Department records to ascertain they are being maintained in

compliance with the retention schedule and reports annually to the Director or to a Deputy Director regarding compliance with the records management policy.

3. Division heads are responsible for official records in the custody of their division and ensuring that their division adheres to the Department's records management policies and procedures. Each division head shall act as or appoint a records management liaison (RML) for operational handling of the division's records management.

4. RMLs are designated by division heads to manage the official records of the division, including completing and submitting to the RMO quarterly inventories of official records in their custody, designating a records series for each type of record created or maintained by the division, notifying the RMO of any new record series applicable to official records created or maintained by their division, and requesting approval on behalf of the division for the destruction of records having met the retention schedule to the RMO.

5. All Department employees charged with responsibilities in the handling of records will be knowledgeable of and carry out their respective job duties in compliance with federal and state regulations, this policy, and established records management procedures. Employees will maintain the records in good order, following established procedures in the organization, filing, and storage of official records. Department employees are required to complete and pass the approved records management training course every two years of employment to ensure that they are current on records management policies and procedures for the agency. The records management training course shall be taken within 60 days of a new hire's employment date with the Department. As the division point of contact, designated RMLs are required to complete and pass the approved records management training course annually.

#### **01.04 PROCEDURES**

##### **1. Records Retention Schedule.**

a. The RMO shall develop a records retention schedule as outlined in Gov't Code Ch. 441. The retention schedule will list the records series that are created and/or maintained by the Department and will define a retention period for each series in accordance with state and federal laws. All official records of the Department must be included in the retention schedule.

b. Assignment of a record to a records series is at the discretion of the records management liaison for the division which is primarily responsible for the record.

c. The retention schedule shall be reviewed quarterly by the division RMLs to verify that the retention schedule is current as it pertains to their division. The RML will submit an amendment request to the RMO if during the review they find that there is a newly created series, change in a retention period or that a records series is no longer useful and should be deleted. At the RMO's discretion, amendments will be submitted throughout the year to TSLAC to obtain final approval for changes to the Department's current records retention schedule.

**2. Maintenance of Records.** All records will be kept for the retention periods listed in the records retention schedule.

a. Official records may be kept for the prescribed retention periods in microform, if the microform reproduction is accomplished pursuant to a procedure that complies with Gov't Code § 441.188 and the administrative rules of the Texas State Library (13 T.A.C. §§ 6.21-6.35).

b. An electronic record may be considered an official record if it is the chosen medium for that record or the only record copy maintained for the duration of the retention period listed in the retention schedule. Electronic records also include any hardware, software, documentation required to read or retrieve electronic

records and email. All electronic records must be listed on the agency records retention schedule and must adhere to the specified retention period for the record. See General Manual, Chapter 21.01.05 – Electronic Records.

c. Vital records should be identified in the records retention schedule and protected in accordance with Gov't Code §441.183.

d. Archival records should be identified in the records retention schedule and maintained in accordance with Gov't Code §441.181.

e. Each RML shall ensure that records are stored in an organized manner and located in an area with adequate storage space that is easily accessible to authorized personnel. Additionally, to the extent possible, records should be stored in an area that is climate-controlled and is protected from water, fire, vermin, and insect damage.

f. Employees are prohibited from removing official records from Department custody for any reason other than the conducting of official Department business. Violation of this rule is a violation of Penal Code § 37.10 and Gov't Code § 441.191.

g. Employees are prohibited from removing convenience copies from Department custody for any reason other than the conducting of official Department business.

**3. Final Disposition of Records.** Official records and associated convenience copies shall not be retained longer than the established retention period and shall be destroyed regularly in accordance with the retention periods shown in the records retention schedule. Prior to disposal of official records, all state and institutional records and information management regulations and policies must be followed.

a. The final disposition of all record copies must be recorded on a disposition log. The disposition log shall be submitted to the RMO and will be reviewed and approved by the RMO prior to disposition of records. At a minimum, the disposition log must include the requestor, description of record, retention period, inclusive dates of records being disposed, DPS agency number, manner of disposition and confirmation that the requested records are not part of pending litigation or an open records request. Once the RMO has reviewed and approved the disposition request, the division may dispose of the records.

b. An official record whose retention period has expired may not be destroyed if any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record is initiated. Its destruction shall not occur until the completion of the action and the resolution of all issues that arise from it.

c. (omitted)

d. Archival records should be transferred to the Texas State Library and Archives in accordance with Gov't Code § 441.186. The records management officer will coordinate transfer of the archival records to the State Archivist.

If a records series has an "A" in field eight of the retention schedule ("Archival"), the records shall be forwarded to the State Archivist at the end of the retention period.

If a records series has an "R" in field eight of the retention schedule ("Archival"), the records shall be reviewed by the State Archivist to determine if they merit continued preservation.

If a records series has “PM” (“Permanent Retention”) in field seven (“Retention Period”) and an “A” or “R” in field eight of the retention schedule, a copy shall be forwarded to the State Archivist for archival and/or review within one year after its creation.

e. Official records not listed on the records retention schedule may be destroyed only after receiving approval by officials at the TSLAC. The RMO must complete Form RMD 102, Request for Authority to Dispose of State Records, and submit it to the Records Services Department of the TSLAC to obtain approval for the destruction of public or official records. Unlisted records must not be destroyed until the TSLAC administrator approves and returns the form to the appropriate Department officials.

f. (omitted)

g. Confidential records and convenience copies of confidential records shall be destroyed in a manner that maintains the confidentiality of the information at issue.

h. The records retention schedule is not applicable to convenience copies, which are not official records. Convenience copies should be disposed of as necessary, without documentation, when their purpose has been served, and shall in no case be retained past the date that the official record would be destroyed, as indicated in the retention schedule. The owner of the convenience copy should be familiar with the current records retention schedule and must adhere to the retention period of the official record.

i. In the event a convenience copy is improperly retained after the official copy is disposed of, that convenience copy becomes an official record for purposes of litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record, and subsections (b) and (c) of this section apply to that convenience copy.

j. In no case shall official records or convenience copies be removed from the Department for the purpose of private storage rather than destruction.

## 01.05 ELECTRONIC RECORDS

1. **Definition.** An electronic record is information that meets the definition of a state record and is maintained in electronic format for computer processing, including the product of computer processing of the information. An electronic record may be considered an official record if it is the designated medium for that record or the only record copy maintained for the duration of the retention period listed in the retention schedule. Electronic records also include any hardware, software, documentation required to read or retrieve electronic records and email. E-mail is also a form of electronic record and consists of any electronic state record sent or received in the form of a message, including attachments, through an electronic mail system.

2. **Creation of electronic records.** Electronic records should have the capability of residing in a computer system for the full retention period and Department personnel should be able to retrieve and carry out disposition of records within the system according to the records retention schedule. If the Department implements a new computer system, the software/operating system should be able to convert or migrate existing electronic data from one system to another without loss of data and have the capability to meet the different retention periods of the records that reside in that system.

### 3. Retention and disposition of electronic records.

a) All electronic records must be referenced on the records retention schedule and must adhere to the specified retention period for the record. If a division finds that there are electronic records not listed on the records retention schedule, the RML for that division shall contact the RMO with a request for an amendment.

b) An electronic state record must be individually accessible in accordance with the retention period. System tapes used for data backup or disaster recovery, unless indexed for accessibility, must not be used to satisfy records retention requirements.

c) It is the content and function of an email message that determines the retention period for that message. Email shall be retained according to the retention schedule and organized appropriately for maintenance for the duration of the required retention period prior to the automated system deletion. See General Manual 26.110.02 (8).

d) If an electronic record requires review by an archivist at the Texas State Library, the record must be maintained in an accessible and searchable format that is able to be provided to the Texas State Library at the required time in accordance with the records retention schedule.

e) Electronic records may only be deleted without filling out a disposition log if they are a convenience copy, transitory, spam, or personal records. Deletion of all other electronic records must be submitted as a request through the divisions RML on a disposition log to the RMO.

## **21.02.00 MEDIA INQUIRIES**

In recognition of the vital need for a free press in our state and nation, existing policies and procedures are herewith restated, clarified, and expanded.

### **02.01 GENERAL POLICY (RULE § 1.51)**

It is the policy of the DPS that the public should have accurate and timely information concerning matters that affect the public welfare or that are of public interest. It is also the policy of the DPS that the public should be informed of the actions of governmental agencies when it is possible to give such information without substantially interfering with the performance of vital emergency police services or jeopardizing the results of a police investigation.

To this end, the Department has established a Media and Communications Office (MCO) to coordinate the delivery of such information to the public through the media.

Therefore, all media contacts received by DPS employees shall be immediately forwarded to the MCO. Exceptions to this policy include only the following:

1) Regional Media and Communications (MC) Sergeant and Safety Education (SE) Troopers are authorized spokespeople for the department, and will communicate with the media regarding local incidents. These authorized spokespeople will coordinate with regional commanders, local supervisors and the Headquarters MCO in communicating accurate information to the media. Conversely, regional commanders, local supervisors, and all DPS personnel will cooperate in providing timely, necessary information to these authorized spokespeople.

2) DPS Communications staff may give general information to the media on road closures, fatality reports and wrecks.

3) DPS officers or investigators on the scene of a wreck, traffic accident or emerging case may – in the absence of an authorized department spokesperson – provide general information to the media on scene regarding the particular incident or case they are working. After the scene has been cleared, subsequent media inquiries about that particular incident or case shall be referred to the local SE Trooper, regional MC Sergeant or the MCO.

Additionally, the MCO is the only authorized entity to coordinate press conferences, press releases, media advisories, media availabilities, interviews or other press-related activities involving the department. This includes the coordination of such efforts either independently or in partnership with other state agencies or organizations.

Any other exceptions to this policy shall be determined by the MCO.

## **02.02 RELEASE OF INFORMATION IN CRIMINAL INVESTIGATIONS (RULE § 1.52)**

1. Subject to the limitations outlined below, DPS employees may respond to news media inquiries about criminal investigations in which the Department is involved.

2. Release of information concerning criminal investigations may be made only by the officers directly responsible for the investigation, by the Public Information Office, by the Office of General Counsel, or by designated public information officers on the scene after consultation with the lead investigating officers. Employees not involved as outlined in this paragraph will refer all news media inquiries to the appropriate personnel.

3. When an investigation is being conducted jointly with local officers, releases will be coordinated with them so as to maintain proper working relationships. Every effort should be made in such cases for releases to be handled by the sheriff or chief of police, if he so desires.

4. Once an arrest has been made and primary responsibility for a case has shifted to the prosecutor, news media inquiries should normally be referred to the appropriate county or district attorney. However, a written request for information must be answered and may not be referred elsewhere if the Department has responsive information.

5. The names of offenders under age 17 should not normally be released. Guidance should be sought from the Office of General Counsel or local juvenile authorities in cases involving juvenile offenders.

6. The following information regarding criminal matters may not be released by members of this Department:

a. The prior criminal record (including arrests, indictments, or other charges of crime) or the character or reputation of the accused, except that the officer may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present. Nothing herein should be construed as limiting the right of the news media to obtain and publish conviction data from court or public records.

b. The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement, except that the officer may announce without further comment that the accused denies the charges made against him.

c. The details or results of any laboratory examinations of evidence in the case or the results or failure of the accused to submit to any examination including polygraph. This prohibition does not apply to results of blood alcohol concentration tests (breath, blood or urine) or to the accused's failure to submit to such a test.

d. The identity, testimony, or credibility of prospective witnesses, except that the officer may announce the identity of the victim(s) unless the offense involved sexual contact.

e. The possibility of a plea of guilty to the offense charged or a lesser offense.

f. Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

g. No member of this Department shall deliberately pose a person in custody for photographing or televising by representatives of the news media. This does not limit the right of the news media to photograph the person in custody, in a public place, and on their own initiative.

#### **02.03 RELEASES BEFORE ARREST OR CHARGE (RULE § 1.53)**

Following the commission of a crime but prior to the making of an arrest, the issuance of an arrest warrant, or the filing of formal charges, the following limitations on release of information to the news media apply:

1. Releases may include pertinent facts related to the crime itself including nature of the offense, information concerning the victims, location and approximate time of the crime, and information as to what agency or agencies are investigating.

2. The fact that laboratory examinations are being made by the DPS lab may be released, but the details or results shall be considered confidential. This same limitation applies to polygraph examinations, but does not apply to blood alcohol concentration tests.

3. Prior to the filing of formal charges, the identity of a person wanted for questioning should not be disclosed unless determined by the investigators to be necessary to aid in the investigation, to assist in the apprehension or location of the person, or to warn the public of any dangers.

#### **02.04 RELEASES AFTER ARREST OR CHARGE (RULE § 1.54)**

It shall be permissible for authorized members of this Department to release the following information in criminal proceedings at the time charges are filed or upon arrest of the defendant(s):

1. The fact and circumstances of arrest, including the time and place of arrest, pursuit, resistance, any injuries suffered during the arrest.

2. The identity of the investigating and arresting officer(s) and/or agency and the length of the investigation.

3. At the time of seizure of any physical evidence, a description of the evidence seized.

4. The nature, substance, or text of the charge as filed in a court proceeding, and the identity of the person(s) charged. This may include the age, residence, occupation, and family status of the suspect.

5. Information as to the court in which the charge was filed, and the fact the defendant was released on bond or remanded to jail.

6. Information of the type outlined in 02.03 of this title (relating to Releases Before Arrest or Charge).

#### **02.05 ACCESS TO DISASTER AND EMERGENCY SCENES (RULE § 1.55)**

1. DPS officers will permit properly identified news media representatives free access to any disaster or emergency scene unless their presence would constitute a violation of the law or would substantially interfere with the officer's duty to:

a. Protect human life, including providing assistance to those already injured and preventing further injuries to others from explosion, fire, radiation, chemicals, or other hazard.



- b. Collect and preserve evidence of a crime or serious negligence.
- c. Protect property.
- d. Identify dead or injured persons.

2. The question of what constitutes proper identification as a news media representative is left to the discretion of the DPS officer involved. Most news persons carry cards showing their professional affiliation. Press cards of this sort are issued by many local law enforcement agencies, by some federal agencies, and by news media organizations and associations.

3. When necessary to bar news media representatives from emergency scenes for the reasons set out in paragraph 1 of this section, the reason should be explained to them, and they should be permitted access as close to the scene as possible. It should be recognized that such close access is essential to the proper working of a free and independent press.

4. DPS officers should attempt to cooperate with news media efforts to obtain information, photographs, or film within the above-stated limitations in order to lessen congestion and permit the media representatives to complete their tasks in an orderly manner.

#### **02.06 ACTIONS OF MEDIA REPRESENTATIVES AT DISASTER AND EMERGENCY SCENES (RULE § 1.56)**

1. After news media representatives have been permitted access to a disaster or emergency scene, DPS officers will not attempt to restrict any of their actions unless the act is a violation of the law or interferes with the performance of vital police duties.

2. In the event a media representative attempts or commits an act not in violation of the law or in interference with vital police duties, but which is repugnant to decent human sensibilities, DPS officers will not attempt to prevent the act. However, in such instances, a DPS officer will identify the representative and his employer and will make a written report of the incident to his commanding officer. A copy of such report may be sent to the representative's employer. The commanding officer will incorporate this report in his official record of the disaster or emergency.

#### **02.07 MILITARY INCIDENTS RULE (RULE § 1.57)**

The same policy as set out in the preceding sections will be followed in military accidents. If a media representative desires to take photographs or secure information, he should be referred to the proper military authorities for permission. However, DPS officers will not bar media representatives from taking photographs or seeking information once they have referred them to the proper military authority. Exception to this shall be made only when the DPS officers have been officially and authoritatively advised by the proper military authorities that a specific violation of federal law is involved in allowing unauthorized persons to examine or photograph classified material or equipment involved in the specific incident. An applicable federal statute is 18 U.S.C. § 795.

#### **02.08 RELEASE OF INFORMATION ON ACCIDENT VICTIMS (RULE § 1.58)**

It is highly desirable to notify next of kin of any victim, who has died or been seriously injured, before releasing the victim's name to the news media. Therefore, department personnel will not release the names of such victims to the news media representatives until the identities of the victims have been fully established and the next of kin have been notified.

#### **02.09 LAW VIOLATIONS BY MEDIA REPRESENTATIVES (RULE § 1.59)**

News media representatives apprehended for violating the law at a disaster or emergency scene will be dealt with the same as any other violator.

## **21.03.00 PUBLIC INFORMATION REQUESTS**

### **03.01 GENERAL POLICY**

Under the Texas Public Information Act (“PIA”), members of the public are entitled to receive information maintained by the Department unless otherwise expressly provided by law. The Department will respond to all requests for public information in accordance with the requirements of the PIA and other state and federal law. Further, the Department adopts the policies and procedures set out in this section to allow for inspection and copying of public information efficiently, safely, and without delay.

### **03.02 DEFINITIONS**

1. **Public Information Request.** A written request for information submitted to the Department that meets the requirements of the PIA.

2. **Responsive Record.** A record generated, held, maintained, possessed, or otherwise in the control of the Department and in existence on the date a public information request is received that meets the subject matter of the request.

3. **Confidential Information.** Information that under state or federal law may not be disclosed to the public except under specific circumstances.

4. **Excepted Information.** Information that is not required by the PIA to be disclosed to the public. Excepted information is not necessarily confidential, and whether to release such information is in the Department’s discretion.

5. **Date of Receipt.** The date a request is received by the Department, not a particular office or division. For requests sent by mail, a date stamp is sufficient to demonstrate date of receipt. Absent any other proof of date of receipt, a request is considered received on the third business day after the date of the postmark on a properly addressed request. For requests sent by email or facsimile, a request is considered received on the date it is sent to the proper email address or facsimile number as indicated in this policy or on the Department’s public website. Requests received after 5pm, on a weekend, or a holiday, including a minimal staff holiday, are considered received the next business day.

6. **Personal Information.** Identifying information specific to an individual or the property of an individual, such as driver license number, identification card number, license plate number, vehicle identification number, vehicle title number, social security number, personal e-mail address, FBI number.

### **03.03 SUBMISSION METHODS**

All requests must be in writing. The Department is not required to respond to telephone requests for information. An individual may submit a written request using any of the following methods:

1. **Mail.** A written request may be mailed to the Department headquarters or to any field office.

2. **Facsimile.** A written request may be faxed to the Office of General Counsel at (512) 424-2617 or to any field office.

3. **Email.** Pursuant to §552.301(c) of the PIA, the Director has designated the following email address for public information requests: [OGC.Webmaster@dps.texas.gov](mailto:OGC.Webmaster@dps.texas.gov). An email request must be sent directly to that address or through the Department's Public Information Request Page on our public website. A request emailed to any other Department email address does not meet the requirements of the PIA and the Department is not required to respond to such a request.

4. **In person.** A written request may be submitted in person at the Department headquarters or at any field office.

#### **03.04 TIME LIMIT ON REQUESTS BY A SINGLE REQUESTOR**

Pursuant to §552.275 of the PIA, the Department has established a time limit of 36 hours per fiscal year that will be spent providing public information to a single requestor without recovering attributable personnel costs. The Department will comply with all requirements of §552.275 in determining whether the 36 hour requirement has been met for a particular requestor.

#### **03.05 DESIGNATION OF PUBLIC INFORMATION COORDINATOR TO SATISFY TRAINING REQUIREMENTS**

Pursuant to §552.012(c) of the PIA, the Director has designated the Office of General Counsel's legal assistant responsible for coordinating public information requests as the public information coordinator for the purpose of satisfying training requirements under the PIA.

#### **03.06 CERTIFICATION OF RECORDS**

The PIA does not require the Department to certify records.

#### **03.13 PAYMENT METHODS**

The Department does not accept credit card payments for public information. Cash may be accepted in person only if the requestor provides the exact amount due. Department personnel will not make change for requestors making cash payments. Mailed payments should be made via check or money order.

#### **03.14 RECEIPTS**

The Department will provide a receipt for all responsive records for which payment was received. The receipt may be in the form of a letter acknowledging the date of receipt and the amount of payment.

# AUSTIN HEADQUARTERS OPERATING PROCEDURES

## 01.22.00.00

### 22.10.00 VEHICLE OPERATION

**10.01** All drivers operating vehicles within the Headquarters Complex shall comply with the following:

1. Parking is permitted only in "lined" spaces. Where parallel parking is authorized, the vehicle will be parked with the right wheels next to the curb. Where drive-in parking is authorized, the vehicle will be "head-in"; no backing into spaces or drive-thru where two spaces connect without a divider. Care should be exercised to park within the designated area to prevent being over the lines and occupying more than one space.

2. All numbered reserved parking spaces are assigned to an individual on a 24-hour, 7 day per week basis. These spaces are identified with a black "RESERVED" followed by a number on a yellow background.

3. Visitors parking spaces are identified by a white curb and the word "VISITORS." These spaces are for visitors only, which includes all field personnel who come to the Headquarters Complex. Any visitor who will remain all day or longer should use an unmarked parking space.

4. Laboratory visitors will use the area south of Building B identified by a white curb and the words "LAB VISITORS ONLY." These spaces are reserved for those persons who are in DPS to submit evidence and conduct business with laboratory personnel.

5. Service vehicle parking spaces are identified by a white curb and the words "SERVICE VEHICLE ONLY." These spaces are for service technicians (example: telephone repairmen), including maintenance personnel assigned to the Department.

6. Loading zones and pathways are identified by crossed yellow lines. These areas are to remain open at all times. When loading or unloading, vehicles will not be left unattended.

7. Motorcycles and bicycles will be parked in the designated areas only. Two motorcycle parking areas are provided - one between the Human Resources Bureau and auditorium and the other at the southwest corner of the parking lot on the west side of the gymnasium. Bicycles will be parked on the west side of Building G in the area provided with security bars. All bicycles should be secured to this bar.

8. No vehicle will be left unattended on the grounds of the DPS complex unless in an authorized parking space. Notify Headquarters Security if a vehicle is to be left in the parking lot over 24 hours. When unattended, the vehicle should have the parking brake set.

9. Vehicles will not exceed 15 mph on any street or parking area within the DPS complex.

10. Employees should instruct those persons who pick them up at the close of the workday, or any other time, to avoid blocking the movement of traffic. In no instance shall they park against a left-hand curb or in any way impede the normal flow of traffic. Vehicles will not be left unattended in an unauthorized area while looking for passengers. A passenger pick up area is provided at the east side of the Headquarters building. Employees are encouraged to use this area.

11. Vehicles will move only with the flow of traffic. Parking lots are designed and striped to establish a direction of flow. The practice of turning, entering, or driving against the flow is prohibited.

12. At times it will be necessary to clean along the curbs and cut grass along the parking areas. These areas will be designated by the use of orange traffic control cones. When the cones are placed only two (2) feet from the curb, the space may still be used for parking, with the front bumper against the cone. This will allow for maintenance work to continue in this area. When the cones are at the entrance to the space, it will indicate the space is closed to all parking.

13. Vehicles that are found in violation of any of the parking regulations will be issued a courtesy notice of the parking infraction which was violated. Headquarters Security personnel have the responsibility of issuing these reminders. No "follow-up" action is necessary on the part of the driver except to refrain from committing subsequent violations.

14. Vehicular Crashes: The Headquarters Security Detail is assigned the responsibility of investigating all reported crashes which occur on the Headquarters Complex. They may be contacted at any time at ext. 3333.

**10.02** Supervisors are responsible to ensure employees understand and comply with these instructions. The Director of Training is responsible to brief all students at the Academy on parking policies.

## **22.15.00 GENERAL EMPLOYEE INFORMATION FOR THE EMERGENCY EVACUATION OF HEADQUARTERS FACILITIES**

**15.01 Policy.** Headquarters personnel will adhere to the emergency evacuation policy as outlined in Chapter 5, Section 83.01, of the General Manual.

**15.02 Procedures.** Evacuation procedures designed for the Austin Headquarters Complex are summarized below. A copy of the master plan, HR-100 (9/97), used by the Headquarters Evacuation Coordinators is on file in the Health and Safety Section of the Human Resources Bureau and will also be available from Reproduction and Supply of the General Services Bureau.

### **15.03 Components of Evacuation**

1. **"All Clear."** An oral announcement that it is safe to return to the building. The decision to return will be made by the Headquarters Emergency Coordinator and communicated to the Building Evacuation Coordinator. The announcement to return to the building will be made by the Building Evacuation Coordinator or Headquarters Security officer either on foot or operating a public address system from a patrol unit.

2. **Alternate.** An individual designated to perform the duties of the Evacuation Coordinator if that individual is not present during the emergency. An alternate should be an individual with sufficient strength and mobility to assist disabled personnel if necessary.

3. **Assembly Sites.** A site safely away from the building where personnel should wait until the emergency is resolved. Designated assembly sites for each building will be indicated on the evacuation route diagrams posted in strategic locations in the building.

4. **Audible Alarm System.** A system of low- and high-pitched alarms, accompanied by strobe lights for the hearing impaired, located in strategic places in the majority of Department Headquarters buildings.

5. **Building Evacuation Coordinator.** There will be one Building Evacuation Coordinator assigned per building and two alternates in the event the Building Evacuation Coordinator is unavailable during a bona fide emergency. The Building Evacuation Coordinator will be responsible for ensuring all occupants of the building understand the evacuation

procedures, maintain a current list of Floor Evacuation Coordinators, plan to accommodate persons with disabilities during an evacuation, and ensure the evacuation plan is implemented correctly in the building. They will also be the primary source of communication between the occupants of the building and the command center during an evacuation.

**6. Emergency Command Center.** The command center will assume a stationary position at the center aisle of the main employee parking lot behind Building A. If the nature of the emergency prohibits the command center to be set up at the primary location, the Headquarters Emergency Coordinator will determine the location of the command center. All personnel responsible for decisions during an emergency, including the Headquarters Emergency Coordinator and the Public Information Officer, shall be located at the command center to interface with other agencies responding to the emergency such as Austin Fire Department, Austin Police Department, or the media.

**7. Evacuation Buddy.** An employee trained to aid persons who need assistance to exit the building during an emergency. They also act as the main form of communication between the Building Evacuation Coordinator and the person with a disability in the event they must be evacuated.

**8. Headquarters Security Detail.** In a bona fide emergency, the Headquarters Security Detail will be responsible for all communications to and between evacuation coordinators, the command post, and other emergency personnel. The Headquarters Security Detail is also responsible for implementation and monitoring of the Headquarters Evacuation Plan.

**9. Floor Evacuation Coordinator.** There will be one Floor Evacuation Coordinator assigned for each floor in the building and one alternate in the event the Floor Evacuation Coordinator is unavailable during an emergency. During a bona fide emergency, the Floor Evacuation Coordinator is responsible for facilitating and assisting the safe exit of any employee or visitor on their floor and reporting to the Building Evacuation Coordinator when their floor is clear or any problems noted in their area.

**10. Headquarters Emergency Coordinator.** In a bona fide emergency, the Chief of Administration shall be designated as the Headquarters Emergency Coordinator. In the event the Chief of Administration is not available, the Chief of Texas Highway Patrol Division will be first alternate, the Chief of Criminal Law Enforcement will be second alternate, the Senior Captain, Chief of Texas Rangers will be third alternate, and Chief of Driver License Division will be the fourth alternate. This list will serve as a means of establishing a person in charge in the event of an emergency. All persons available will be under the command of the Headquarters Emergency Coordinator and act to assist him as instructed.

**11. Primary Evacuation Route.** The quickest and most accessible safe route from an individual's location when the emergency is announced to a designated assembly site outside the building. Evacuation route diagrams will be strategically located throughout the buildings.

**12. Secondary Evacuation Route.** The next closest safe route to a designated assembly site if the primary evacuation route is announced or seen to be unsafe for use. In the event construction temporarily blocks the evacuation route, the secondary evacuation route will become the primary evacuation route.

**15.04 Notification.** The Headquarters Security Detail will be responsible for the notification of personnel designated under the emergency communication plan. If notice of a fire, threat, or other emergency is received at a location other than the Headquarters Security Detail, this information will be relayed immediately by the employee who received the notice of a threat to the Headquarters Security Detail at extension 3333. This call should be made from a safe location. If the Headquarters Security Detail cannot be reached, then the Headquarters Emergency Coordinator should be notified. The Headquarters Security Detail will be responsible for notifying appropriate emergency personnel.

**15.05 “Evacuate the Building” Instructions.** Follow the “Evacuate the Building” instructions located in General Manual, 05.83.04, when you are notified of an emergency by a continuous ringing alarm, flashing lights, the Floor Evacuation Coordinator, or other means. Only the Building Evacuation Coordinator or Headquarters Security Detail Officer is authorized to issue the “all clear” announcement when the buildings have been declared safe by the proper authority.

### **15.06 Fire Emergencies**

1. If a fire is discovered inside the building:

a. Activate the nearest fire alarm pull station if one is available in your building. Follow the instructions on the pull station. Make sure the handle is pulled all the way down and released.

b. Follow the notification procedures outlined in Section 15.04 except if you see fire or smoke, dial 9-911 first, then notify the Headquarters Security Detail and advise them that you have already contacted emergency personnel.

c. Evacuate the building by following the “Evacuate the Building” instructions in Section 15.05.

2. Do not attempt to fight a fire before activating the fire alarm pull station or verbally notifying other employees if a fire alarm is not available in your building and calling the Headquarters Security Detail, extension 3333. After notifying proper persons, and if it is safe to do so, you may attempt to extinguish the fire following the instructions on the fire extinguisher.

3. Due to the sensitivity of the fire detection equipment, it is possible that false alarms will occur. All employees are required to evacuate. Never assume that an alarm is false unless so informed by your Building Evacuation Coordinator, Headquarters Security Detail, or the Austin Fire Department.

4. If there is a fire outside of the building, call Headquarters Security Detail, emergency number 3333. Do not activate the fire alarm system unless the outside of the building itself is on fire.

**15.07 Bomb Threats Received.** If a bomb threat is received, follow the instructions outlined in General Manual, 05.84.03.

### **15.08 Bomb Threat Evacuation**

1. Headquarters Security Detail will consult with the Headquarters Emergency Coordinator for approval to evacuate endangered areas.

2. In the event of a decision to evacuate the building. Headquarters Security Detail will notify the Building Evacuation Coordinator for the building. The Building Coordinator will instruct the Floor Evacuation Coordinators to order the employees to evacuate the building.

3. The following steps will be taken by employees during a bomb threat evacuation:

a. Before evacuating, conduct a quick search of your work area for any suspicious object. Since this is your primary work area, you are the most familiar with what does or does not belong in this particular area.

b. If you notice a suspicious object, report it immediately to the Headquarters Security Detail from a safe location. Do not touch the suspicious object. Try to recall any suspicious circumstances or events out of the ordinary and report this to the Headquarters Security Detail.

- c. Warn fellow employees/visitors in the near vicinity that a suspicious object has been found.
- d. As soon as possible, notify your Floor Evacuation Coordinator.
- e. Evacuate the area immediately following the instructions outlined in Section 15.05, "Evacuate the Building."

**15.09 Power Failure.** If a power failure occurs and there is not another emergency, such as fire, remain in your office and await information from your Floor Evacuation Coordinators. The building should be equipped with emergency lighting or have enough natural lighting that emergency lighting is unnecessary. Please turn off all electrical equipment. There will be a power surge when the electricity is restored.

**15.10 Severe Weather.** In the event of severe weather that poses a threat to the complex, the following steps will be taken.

1. Emergency Management Service will notify the Headquarters Emergency Coordinator of the threat of severe weather and give information as to any recommended action to be taken by the agency.

2. Information about severe weather and the action to be taken will be communicated to the Building Evacuation Coordinators and the Headquarters Security Detail.

3. If necessary, Building Program Bureau will provide suitable protective material to protect equipment in the event of unexpected exposure during severe weather.

4. In the event of limited response time, follow Section 15.11, "Take Shelter" instructions. Do not activate the fire-alarm system.

**15.11 "Take Shelter" Instructions.** Follow these instructions when notified by the Floor Evacuation Coordinators to take shelter.

1. Use the primary evacuation route to proceed to the inside hallway of your floor. This area should be void of windows.

2. Do not use the elevators under any circumstance. Elevators are reserved for emergency personnel only. If the power fails, the elevators will stop immediately.

3. When ordered to take shelter, kneel facing the wall and protect the back of head and neck areas with hands and forearms.

4. Remain in this position until told otherwise by designated personnel.

**15.12 Elevators.** If an elevator malfunctions while you are a passenger:

1. Do not Panic. There are a multitude of safety features in modern elevators that severely reduce any chances you will be in danger.

2. Look for the emergency stop button. See if it is pushed in. If it is, pull it out and then push the button back in. This will often reactivate the elevator's normal cycle.

3. If nothing happens after you have pulled out and pushed back in the stop button, open the telephone door and lift the receiver.



4. If possible, provide the following information to the dispatcher:
  - a. Location of building
  - b. Location of elevator in the building
  - c. Location between floors
  - d. Any immediate medical emergency or other hazard in the elevator car
5. Periodically maintain contact with the operator until you are rescued.
6. If the telephone is not operable and there is an alarm, press the alarm button.

If you notice a malfunctioning elevator, call Building Program Bureau at extension 2882.

### **15.13 After Business Hours Emergencies**

1. **Fire Emergencies.** If a fire alarm is sounding, the shift supervisor should follow the notification procedures. All employees will evacuate to their assigned assembly sites in accordance with the "Evacuate the Building" instructions outlined in General Manual, 05.83.04.

2. **Bomb Threats.** The employee receiving the call or noticing the suspicious device should follow the notification procedures outlined in Sections 15.07 and 15.08 of this chapter. After receiving instructions from the Headquarters Security Detail, inform the shift supervisor and begin to evacuate the building if so instructed. The shift supervisor should also advise any other sections in the building of the emergency. The shift supervisor should ensure his area is clear of employees then proceed to the assembly site.

3. **Other Emergencies.** Follow the instructions outlined in sections 15.04 and 15.05 of this chapter.

The Headquarters Security Detail shall be responsible for securing the affected building(s) and ensuring that all employees have been evacuated as necessary.

### **22.20.00 EMERGENCY FIRST AID**

**20.01 Major.** Telephone numbers of Austin Emergency Medical Services, Austin Fire Department, Austin Police Department, and Headquarters Security are published in the front of the Headquarters Telephone Directory.

**20.02 Minor.** Persons in need of minor first aid services should contact their immediate supervisor who will determine the nearest or most accessible first aid station.

**20.03** Minor emergency first aid stations will generally be staffed by a person trained in first aid. These stations are established as follows:

1. Building A
  - a. First floor
    - 1) Safety Responsibility Bureau

- 2) Office of Audit and Inspection
  - b. Second floor
    - 1) Texas Highway Patrol Division
  - c. Ground floor
    - 1) Security Office
  - d. Basement and Subbasement
- 2. Building B
  - a. Texas Ranger Division
  - b. Crime Laboratory Service
- 3. Building C
  - a. Training Academy
- 4. Building D
  - a. Lobby
- 5. Building E
  - a. First floor
    - 1) Criminal Law Enforcement
    - 2) Motor Vehicle Theft Service
    - 3) Special Crimes Service
  - b. Basement
    - 1) Narcotics Service
- 6. Building G1
  - a. Annex
- 7. Building P
  - a. Motor Carrier Bureau

**20.04** Items available at Minor Emergency First Aid Stations shall be as follows:

- 1. Department-issue first aid kit

- a. All stations
- 2. Wheelchairs
  - a. Buildings A, B, C, and E
- 3. AED
  - a. Building A
    - 1) Lobby
    - 2) Headquarters Security
    - 3) Information Management Service
  - b. Building B
    - 1) Lobby
  - c. Building E
    - 1) Lobby
  - d. Building L
    - 1) Parts Room
  - e. Building G
    - 1) Lobby
  - f. Building P
    - 1) Captain's Office

**20.05** Employees trained in first aid should make their supervisors and fellow employees aware of such training.

#### **22.25.00 HEADQUARTERS SECURITY PLAN**

**25.01** The security plan for the Headquarters Complex relies on the cooperation of all Department personnel. Policies set forth by the Department of Public Safety will be made available to all employees. The security plan is designed to protect employees, visitors, and Department property and equipment.

1. Violations by visitors which are in conflict with the security plan should be reported immediately to the Security Office.

2. Violations by employees are to be reported to Security and the appropriate supervisor.

**25.02** The Texas Highway Patrol Division headquarters office provides security for Department's property and personal safety for employees.

1. **Functions.** The primary function of the Headquarters Security Detail is to provide security at all times for all DPS buildings and storage areas that comprise the Headquarters Complex. This will be accomplished by maintaining building and grounds patrol in an effort to deter violations, vandalism, or destruction to this property and its contents. This service will: provide authorized access to all areas to authorized personnel; register incoming personnel into the Training Academy dormitory during all hours other than normal workday duty hours; monitor and maintain computerized security systems which monitor alarms and access/egress to DPS buildings; check all pedestrian and vehicular traffic on the Department property; provide assistance and information to all visitors; observe and determine the extent of faulty plumbing, electrical equipment, air conditioning, heating or any other equipment in the DPS compound, and report any malfunction to the proper sources so that corrective action may be made; investigate all motor vehicle accidents that occur in the Department of Public Safety parking areas; and exercise necessary police authority over all suspicious persons, vehicles, and acts that occur at the Headquarters Complex or on adjacent Department properties.

2. **Security Organizational Program.** A secure working environment is the responsibility of all employees of the Department. Some items contained in the security organizational program are interwoven with the responsibilities of other persons and other divisions. However, there is a fine line that separates the basic responsibilities for security and other functions. The key to the success of this program is employee awareness and assistance.

**25.03 Information Signs.** Information signs will be placed on the Department grounds directing visitors as well as employees to certain locations. These signs are designed to assist the public with instructions and necessary restrictions. Signs are placed on each doorway, indicating that the doorways are for the entry of employees only. All visitors should be referred to the front entrance of Building A or the main entrance of each respective building.

**25.04 Visitors.** Visitors to the Headquarters Complex will be required to sign an entry log and will be issued a visitor building pass if their business requires them to depart the lobby area of each building. Employees who observe a visitor who is not wearing a visitor's pass should contact the visitor and offer assistance in acquiring a visitor's pass from the main lobby, or notify Security of the unauthorized person. Guests are to be accompanied at all times. Visitors are to be escorted when practical. Any suspicious persons should be reported immediately to the Security Office at ext. 3333.

**25.05 Employee Access/ID Card.** Employee Access/ID cards will be issued by the Headquarters Security Detail. All DPS personnel that possess a building identification/access card when on the DPS Headquarters Complex, are to comply with the following:

1. DPS Headquarters, summer, and intern personnel and authorized field and contract personnel are to be issued a photo access/ID card and must display the card with the information visible while on the DPS Headquarters Complex. Personnel must complete an HQ-3 form (Annex #1). These cards are not to be defaced in any way. Supervisory personnel within the section where employees work have the responsibility of assuring that ID's are properly displayed at all times.

2. In the event an employee forgets his/her access key card, he/she is to report to the security office or lobby of the building and sign in on the "Visitor" sign in log. He/she will be required to notify his/her supervisor for an escort into the building. If the key card is not found, the employee must contact the Headquarters Security Office for a replacement. There will be a charge for the replacement. There will be no refunds.

3. Employees are required to report lost or stolen cards to the Headquarters Security Office immediately.

4. Buildings on the DPS complex have restricted areas. Employees are not to attempt to enter those areas unless authorized. The card key designator or supervisor shall advise their employees as to where their access card will allow them to enter. A record of attempts to gain entrance to unauthorized areas will be maintained by Headquarters Security.

5. Emergency release bars may be pushed to exit the building. If an access key card reader is present, swipe the key card, push the bar, and exit the building. An alarm will sound in the security system when a door is held open too long or a door is forced open.

6. Employees are not to loan their card to anyone. Employees are not to allow other persons into the building with their card. A record is kept of each time the card is used.

7. Employees are to utilize their card at every door with readers, even if the door has been previously accessed. The system is designed to determine who is in the building at any given time.

8. The cards are breakable. They are not to be tested for flexibility. Do not leave cards in areas where they may be exposed to extreme heat (i.e., automobiles). If the card does not work, notify Headquarters Security immediately. Headquarters Security may replace broken or worn out cards at no cost to the employee.

9. An HQ-3 form (Annex #1) is to be completed in the event that any of the original information has changed (i.e. license plate, last name, division, or title change). The employee is responsible for getting updated information to Headquarters Security, when necessary.

10. The employee access card is the property of the Department. It must be turned in to the employee's immediate supervisor when employment is terminated.

11. Managers will be required to immediately notify Headquarters Security Operations whenever an employee is discharged or resigns. Managers of employees who provide notice of their retirement or resignation will be required to notify HQ Security Operations the date the employee will terminate with the Department. Managers will be required to collect access key cards from all employees leaving employment, when possible, and forward the key card to Headquarters Security Operations within 5 days for destruction or reprogramming.

**25.06 Emergency Exit.** All exit doors which are locked on the security system are equipped with breakaway bars or emergency release buttons.

**25.07 Closed Circuit Television and Other Security Devices.** The Headquarters Security Office will continue to monitor closed circuit TV cameras and support equipment. Visitors/guests are to enter through main lobbies or through the Headquarters Security entrance. Visitors/guests are to sign in and be issued a visitor's badge.

**25.08 Commissioned Officer Assignment.** The Headquarters Security Office and Headquarters lobby are generally manned with commissioned peace officers. Motor vehicle accidents occurring on the Department of Public Safety parking grounds or incidents involving the need of immediate first aid or suspicious persons or other incidents that would normally require the action of a peace officer should be referred to the Headquarters security office, extension 2290, or the Front Lobby Officer, extension 2087. In other cases, the Texas Highway Patrol Division Office, Criminal Law Enforcement Office, Texas Ranger Office, Special Crimes Office, Narcotics Office, Motor Vehicle Theft Office, or Driver License Division Office may be contacted when the need for a peace officer occurs in the complex.

**25.09 After-Hours Admittance.** Hours of access will be displayed on employee entrances. Division chiefs, coordinating with Headquarters Security, will determine the times during which individual doors may be accessed.

# **RECOGNITION AND AWARDS PROGRAM**

## **01.23.00.00**

### **23.05.00 AWARDS PROGRAM**

**05.01 Purpose.** To provide a manner whereby deserving employees, both sworn and civilian, and members of the general public will receive official departmental and public recognition for outstanding acts of valor or meritorious service.

Fundamentally, awards are for the purpose of publicly recognizing and rewarding exceptionally meritorious service, conspicuously outstanding acts of heroism, or other extraordinary acts which are above and beyond that normally expected and which distinguishes the individual or unit among those performing similar acts. Superior performance by an individual of his normal duties over an extended period of time is not necessarily a basis for an award. The individual must have brought distinction upon himself or the Department by such act. Commendations issued to the individual will be made a part of his or her personnel record. (Nomination Form, Annex #1)

**05.02 Implementation.** The Recognition and Awards Program is effective 1-1-82.

### **23.10.00 TYPES OF DEPARTMENTAL AWARDS**

#### **10.01 Commissioners' Medal of Valor**

1. The Medal of Valor shall be the highest award presented by the Department.

2. It may be issued to any member of the Department who intelligently distinguishes himself conspicuously by gallantry and intrepidity at the risk of his own life. The deed performed must have been by voluntary act and of personal bravery or self-sacrifice so conspicuous as to distinguish clearly the individual for gallantry and intrepidity above his comrades, and must have involved risk of life, known to the member before performing the act.

3. Incontestable proof of the performance of the service will be exacted (Annex #2). Each recommendation for the award will be considered on the standard of extraordinary merit. It must be the type of deed which, if left undone, would not subject him to any justifiable criticism.

4. The act must be far above and beyond the normal call of duty.

5. An accumulation of minor acts of heroism does not justify the award.

6. The Medal of Valor is a medallion in the form of a five pointed star similar in size to the military's Congressional Medal of Honor. It is of gold fill and is suspended from a red, white, and blue ribbon.

7. The award shall be accompanied by a certificate from the Public Safety Commission and the Director of the Department and white and blue breast bar with "VALOR" in the center and lapel pin. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

8. In addition, up to 32 hours of Recognition Leave may be awarded.

#### **10.02 Memorial Cross**

1. The Memorial Cross shall be awarded to the immediate family of any member of the Department who loses his life in performance of duty or in the act of performing in a law enforcement capacity while off duty under honorable circumstances.

2. The Memorial Cross may be awarded in addition to any other award the member may be entitled to in making the supreme sacrifice.

3. The Memorial Cross is a medallion in the form of a cross encompassed by a laurel wreath similar in size to the military's Distinguished Service Medal. It is of gold fill and is suspended from a blue and black ribbon.

### **10.03 Star of Texas Award**

1. The Star of Texas Award honors those peace officers, firefighters, or emergency medical responders who are seriously injured or killed in the line of duty. This award is presented by the Governor.

In addition to the award, Department employees receiving this award shall also be the recipient of a red, white, and blue breast bar with a star in the center commemorating the event. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

### **10.04 Purple Heart**

1. The Purple Heart may be awarded to commissioned officers of the Department seriously injured in the line of duty. The guiding philosophy in issuing this award is to recognize the individual's sacrifice incurred while in the immediate and direct performance of a law enforcement action.

2. The Purple Heart may be awarded in addition to any other award the member might be entitled to arising from their actions in the same event.

3. To be eligible for the citation the officer must have sustained a serious bodily injury, defined as bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ while on duty and acting in an official capacity (Annex #3).

4. Injuries resulting from negligence or the use of poor judgment will not be considered.

5. The award is limited to current and retired members of the Department and is retroactive for any current or retired commissioned member eligible for the award regardless of the time elapsed.

6. The Purple Heart is a heart shaped bronze medallion. The medallion has a purple inset with the DPS insignia in relief suspended from a purple, white, and gold ribbon.

7. The award shall be accompanied by a certificate from the Director and a breast bar and lapel pin, of purple, white, and gold. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

8. Recipients of the award would be eligible to apply for vehicle registration pursuant to TRC, 504.407.

### **10.05 Medal of Merit**

1. To be awarded to any member of the Department who has rendered a service beyond the normal course of duty, performed an act that clearly exceeds what is normally required or expected, or makes an important contribution

to achievement of the goals of the Department or the law enforcement profession. It may be issued for acts or accomplishments of a nonrecurring nature. These acts may include, but are not limited to:

- An important contribution to the Department, law enforcement profession, science, research, or development.

- Unequaled personal efforts in overcoming unusual difficulties or obstacles in the completion of a major task project or task with substantial benefits to the Department and state (Annex #4).

2. The Medal of Merit is a round medallion, similar in size to a silver dollar. It is of bronze and suspended from a red, white, blue, and gold ribbon.

3. The award shall be accompanied by a certificate from the Director and white and blue breast bar with "MERIT" in the center and lapel pin. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

4. In addition, up to 24 hours of Recognition Leave may be awarded.

#### **10.06 Director's Citation**

1. May be awarded to any member of the Department who has rendered a service beyond the normal course of duty, because of his timely observation, diligence, perseverance, and judgment in the performance of a difficult task that has resulted in the protection of life or property; the prevention of a major crime; the apprehension of a dangerous criminal; or performed an act that clearly exceeds what is normally required or expected (Annex #2).

2. The award shall be a certificate from the Director and a red and blue breast bar and lapel pin. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

3. In addition, up to 16 hours of Recognition Leave may be awarded.

#### **10.07 Lifesaving Award**

1. To be awarded to any member of the Department who performs emergency medical aid, not necessarily requiring bravery or action beyond the scope of Department training, which results in the saving of human life (Annex 5).

2. The award shall be a certificate from the Director, accompanied by a blue and white breast bar with two red stripes and a cross in the center and lapel pin. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

3. The award is limited to current members of the Department and shall not be given in conjunction with any other Department awards arising from the same action.

4. In addition, up to 8 hours of Recognition Leave may be awarded.

5. Employees will be eligible for consideration for a Division Chief's Award when they have exhausted all efforts to save a human life, but despite those efforts, the victim does not survive.

#### **10.08 Director's Award**



1. May be awarded to a private citizen or personnel of other agencies giving significant assistance in aiding, or attempting to aid, an employee of this Department in the performance of his/her duties (Annex #2).
2. The award shall be an appropriate plaque prepared with a brief statement on an attached plate.
3. The Director shall have the prerogative at any time to order issuance of the "Director's Award".

#### **10.09 Unit Citation**

1. May be awarded to any bureau, section, group, area, or office within the Department which has distinguished itself through extraordinary performance under adverse conditions or circumstances. The unit's performance must clearly exceed normal expectations and represents the combined efforts of all personnel within the unit.
2. The award shall be an appropriate plaque prepared with a brief statement on an attached plate. Each individual unit member shall receive a certificate from the Director.

#### **10.10 Veterans National Defense Service Award**

1. Whether active, reserve, or national-guard all service in the Military Services of the United States of America (Army, Navy, Air Force, Marines, and Coast Guard) is greatly appreciated and highly valued by the citizens of this state and the Department.
2. In special recognition of Military Service veterans employed by the Department who have served on active duty during a time of armed conflict this award may be given to any member who has received the National Defense Service Medal as determined by their DD Form 214 Certificate of Release or Discharge from Active Duty (DD-214) and/or other applicable official military records (Annex 7).
3. The award shall be a certificate from the Director, accompanied by a red, white, blue, and gold breast bar and lapel pin similar to the military ribbon for the National Defense Service Medal. When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.
4. Nomination for recognition is open and may be made by anyone with knowledge of the veteran's service including the member them self.
5. This award is limited to current members of the Department however there is no restriction on when the recognized service may have occurred (Annex #7).

#### **10.11 William P. Clements Excellence Award**

1. Governor William P. Clements was known for a commitment to excellence in government. The William P. Clements Excellence award was created to honor employees who display exceptional performance of duties throughout the course of his or her career at DPS. The William P. Clements award will be awarded annually to a commissioned and non-commissioned employee of the Texas Department of Public Safety.
2. Nominations shall follow standard procedure through channels to the Regional Commander who will forward the nominations, with recommendations, to the appropriate division Director. Personnel not falling under a regional chain-of-command shall submit nominations through channels to their division Director. Division Directors shall submit no more than one commissioned and one non-commissioned recommendation to the Awards Program Manager by November 30<sup>th</sup> of each year. The Awards Program Manager will forward these nominations to the Director who will choose one commissioned and one non-commissioned recipient. Documentation supporting each nomination should be

attached to the nomination memo which may include but is not limited to 360 Leadership Feedback analysis, Performance Evaluations and commendations from internal and/or external sources.

3. This award shall be a plaque from the Director and presented at the January Public Safety Commission meeting. Recipients of this award shall also receive a breast bar/lapel pin. The breast bar shall be green with a blue stripe in the center and when worn on the uniform, worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

#### **10.12 Subsequent Awards**

1. When an employee earns a subsequent award of the same type, it will be denoted by placing a "gold star" on the breast bar and the lapel pin for each such subsequent award.

2. Subsequent awards will be issued by the Department.

3. Previously earned awards shall not be returned to the Department when a subsequent award is issued.

#### **23.15.00 NOMINATION PROCEDURES**

**15.01** It shall be the duty of every member of the Department to submit recommendations for an award when it is believed an act of another is worthy of the recognition. To ensure that the qualifications as described for each award are met, the person nominating someone, if other than supervisory personnel, should have witnessed the act or have firsthand knowledge of it.

**15.02** Timely nomination is essential to a successful awards program. A nomination from within the Department must be submitted through the proper channels on the appropriate form as soon as practicable following the act on which it is based. Nominations submitted over 30 days after the act must be accompanied by justification for the delay in nominating the individual or individuals.

**15.03** Nominations submitted shall be attached to the Nomination for Award Transmittal Form (See Annex #1) through channels to the Division Director who in turn will review and forward a recommendation to the Director for final approval. Nominations submitted without the investigative report or those received externally will be assigned to the employee's immediate supervisor for investigation. All nominations must be appropriately justified and sufficiently detailed to allow proper evaluation and decision. (Refer to Annexes #2, #3 and #4.)

**15.04** Each succeeding supervisor shall review the request for accuracy and completeness. Dissenting opinions and/or exceptions to the original recommendations must be submitted with the report by separate memorandum.

**15.05** The investigator's report shall include, but not be limited to, the following information.

1. Statements of all eyewitnesses

2. Names of all persons involved and the nature of their involvement or act or actions in the incident

3. A detailed account of the incident and any other pertinent information such as photographs, physicians' reports, case summaries, other agencies' reports, and newspaper clippings.

**15.06** This policy does not preclude the issuance of letters of appreciation or commendation at any level for acts or outstanding services performed that do not merit a departmental award.

**15.07** In those cases where the original recommendation has been downgraded or disapproved, additional evidence may be re-submitted through channels for reconsideration.

**15.08** Care should be exercised to avoid premature disclosure of information as it could be a source of embarrassment to those nominated and could diminish the impact of subsequent ceremonies.

### **23.20.00 AWARDS PROGRAM MANAGER**

**20.01 Purpose.** The purpose of the Awards Program Manager is to facilitate the recognition of those persons who performed outstanding acts or service.

**20.02 Duties.** The Awards Program Manager has the following duties:

1. Receives Nomination for Award Transmittal Forms approved by the Director.
2. Responsible for writing the citation on or accompanying awards approved by the Director. The manager may require assistance from any individual or division in accomplishing this task.
3. Responsible for notifying in writing, the nominator and/or employee's supervisor of the decision by the Director and/or Commission.
4. Responsible for coordinating the formal presentation of approved departmental awards.

**20.03 Selection of the Awards Program Manager.** It shall be the responsibility of the Assistant Director of Administration to select the Awards Program Manager.

### **23.25.00 OTHER TYPES OF AWARDS**

#### **25.01 Division Director Award**

1. The Division Director Award may be awarded to any member of the Department for outstanding efforts and achievements noticeably above and beyond the requirements of the position.
2. Nominations should be made to the division Director through channels by detailed memorandum.
3. In addition to the award, uniformed recipients will also receive a uniquely colored breast bar which they may wear at their discretion. Nonuniformed recipients may receive a uniquely colored lapel pin which they may wear at their discretion.

**THP** - red with two white pinstripes

**Admin** - royal blue and gray

**CID** - forest green separated by gold bar down the middle

**DL** - royal blue separated by gold bar down the middle

**Rangers** - gold with lettering

**ICT** – Maroon centered between orange separated by two gold bars

**Chief of Staff (commissioned)** – scarlet red with one gold stripe down the center and gold star centered over the gold stripe.

**Chief of Staff (non commissioned)** - scarlet red with one gold stripe down the center

**LES** -Emerald green with two white pinstripes

## RSD – green and gold

When worn on the uniform, the breast bar shall be worn centered on the right pocket flap below the nameplate, as per THP Manual, Chapter 14.

4. In addition, up to eight (8) hours of Recognition Leave may be awarded.

**25.02 Employee Recognition Award for Outstanding Performance.** Section 661.911 of the Texas Government Code allows the Director or designee to grant administrative leave, with pay, for outstanding performance. The maximum amount of time that can be awarded in one fiscal year is thirty-two (32) hours.

The process to document the outstanding performance is as follows:

1. A memorandum describing in detail why this employee's job performance is considered outstanding and may merit an award of administrative leave must be submitted through the chain of command to the appropriate division Director for final approval.

2. Examples of how this particular achievement has improved the efficiency of the section the employee works in must also be included.

**25.03 Trooper Recruitment Award.** Recruitment of qualified Trooper applicants is an agency priority and all Department employees are encouraged to constantly seek out qualified applicants for the position of Trooper. For this reason, the Department has developed a procedure to recognize employees who recruit an applicant that is hired into the position of Probationary Trooper. This recognition shall be given in the form of a payment of a \$2,000 Recruitment Award to the referring employee. Granting of a Recruitment Award will be dependent upon the referred applicant successfully being employed as a Probationary Trooper for one full day and must be in accordance with the requirements of Government Code §659.255(f) regarding one-time merit payments as follows:

(1) the referring employee has been employed by the agency in the employee's current position for at least six continuous months before the effective date of the award payment;

(2) the effective date of the award payment is at least six months after the effective date of the employee's last:

(A) promotion; or

(B) merit salary increase for performance in the employee's current position;

(3) the employee's job performance and productivity in the employee's current position are consistently above that normally expected or required; and

(4) the effective date of the award payment is at least six months after the effective date of the agency's last:

(A) payment to the employee of an enhanced compensation award authorized by the General Appropriations Act; or

(B) one-time merit payment for performance in the employee's current position, including a Recruitment Award.

If a referring employee is not eligible to receive an award payment under the state law requirements above at the time the referred Probationary Trooper is employed, the employee may defer payment of the award until such time as the employee becomes eligible.

The following categories of employees may not receive an award payment:

(1) The following members of management: any commissioned employee with a rank of Captain or above, any non commissioned supervisor, with the exception of a first line supervisor.

(2) Department recruiters and other Department members who, as a part of their normal duties, are primarily assigned to full-time recruiting and/or testing duties;

(3) Staff who were assigned to be temporary duty recruiters and recruited the trooper applicant as part of that assignment;

(4) Employees assigned to the recruit academy whose job duties would allow them to influence whether a recruit successfully completes training and is hired as a Probationary Trooper, as determined by the Deputy Director, Services;

(5) Employees who have received disciplinary action consisting of time off without pay, salary deduction, or disciplinary probation within six (6) months prior to the effective date of the award payment;

(6) Employees within the ETR chain of command that fall under the Training Academy line or the Tactical Training Center line.

Department employees are eligible to receive multiple Recruitment Awards; however, no more than one award shall be granted for each Probationary Trooper hired. The Trooper Recruitment form (RC-83) [Annex #5] will be used to determine eligibility for the award. It will be necessary for the Department employee to provide this form to the applicant before the applicant submits the State of Texas Application (HR-1). In order to receive this award, the Trooper Recruitment form (RC-83) must be completed and signed by both the applicant and Department employee. The form will include a certification to be signed by both the applicant and the referring employee stating that the referral is not the result of an agreement for the parties to split the award or for the referring employee to provide any other benefit to the applicant or another person. The form must describe the actions taken by the referring employee to recruit the trooper applicant. The completed form must be included with the application upon initial submission to the Department. The form cannot be submitted separately or added to the application at a later date. The Trooper Recruitment form (RC-83) will be made a part of the file and submitted to Recruiting in ETR with the completed application packet. Recruiting will confirm the applicant's date of Academy graduation and promotion to Probationary Trooper, if the applicant successfully completes the Academy, will forward the necessary information to Human Resources, and will mail a letter of appreciation from the Director to the referring employee. Human Resources will confirm that the employee meets all of the criteria and forward a copy of the award to Payroll for processing. A copy of the appreciation letter will be placed in the referring employee's personnel file. Payroll will ensure the award payment is made to the referring employee.

**25.04 Trooper of the Year Award.** Awarded annually to one male and one female that competes and wins the Javier Arana Jr. Top Trooper Competition.

1. The competition will be conducted annually at the discretion of the Assistant Director of the Texas Highway Patrol.

2. In addition to the award, the recipients will also receive a breast bar commemorating the award. The breast bar appearance is documented in Annex #8 of this chapter. The breast bar may be worn in conjunction with other awards on the right pocket flap below the nameplate as stipulated in the Texas Highway Patrol Procedures Manual, Chapter 14.

**25.05 Regional Awards.** Nomination for regional awards may be submitted by any personnel through the chain of command to the division major. The division major will consider and determine all regional awards with the advice, counsel, and consent of the Regional Commander.

1. Investigation Excellence Award: awarded for outstanding investigation efforts in criminal interdiction, recovery and interdiction of human trafficking, crash investigation, etc.

2. Traffic Enforcement Award: awarded for outstanding efforts in reducing crashes through speed, DWI, seatbelt, or motor carrier enforcement.

3. Fleet Safety Award: awarded for the number of years with no contributing factors attributed to driver behavior in a fleet crash. This award is displayed in multiples of 5 years.

4. Fitness Award: awarded for achieving 90% or higher in the Department's Physical Readiness Testing. An employee must maintain this achievement to continue to display the award each fiscal year.

5. Marksmanship Award: awarded for scoring 90% or higher in all issued weapons. An employee must maintain this achievement to continue to display the award each qualification period.

6. Law Enforcement Training Award: awarded for outstanding efforts in providing law enforcement training.

7. Community Service Award: awarded for outstanding efforts in establishing and maintaining positive relations within a community through involvement in civic, school, neighborhood, and other community related activities.

8. International Association of Emergency Managers (IAEM) Award: awarded to IAEM members who have received the IAEM Certified Emergency Manager® (CEM®) or Associate Emergency Manager® (AEM®) credential.

9. In addition to the awards, the regional award recipients will also receive a breast bar commemorating the award. The appearance of each breast bar is documented in Annex #8 of this chapter. The breast bars may be worn in conjunction with other awards on the right pocket flap below the nameplate as stipulated in the Texas Highway Patrol Procedures Manual, Chapter 14.

### **23.30.00 PRESENTATION OF AWARDS**

**30.01 Memorial Cross.** To be presented to a member of the immediate family by the Director or his designee at an appropriate time and place.

**30.02 Commissioners' Medal of Valor.** To be presented by the Chairman of the Public Safety Commission or his designee.

**30.03 Purple Heart.** To be presented by the Director or his designee.

**30.04 Medal of Merit, Director's Citation, Veterans National Defense Service Award, and Director's Award.** To be presented by the Director or his designee.

**30.05 Division Director's Award or Employee Recognition Award.** To be presented by the division Director or his designee.

**30.06 Trooper of the Year Award.** To be presented by the Director of the Texas Highway Patrol Division.

**30.07 Regional Awards.** To be presented by the appropriate Major and Regional Commander in each region.

**30.08 Administrative Leave for Awards.** Employees may not exceed the maximum administrative leave allowed per statute in a fiscal year.

### **23.35.00 LETTERS OF APPRECIATION**

**35.01 External.** Routinely, in the normal course of duty, our personnel render service which generates positive comments by someone outside the Department. However, the service is not above that which is normally expected. In these instances, the following procedure will be used:

1. The person who sent the letter of appreciation will be appropriately answered.

2. A copy of the letter of appreciation will be given to the member(s) to whom it referred.

3. The original letter of appreciation will be sent to the Human Resources Bureau through channels where it will be entered in the member's Department personnel file.

**35.02 Internal.** Routinely, personnel in the normal course of work perform their duties in an exceptional manner or assist others within the Department for which an indication of appreciation is in order.

1. Within a division or service, such indications of appreciation may be directly communicated by the Regional Commander, Assistant Director, or designee.

2. In other cases, such indications of appreciation will be communicated through the respective supervisor.

3. When deemed appropriate, the Regional Commander or Assistant Director may recommend the indication of appreciation be directly communicated by the Director.

4. The original letter of appreciation will be sent to the Human Resources Bureau through channels where it will be entered in the member's personnel file.

### **23.40.00 RECOGNITION PROGRAM FOR MEMBERS KILLED IN THE LINE OF DUTY**

**40.01 Purpose.** To provide formal recognition to members who have made the supreme sacrifice in service to the people of the state of Texas.

#### **40.02 Annual Formal Ceremony**

1. **Location and Date of Ceremony.** Ceremony to be conducted in the courtyard of the entrance to the training academy on any day during the week of May 15, each year, to coincide with National Law Enforcement Memorial Week.

2. **Responsibility.** The division Director of Administration will be responsible for arranging an appropriate ceremony. He may request assistance from all divisions.

# HANDLING AND DISPOSITION OF ENTRUSTED PROPERTIES

## 01.24.00.00

### 24.05.00 SEIZURES

#### 05.01 Regulations

1. Members of the Department shall not make any arrest, search, or seizure which they know or should know is not in accordance with law and established Department procedures or policies.

2. Police power to seize the personal property of citizens is the exercise of authority that should never be taken lightly or capriciously. Citizens are ordinarily under no obligation to prove ownership of any property found in their possession. Conversely, the burden is upon the officer to prove that property is not legally in possession of the citizen. Unless investigation can establish otherwise, it should be presumed that property found in the possession of any citizen is that citizen's property and, if such property is seized for any reason, the citizen is entitled to recover that property when there is no longer a bona fide reason for the Department to retain it. (This policy includes weapons; it excludes any contraband.) It is, therefore, the policy of this Department to seize and impound property only when a legitimate need so requires and to retain such property only so long as that need is served.

#### 05.02 Policy.

1. **Definitions.** The following definitions will apply throughout this chapter:

- a. CARE - constitutes the watchful attention or supervision of something.
- b. CUSTODY - is the immediate possession, charge, or control exercised by someone having authority.
- c. CONTROL - is having the authority or power to act, guide, or exercise authority over.
- d. MANAGEMENT - is the act of overseeing or supervising.
- e. POSSESSION - the act of holding or taking something into care, custody, control, or management.
- f. AFU - means the Asset Forfeiture Unit located in the Criminal Investigations Division of the Department.
- g. SEIZED ASSET or ASSET SEIZURE - means any property lawfully seized which is subject to state or federal forfeiture. This term does not include controlled substances, weapons, or items seized solely for evidentiary purposes, unless ordered forfeited by a court with proper jurisdiction.
- h. FINANCIAL INSTRUMENT - means currency, checks, money orders, certificates of deposit, regulated financial institution accounts, securities, stocks, bonds, and other forms of investment or retirement accounts.
- i. CASE INVESTIGATOR – means the officer with primary responsibilities for all forfeiture-related matters of an individual case. This person may be either the seizing officer or another officer involved in the investigation or assigned to the investigation.



j. AFU Coordinator – means the individual designated by the Assistant Director of the Criminal Investigations Division, responsible for overseeing the Asset Forfeiture Unit and preparing all reports and audits in accordance with Department policies and procedures and statutory requirements.

k. REGIONAL FORFEITURE LIAISON OFFICER or RFL – means the individual within each Region’s geographic area designated by the Regional Commander.

2. It is the policy of this Department that all property which comes into the possession of an officer of the Department, for any reason, will be inventoried as soon as practicable and a written record of the inventory will be made on the HQ-109 form with a copy provided to the person from whom it is taken. An accurate accounting of all property will be made including a notation of where the property was located when inventoried and, if so, where it was placed for safekeeping. In the case of a closed container (briefcase, suitcase, shipping crate, etc.) or a closed compartment of a vehicle (trunk, glove box, console, camper, etc.), the container or compartment will be opened, inventoried, and the contents noted on the HQ-109.

a. An exception to this policy is a container or compartment that cannot be opened without using force that results in physical damage to the container or compartment that is significant and permanent because, for example, a key, combination, or appropriate opening tool is not available. In such cases, consent is required to force open the container or compartment for the purpose of inventory. If consent is not forthcoming or if the closed container or compartment is not opened or inventoried for any other reason, an entry will be made on the HQ-109 noting that the particular container or compartment was not inventoried and why.

b. This policy does not preclude, forbid, or control the forced opening of any container or compartment under some other legal authority independent of an inventory purpose, such as consent, warrant, probable cause, etc.

c. An exception to this policy is in investigations arising under Article 179e, V.T.C.S. (Texas Racing Act). Warrantless seizures of contraband or evidence, pursuant to this Act or its rules, may be documented utilizing Texas Racing Commission (TRC) inventory/receipt form in lieu of agency forms HQ-109 and HQ-109b. Dispositions of such property may be documented in the “chain of custody” section on the TRC document in lieu of HQ-109b. All other policy provisions of this chapter (HQ-109a - property logs, property tags, storage, etc.) remain applicable. (For details, refer to the Criminal Law Enforcement Division Manual.)

3. **Controlled Substances and Dangerous Drugs.** Contraband that comes into a DPS officer’s possession, for any reason, shall be submitted to a crime laboratory for analysis and/or destruction as soon as practical and not later than three (3) working days of the seizure unless authorized additional time by the employee’s supervisor. The only other exceptions will be large seizures that are to be destroyed by court order.

4. **Drug Paraphernalia.** Items subject to seizure shall be stored in either central or resident storage until disposed of in accordance with the provisions of the Controlled Substances Act.

5. UNDER NO CIRCUMSTANCES WILL ANY ENTRUSTED PROPERTY BE APPROPRIATED FOR PERSONAL USE.

6. **Non-Evidentiary Items.** When it becomes the responsibility of an officer of the Department of Public Safety to take care of the property of a citizen, as in the case of an accident, the officer shall make an itemized list of all items removed from the vehicle or person and identify them with the vehicle make, vehicle identification number, and license number and/or information as necessary to properly identify from whom the items were taken. (See Annex #1, HQ-109.)

a. Depending upon location and circumstances, he may turn the valuables over to a responsible official such as a judge, police chief, or sheriff, or remove them to the station or district office.

b. If the officer should deliver the property to another person, the officer must have the official or other person receipt the list of items on the form used to inventory the items.

c. If the officer retains the articles, he shall keep them under lock and key until they can be delivered to the rightful owner, from whom he must obtain a receipt.

d. The officer shall file all property inventories and receipts as a Department record.

**7. Evidentiary Items.** All articles or items of evidence seized by an officer of the Department of Public Safety shall be inventoried and properly identified, marked, labeled, stored, and secured until such time as legal disposition or proper adjudication of the case, or cases, has been made. The officer shall file a property inventory, HQ-109, and enter the property in the entrusted property log, HQ-108, as a Department record in addition to the following:

a. **STOLEN PROPERTY.** Code of Criminal Procedure, Article 47.03, Schedule. When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with a magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefore. (See Annex #1, HQ-106, striking through the non-applicable sections.)

b. **MOTOR VEHICLES.** Transportation Code Section 501.158 applies to motor vehicles where the serial number, the motor number, or the manufacturer's permanent vehicle identification number or derivative number thereof has been removed, changed, or obliterated. If the seizure under this Subsection is not made pursuant to a search warrant, the arresting officer shall prepare and deliver to a magistrate a written inventory of each motor vehicle or part of a motor vehicle seized. (See Annex #1, HQ-106, striking through the non-applicable sections.)

c. **WEAPONS.** (Code of Criminal Procedure, Article 18.19.) When weapons are seized in connection with an offense involving the use of a weapon or an offense under Penal Code Chapter 46 and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized. (See Annex #1 HQ-114.)

**8. Seized Assets.** State and federal laws provide for the seizure and forfeiture of assets in certain narrow circumstances. The main purpose of asset seizure and forfeiture is to deprive criminals of the proceeds of their criminal acts.

The Asset Forfeiture Unit (AFU) will be responsible for recording and tracking all assets seized by the Department through the forfeiture process and final disposition. This includes assets seized by another government entity if the Department retains an interest in the disposition of the property, regardless of the physical location of the assets.

The AFU is physically located in the Criminal Investigations Division. Any correspondence or other contact with the AFU should be directed to the attention of the AFU Coordinator. A case investigator or Regional Forfeiture Liaison Officer (RFL) should contact the AFU with questions not addressed in policy.

All assets seized by an officer of the Department for forfeiture purposes under applicable state or Federal statute shall be inventoried and properly identified, marked, labeled, stored, and secured until such time as final disposition of the case, or cases, has been made. The officer shall file a property inventory, HQ-109, enter the property in the entrusted property log, HQ-108, as a Department record in addition to the required documentation necessary to make the forfeiture. NO ASSET SHALL BE PUT INTO USE UNTIL IT IS PROPERLY AWARDED TO THE DEPARTMENT AND AUTHORIZED BY THE DIRECTOR OR HIS DESIGNEE.

### 05.03 Inventory of Property

1. **HQ-109.** (See Annex #1.) Will be utilized for all evidentiary and non-evidentiary items when property comes into possession of an officer pursuant to an arrest or other legal means, except when seized pursuant to a search warrant or as provided for in 24.05.02-2c concerning items seized pursuant to the Texas Racing Act.

a. It will not be necessary to complete form HQ-109 for open alcoholic beverage containers or for controlled substances and other items that are seized without a search warrant and are submitted to DPS crime laboratories for storage and final disposition.

b. The original and at least three copies will be made, with additional copies made as needed. The original will be retained with the property until final disposition is made. The copies will be routed as follows:

- 1) One copy retained by the officer making the seizure.
- 2) One copy provided to the person from whom the property is taken.
- 3) One copy retained at the local level as a permanent Department record.

2. **HQ-109a.** (See Annex #1.)

a. This must be used for all items seized pursuant to a search warrant. It may also be used for all items seized pursuant to a consent search and searches incident to arrest. The original and at least three copies will be made, with additional copies made as needed. The original will be returned to the court issuing the search warrant. The copies will be routed as follows:

- 1) One copy retained by the officer making the seizure.
- 2) One copy provided to the person from whom the property is taken or left at the scene as required by law.
- 3) One copy retained at the local level as a permanent Department record.

b. The HQ-109a will also be utilized to document and report all seizures that are subject to forfeiture under applicable state and Federal statutes. If the seized asset is subject to forfeiture, a completed copy of the HQ-109a will be submitted to the Asset Forfeiture Unit within five (5) working days of the date of seizure.

3. **HQ-109b.** (See Annex #1.) May be used as a receipt to record any other type of disposition or continuation sheet for the HQ-109 or HQ-109a.

4. **Mandatory Inventory Files.** File documents will be maintained at the district, company, subdistrict, or sergeant area office. Inventory files may not be closed until all necessary receipts and/or dispositions are attached.

Closed files may not be disposed of for a period of three years after closing date. This length of time is necessary because of the two-year statute of limitations in Section 16.003, Civil Practice and Remedies Code, and the provisions of Section 16.062, Civil Practice and Remedies Code, which allow up to a one-year extension in certain cases if the claimant has died.

If seized property is not sold or destroyed but placed into use by the Department, the title documents and court orders relating to title must be kept until the property is taken out of service. For example, if a vehicle is placed into service or retained, the files relating to the acquisition and forfeiture of that property must be retained as long as the property is retained.

## 05.04 Identification of Property

1. **Property Tag.** (See Annex #1, HQ-113.) In addition to traditional court approved marking techniques, all personnel will utilize the DPS property tag.

All property seized, impounded, or taken into custody that is to be placed in a DPS storage facility, other than a crime lab, will be properly tagged by the impounding officer. It is his/her responsibility to properly fill out the tag, secure it to the item, and initiate the protection of chain-of-evidence events.

The officer assuming original custody of the property will sign and complete line #1 (impounding officer) on the back of the property tag.

Each person who later assumes custody of the item will follow the same procedure using the next available line. Property tags will not be removed until a lawful disposition of the property is made.

Seized property that is submitted to a crime lab for analysis which is returned to the officer will require tagging, if retained in DPS custody.

## 05.05 Entrusted Property Storage

1. **Non-DPS Storage.** When local law enforcement agencies are involved in an investigation with DPS personnel, the local agency should be utilized for the storage of evidence when practicable. Personnel will continue to use non-DPS facilities such as wrecker companies for vehicles and other items that are too large for DPS storage.

### 2. DPS Storage, Minimum Security Requirements

a. Closet or room with a secure ceiling, single door, without windows, and equipped with a deadbolt lock.

b. Steel cabinet equipped with a padlock and locking bar.

c. Steel filing cabinet equipped with a locking bar and padlock.

d. Jewelry, gemstones, financial instruments, and precious metals will be stored in a safe (including but not limited to drawer or imprest) or a safety deposit box, unless disposition is imminent. (See 05.13 for regulations concerning money items seized under the provisions of the Texas Penal Code, Texas Transportation Code, and the Code of Criminal Procedure.)

### 3. Types of DPS Storage

a. **Central.** Regional, company headquarters, district, subdistrict, or area DPS office.

Central locations may be combined and used by more than one service, provided it is agreeable between all district commanders concerned and adequate facilities are available.

District commanders and/or service commanders may require any or all officers under their command to use only assigned central locations when lawful.

NOTE: (Items seized pursuant to a search warrant that are not submitted to a laboratory for scientific analysis may not be removed from the county without an order from a magistrate.)

b. **Resident.** DPS storage facility other than a crime lab or central location. (THIS IS NOT AN OFFICER'S VEHICLE OR HOME.)

A DPS officer who has assigned central facilities within his county may not use resident storage except for temporary purposes.

#### **05.06 Property Officer**

1. **Qualifications.** First-line supervisor or other person designated by the regional commander, district/company commander, or service commander.

##### **2. Duties**

a. Central custodian of all entrusted property.

b. Maintain a log on all property checked into and out of central storage (See Annex #1, HQ-108.)

c. The property officer will conduct and submit an annual inventory of all entrusted property within his assigned area of responsibility to their Service Captain by memorandum.

d. Require personnel to update property that has remained in DPS storage for more than one year and document on the log when the item was last checked under remarks.

e. Report damaged, altered, or missing property by memorandum through channels to the division chief.

f. Comply with all court orders for destruction. The evidence or property will be rendered useless by the most feasible and effective means available. A supervisor shall witness destruction of the evidence, and both officers will sign the court order.

g. When an inventory assistant or resident property officer moves out of the assigned area or leaves the Department an inventory shall be conducted prior to the officer's departure. All resident property that can lawfully be moved will be transferred to central storage. Court orders should be obtained when required by law. In no event will entrusted property be moved out of the property officer's assigned area.

In the event of the death of an employee, the inventory will be conducted within 15 days of the date of death.

If a property officer dies, moves, or leaves the Department, the next in-line supervisor will conduct an inventory.

#### **05.07 Assistant Property Officer**

1. **Qualifications.** The requirements for this position and the number needed will be determined by the regional commander, district commander, and/or service commander.

2. **Duties.** Central custodian during absences of the property officer.

#### **05.08 Resident Property Officer**

1. **Qualifications.** Personnel who are unable to use central storage due to the geographical location of their duty station.

2. **Duties.** Responsible for the security and control of entrusted property maintained in resident storage.

**05.09 Disposition of Property Not Returned to Owner or Responsible Person.** Members of the Department will familiarize themselves with, and be directed by, provisions of the Code of Criminal Procedure (CCP) and Texas Penal Code (PC), as amended, concerning disposition of property.

1. **Abandoned or Unclaimed Property.** Article 18.17, CCP. A receipt for the property will be obtained and placed in the inventory file.

2. **Stolen Property.** Chapter 47, CCP.

3. **Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument.** Article 18.18, CCP.

4. **Certain Weapons.** Article 18.19, CCP, and Chapter 46, PC.

## **05.10 Weapons**

1. **Firearms and Other Weapons (knives, blackjack, club, etc.).** When a firearm comes into the care, custody, and control of a DPS officer, the officer will check with NCIC for a possible stolen report.

a. A firearm seized and held for any reason will have a copy of NCIC check attached to the HQ-106 or HQ-114.

b. The proper inventory form, HQ-109 or HQ-109a, will be completed describing the weapon seized with a copy provided to the person or responsible party from whom it is taken.

c. The proper court order HQ-106 or HQ-114 will be completed.

d. The weapon will be tagged using the HQ-113.

e. After all documentation is secured the weapon will be logged and placed into entrusted property storage.

f. When disposition of any weapon falls within the scope of Article 18.18 or Article 18.19 DPS personnel will seek a court order awarding the weapon to the DPS for destruction. (See Annex #3, HQ-26 for Prohibited Weapons and HQ-27 for weapons seized for offenses under Chapter 46, Penal Code.)

g. Due to the reduction in National Integrated Ballistic Information Network (NIBIN) workstations in DPS Crime Laboratories, the following guidelines apply. DPS officers should not submit firearms to a DPS Crime Laboratory solely for the purpose of NIBIN testing. DPS officers should request NIBIN testing when the officer reasonably believes the firearm was discharged in the criminal incident under investigation or was discharged in a previous criminal incident. Applicable firearms may be submitted to any DPS Firearms laboratory. Test firing will be conducted at that location and the casings forwarded to the nearest DPS NIBIN workstation. Once the testing has been completed the firearm will be returned to the submitting officer. The chain of custody shall be properly documented and the weapon logged in and out of entrusted property storage during this process. DPS has NIBIN workstations in the Garland and Austin laboratories.

h. Except in rare circumstances, all firearms awarded to the Department will be transferred to the DPS General Stores for destruction. Firearms awarded to the Department may not be retained for Department use without prior approval from the Assistant Director of the appropriate Division. No weapon awarded to the Department will be sold.

j. All documentation pertaining to the seized weapon will be maintained in a single folder or binder and retained for a period of three years beyond the date that the weapon is ordered disposed.

### 05.11 Reference Chart

TYPE OF ITEM	SEIZURE REQUIREMENT	REQUIRED DOCUMENTATION	RETENTION OF DOCUMENTATION
NON-EVIDENTIARY	Abandonment, or Possession through exercise of official duty	HQ-109	3 years beyond the date the item is destroyed or disposed of.
		<b>AFTER DISPOSITION</b>	
		Destroy Turn over to county purchasing agent or sheriff	
EVIDENTIARY	Abandonment, or Possession through exercise of official duty, or Seized as evidence or fruit of criminal offense, or Seized pursuant to a search warrant	HQ-108 (ALL-except drugs and currency) HQ-109 (ALL) HQ-109a (SEARCH WARRANT) HQ-106 (STOLEN ITEMS) HQ-113 (ALL) HQ-114 (ALL WEAPONS) THP-1/CLE-1	3 years beyond the date that the evidence is ordered disposed of by the court.
		<b>AFTER DISPOSITION</b>	
		County/District Court Order, or HQ-26 (PROHIBITED WEAPONS) HQ-27 (WEAPONS SEIZED AS OFFENSES OF PC, CHAPTER 46) JP order of destruction (ALL OTHER ITEMS)	
ASSET FORFEITURE	Probable cause to believe that item was used in the commission of, or proceeds from, an offense enumerated in Code of Criminal Procedure Chapter 59. Seized pursuant to a search warrant	HQ-108 (ALL-except drugs and currency) HQ-109 (ALL) HQ-109A (SEARCH WARRANT) HQ-83 (CURRENCY) DAG-71 (FEDERAL SEIZURE) Affidavit Filed with DA within five days of seizure (or Federal Agency) HQ-35 THP-1/CLE-1	3 years beyond the date that the evidence is ordered disposed of by the court.
		<b>AFTER DISPOSITION</b>	
		Judgment from court having jurisdiction	

### 05.12 Stolen Motor Vehicles and Parts

Motor vehicles and vehicle parts seized under Section 501.158, Trans. Code which are forfeited to the Department will be evaluated by the Manager of Fleet Operations for DPS use, sale, or destruction.

### 05.13 Asset Seizure and Forfeiture

1. **Asset Seizures.** When a DPS officer seizes assets other than financial instruments subject to state or federal forfeiture proceedings, the case investigator shall photograph each item in color and enter all seized assets into the

Entrusted Property Log unless an asset is immediately turned over to another agency. Any asset maintained by department personnel shall be properly sealed and secured for evidentiary purposes.

The RFL will provide a copy of the HQ-109a to the AFU within five (5) working days of the seizure. Upon receipt of such information, the AFU will create a database record within the asset forfeiture database and assign each asset an Asset Forfeiture Record (AFRec) number to track the asset throughout the process. Completed DAG-71 and TDF-92 forms should be submitted to the AFU within 30 days of seizure for approval and submission to the appropriate federal agency. Original HQ-109a forms should be sent to the AFU in a timely manner upon completion of the document.

Accounting and Budget Control and the AFU will maintain a central, shared database which accounts for all seizures and dispositions. Separate records will be kept of monies deposited and other items which are maintained intact as seized.

a. **Disposition Recommendations.** The case investigator shall propose, with the RFL's agreement, the disposition of each asset which is not a financial instrument. The disposition categories are:

- 1) Release interest to another government entity (pre-forfeiture filing)
- 2) Return asset to owner (pre-forfeiture filing)
- 3) Place Into Service (after awarded to DPS)
- 4) Sell at Auction (after awarded to DPS)
- 5) Transfer to another government entity (after awarded to DPS)
- 6) Destroy (after awarded to DPS)

The disposition recommendation should include justification for the proposed disposition, and be sent to the AFU via electronic or printed memorandum within 30 days of the seizure. The final court order declaring property forfeited to the Department must allow for the recommended disposition. If the order does not provide for the recommendation, a modified disposition recommendation should be submitted to the AFU within five working days of receipt of the court order.

b. **Asset Sharing Requests.** The Department maintains formalized sharing agreements with many local, state, and federal agencies for the disbursement of proceeds of forfeited assets. Should special circumstances require a departure from the standard agreement or if an agency not covered by a sharing agreement participates in an investigation which results in asset seizure and forfeiture, the RFL shall submit an electronic or printed interoffice memorandum as an alternative sharing request to the AFU for chain-of-command review. The memorandum should make a recommendation for a division of the shares and contain sufficient documentation to justify the share.

If CID personnel making the alternative sharing request are conducting the follow-up investigation of another Division's seizure, the RFL should obtain a concurring acknowledgment from the originating Regional Commander, or his/her designee, and document the agreement on the request.

The AFU shall attach an Alternative Sharing Request memorandum to the RFL's field memorandum and submit through the chain-of-command to the CID Assistant Director or his/her designee.

2. **Currency/Financial Instruments Seizures.** Seized currency may only be handled in one of five (5) methods:

- a. transfer to a state prosecuting official or their representative for proper deposit into an interest-bearing account;
- b. transfer to cooperating federal agency acting as a representative of a federal prosecuting official;



- c. transport to Headquarters for deposit to an account held by DPS;
- d. release DPS interest in the asset to another government entity; or
- e. return to the owner or attorney representing the owner prior to filing for forfeiture.

Upon seizure of currency or other financial instruments that are subject to asset forfeiture, the RFL shall email or fax a copy of the HQ-83 along with the HQ-109a to the Asset Forfeiture Unit within five working days. Original HQ-83 forms should be sent to the AFU in a timely manner upon completion of the document.

If currency is seized and conditions are not ideal to obtain an exact amount of the currency immediately, the case investigator should provide a description of the amount of currency seized, e.g. size and number of bundles, denominations, and weight of currency on the HQ-109a. In this circumstance, the currency should be packaged and secured with an evidentiary seal until it can be transported to a regulated financial institution for a certified count. Investigators may develop information through witness statements, ledgers, and other sources to determine an estimate of the currency amount. The currency shall be counted as soon as practical after it is determined that it possesses no additional evidentiary value. A revised HQ-109a should then be sent to the AFU in a timely manner.

A seized financial instrument subject to forfeiture which is not retained by the office of the prosecutor or a federal agency shall be forwarded to the AFU to be deposited in the state treasury. The seizing officer shall convert the currency into a single financial instrument before transferring the property to the AFU by personal delivery or by a form of delivery which provides verification of receipt by the AFU. Any expenses incurred for the conversion shall be absorbed by the Region obtaining the financial instrument. The investigative report documenting the currency or financial instrument seizure shall be completed by the case investigator.

**3. Conveyance Seizures.** Within three (3) business days of asset seizure of a conveyance, the case investigator shall have an appropriate agent complete a "Vehicle Examination Report" to determine if the conveyance seized is reported stolen or not subject to forfeiture under other criteria. The case investigator shall also determine an estimated value of the conveyance.

Any contraband in the form of conveyances which are seized pending forfeiture proceedings will be stored in bonded storage in the judicial district in which seized or in a secure (fenced and locked) Department compound nearest the county of seizure.

No seized conveyance shall be placed into use until properly awarded to the Department and authorized by headquarters.

No member of this Department will knowingly acquire title to any conveyance or other property acquired by the Department under state or federal statute except through public government surplus property sales.

**4. Seized Assets Returned to Defendant.** If the seized items were maintained intact, the actual items will be returned. The seized items will not be released by the DPS supervisor until the "Certificate of Seizure", HQ-83, has been signed by the defendant or his/her legal representative. All money seized in connection with a law violation and placed in an interest-bearing bank account shall be distributed according to applicable law with any interest being distributed in the same manner and used for the same purpose as the principal.

**5. Asset Forfeiture.** The case investigator who oversees the investigation, with supervisory approval, shall be the person responsible for determining the appropriate jurisdiction to pursue an asset forfeiture case. If an asset is seized pursuant to a state search warrant, the asset is under the jurisdiction of the authorizing court until an order is issued relinquishing that jurisdiction to federal court. Because state law only allows 30 days from the date of seizure to file a

forfeiture case in district court, the case investigator shall maintain contact with the office of the prosecuting attorney to ensure a timely filing.

At six-month intervals after asset seizure, the RFL shall submit updated information to the AFU regarding the status of each seized asset until a court orders forfeiture of the property. At the first of these intervals, the case investigator shall confirm that a forfeiture case has been filed in either state or federal court. If no such forfeiture case has been filed and the seized asset has no further evidentiary value, the case investigator will begin the process to return the seized asset to the owner.

**6. Disposition of Awarded Assets.** When the case investigator is notified that an asset has been forfeited, the RFL shall complete the Awarded Assets Memo for each asset and attach it to a certified copy of the court order forfeiting the asset to DPS. These documents and other documentation necessary for disposal of the forfeited asset shall be submitted to the AFU within five working days. If the RFL requests a disposition other than those listed on the Award Assets Memo, the RFL shall prepare and submit a written memorandum to the AFU detailing the requested disposition and a justification for the disposition.

If a forfeiture award is received in the AFU without any additional documentation, the AFU will open an AFRec and forward the seizure information to the appropriate RFL for proper documentation, including a DPS investigative report to document the circumstances of the award.

If a forfeiture award is received in a field office, the award shall be forwarded by the RFL to the AFU with an interoffice memorandum explaining the circumstances regarding receipt of the award. A DPS investigative report shall be prepared at the region level to document the circumstances of the award.

If a forfeiture award is received in Accounting, Accounting shall forward information about the award to the AFU. The AFU will then forward the seizure information to the appropriate RFL for proper documentation, including a DPS investigative report to document the circumstances of the award.

**7. Disposition of Awarded Financial Instruments.** When a case investigator receives a forfeited financial instrument from the prosecutor's office, he/she shall submit the financial instrument to the RFL, who shall forward the forfeited financial instrument to the AFU within five (5) working days of receipt from the prosecutor's office. The AFU will send the financial instrument to Accounting with instructions for disposal, then will close the AFRec on the asset.

**8. Disposition of Awarded Conveyances.** It will be the responsibility of the Manager of Fleet Operations to arrange for transfer of title to the Department and to register the vehicle in the Department's name. If a vehicle is awarded to the Department but is not placed into service, it shall be the responsibility of the Manager of Fleet Operations to arrange for and handle the sale of such surplus vehicle.

When it becomes apparent that vehicles awarded to the Department cannot be economically transported to Austin for auction because of their mechanical condition, it may be requested to sell such vehicles in the field. Permission for sale in the field must be obtained from the State Purchasing and General Services Commission by the Department's accounting office prior to such sale. Recommendations for sales in the field will be made through the Manager of Fleet Operations.

Proceeds from the sale of vehicles acquired by the Department as the result of a forfeiture and subsequent court order under the authority of applicable state or federal statute will be deposited in an account from which the operation of this program will be administered. Authorized expenditures from this account will include storage costs, handling costs, payments to lienholders, and cost of preparation for sale or use and like expenses but will not include cost of operation of the vehicle once assigned for Department use. This vehicle operation cost will be borne by the using budgetary unit.

At all times, all seized assets and all records of seized assets will be available for audit by Accounting and Budget Control, Office of Audit and Inspection, and the State Auditor's Office.

#### **24.10.00 DISPOSAL OF ABANDONED MOTOR VEHICLES (Rule §3.55)**

The term “abandoned motor vehicle,” when used herein, has the meaning ascribed to the term in the TRC, Chapter 683, and no other.

##### **10.01 Doctrine**

1. The TRC, Chapter 683, provides a legal means of making final disposition of abandoned vehicles and clearing the titles of these vehicles at the same time. This Department has a legal and moral responsibility to participate in the procedure outlined in this Code to the end that the intent of the Legislature will be carried out.

2. The services of the Department in this matter should supplement rather than supplant the services of municipal police and sheriff’s departments and the Department should become involved in the handling of abandoned motor vehicles only in those geographic areas in which this service is not available through local departments.

##### **10.02 Policy**

1. The Department will encourage other police agencies to establish a procedure to handle and make final disposition of all abandoned motor vehicles found or reported within the geographic areas for which they have a responsibility. By mutual agreement, other police agencies may process any abandoned motor vehicle found or reported within their jurisdiction which may be handled under the provisions of the Texas Transportation Code, Chapter 683. In areas where another agency will provide this service, officers will refer all abandoned motor vehicles to that agency.

2. The Department will process those abandoned motor vehicles which come to its attention if no other police agency having jurisdiction over the place where the vehicle is found will accept this responsibility.

3. This Department will not become involved in the disposition of junked vehicles to be removed or disposed of under the authority granted to municipalities in Section 10 of this Act. These cases must be handled under a city ordinance.

4. There is a difference between a motor vehicle left beside the road because the owner no longer considers it worthwhile to remove it and one of substantial apparent value. The Department will, therefore, continue to attempt to notify the owner and lienholder through presently prescribed channels in the event the circumstances seem to warrant it.

5. No vehicle will be considered to be an “abandoned motor vehicle” until the time requirements have definitely been met.

6. No member of this Department will knowingly acquire any interest in or benefit from the use of any motor vehicle which is being held or is being sold as an abandoned motor vehicle by this Department or any other police agency.

7. This instruction in no way attempts to discourage the normal processing of vehicles which appear to have been stolen, left temporarily on the right-of-way for the owner’s convenience, or involved in an accident, nor does it discourage the removal of vehicles from the highways by statutory authority prior to the time limitations contained in the Act.

**10.03 Preparatory Procedure.** Sheriffs and local police departments will be encouraged to process the abandoned motor vehicles found within their jurisdictions. Department personnel will refer all abandoned motor vehicles to the appropriate local agency when feasible.

**10.04 Operational Procedure.** No attempt is made here to prescribe procedure to be immediately put into effect by Department personnel who discover an unoccupied vehicle on the highway. The problem begins at the point in time that the vehicle is believed to be an abandoned motor vehicle and the decision is made that it will be handled as such.

#### **10.05 Abandoned Motor Vehicle Coordinators**

1. Each regional commander will appoint as many persons within the region as he deems necessary to serve as Abandoned Motor Vehicle Coordinators, hereinafter referred to as the coordinator. Each coordinator will serve a specified geographic area.

2. Each coordinator will be responsible for gathering and filing prescribed documents relating to each abandoned motor vehicle within the area for which he is responsible and forwarding the completed file on each vehicle to the Chief of Fiscal Affairs, Accounting and Budget Control, at the appropriate time.

3. All documents related to an individual vehicle will be kept in a preprinted envelope designated as form THP-4 and considered as part of the file. The required information will be placed on the outside of the envelope.

**10.06 Responsibility for Originating Forms and Completing Sale.** The officer who first acts to have an abandoned motor vehicle impounded will be responsible for completing the prescribed forms and for the conduct of any subsequent sale. In the event the services of an auctioneer are employed, a Department member will complete the prescribed forms.

**10.07 Placarding of Vehicles Believed to Have Been Abandoned.** An officer who observes a vehicle under circumstances justifying a belief that it will be processed as an abandoned motor vehicle in the near future by this Department will complete form THP-9 and attach it to that vehicle in a conspicuous place.

#### **10.08 Removal of Abandoned Vehicles**

1. An officer who has knowledge of an abandoned motor vehicle in his assigned area will, after determining that the vehicle is not stolen, report the matter to the local police agency within the county that processes abandoned motor vehicles.

2. If there is no such agency within the county, the employee will proceed as follows:

a. Have the vehicle removed to a place of storage. This will be done by following the normal procedure used to remove vehicles from the highways or as directed by the regional commander.

b. Report the removal and storage of the vehicle to the Department communications facility normally contacted, provide that facility with the information that the vehicle is to be handled under the Texas Abandoned Motor Vehicle Act, and request title information. Communications personnel will provide all possible assistance to the officer in determining the name and address of owners and lienholders. Communications personnel will advise owners and lienholders of the known facts.

c. Complete form THP-1 in triplicate and send one copy to the Chief of Finance and one copy to the coordinator as soon as practicable. The coordinator's copy must be accompanied by form THP-4 which should be as complete as available information will permit.

d. Record in an appropriate place on his weekly report an account of this activity. Include the make, model, and VIN of the abandoned motor vehicle, the location from which it was removed, and the place of storage.

#### **10.09 Notification by Mail**

1. The person having the vehicle stored will determine, if possible, the name and address of the last known registered owner and all known lienholders of record. If mailing addresses can be obtained, he will notify the owner and lienholders by completing form THP-2 and mailing it by certified mail, return receipt requested. He will furnish a copy of each form THP-2 so mailed to the coordinator for the area in which the vehicle was found.

2. The regional commander may direct that the coordinator for the area in which the vehicle was found assume responsibility for identifying and notifying by mail the owners and lienholders. When directed, the coordinator will follow the procedure prescribed above immediately upon receipt of form THP-1.

3. Notification by certified mail, return receipt requested, must be done in the following manner in order for the Department to pay the required postage.

a. Place proper amount of postage on addressed envelope.

b. Prepare Post Office Department forms 3800 (Receipt for Certified Mail) and 3811 (Return Receipt Card) for each envelope.

Form 3800 should have the box checked to indicate only "to whom and where delivered."

c. Present stamped envelope and accompanying forms to postal employee at post office.

#### **10.10 Notification by Publication**

1. In cases where no mail address of owners and lienholders has been found, or the certified letter is returned unclaimed, the person responsible for the effort to notify by mail will make the required notification by one publication in one newspaper of general circulation in the area where the vehicle was abandoned. Form THP-3 will be used as a guide in preparing the notice to be published. Multiple listings may be published but if this is done, the costs of publication must be prorated among the vehicles listed and the cost to be charged against each vehicle must be indicated in the billing procedure to be described later.

2. The person responsible for the notification by publication will obtain the page of the newspaper on which the notice appears and a purchase voucher properly executed and signed by the publisher and a publisher's affidavit. The purchase voucher may be notarized in lieu of submitting the publisher's affidavit. The delivery date requested on the purchase voucher will be the date of publication. The completed voucher and the printed notice taken from the newspaper will be delivered to the coordinator as soon as practicable after publication.

3. The voucher must identify the vehicle the published notice concerns. If the voucher covers publication for more than one vehicle, the prorated cost chargeable to each vehicle must be itemized.

4. If the coordinator arranges for notice by publication, he will secure the voucher, the publisher's affidavit, and the printed notice as required above. The coordinator will file these with other documents related to the vehicle in question until some final disposition has been made of the vehicle.

**10.11 Vehicles Reported as Abandoned by Garagekeepers.** Vehicles reported to the Department by garagekeepers as abandoned motor vehicles will be processed in the same manner as described above, with certain exceptions and additions as noted below.

1. Suggest that the garagekeeper make the report to another agency. The statute makes it mandatory that the Department accept the report and process the vehicle in question if this is the desire of the reporting garagekeeper.

2. The reporting garagekeeper is not required to make his report on a specific form, but must tender a certified check, cashier's check, or a U.S. Postal Money Order in the amount of \$5.00 made payable to the Texas Department of Public Safety before any action will be taken on his report.

3. Use form THP-5 for the original report to the coordinator and to the Chief of Finance as described in "Removal of Abandoned Vehicles." The original should go to the Chief of Finance with the fee attached. The reporting officer must retain a copy for his files, and a copy should be given to the reporting garagekeeper to serve both as a receipt for his payment of the \$5.00 fee and to establish the fact that he reported the abandoned motor vehicle within the allotted time.

4. Form THP-4, completed as far as possible, should accompany the coordinator's copy of form THP-5.

5. Notification of last known registered owners and lienholders of record must be completed by Department personnel as outlined above, even though the reporting garagekeeper has already done so.

6. The vehicle in question must be left in the custody of the garagekeeper until the notification process is complete. Mail the notification (THP-2) on the date shown on the form. Assume that this part of the notification process is complete 20 days after the date on the form. We may leave the vehicle stored with the garagekeeper after the notification process is complete and until the time of the sale, but the garagekeeper must be advised that the vehicle is to be regarded as being in our custody during this period.

7. Inform the garagekeeper that the owner may recover the vehicle within 20 days after notification by paying to the garagekeeper all charges, and that he must notify the Department in the event the vehicle is reclaimed. This notification by the garagekeeper should go to the Department officer to whom the garagekeeper reported the abandoned motor vehicle or someone who can act in his behalf.

#### **10.12 Authority to Dispose of a Motor Vehicle to a Demolisher**

1. The Texas Abandoned Motor Vehicle Act named the State Department of Highways and Public Transportation as the agency responsible for granting permission to dispose of a vehicle to a demolisher. However, the Department may become involved in this process under the Act.

2. The Act provides for the disposition, by the possessor to a demolisher, of an abandoned motor vehicle which is over eight years old and totally inoperative, only if a police department had previously authorized it to be towed in. Under this section the vehicle may be disposed of without a public auction. If this method is used, there is no way by which the Department's costs may be recovered. It will, however, provide an easy way to dispose of the almost valueless vehicles wrecker services have moved from the highway.

3. The provisions of Section 7, Subsection (f) of Art. 6687-9, V.A.T.S., will be carried out by the use of State Department of Highways and Public Transportation form MVD #71-2X. The officer who originally had the vehicle towed in, or an officer acting in his behalf, may sign the lower portion of this form if circumstances warrant and the provisions set forth in the lower portion of the form have been complied with. Completion of the upper portion, the payment of a \$2.00 fee, and the final submission of the completed form to the State Department of Highways and Public Transportation will be the responsibility of the person who seeks to dispose of the vehicle to a demolisher.

4. If form THP-1, or form THP-5, has previously been submitted on the vehicle in question, notification as discussed in "Final Reporting on Vehicles Not Completely Processed" will be required.

### **10.13 Sale of Vehicles**

1. As soon as practicable after the expiration of 20 days from the date of mailing notices to owners and lienholders or publication of the prescribed notice, vehicles not reclaimed will be sold at public auction. A notice announcing each sale will be posted not less than five days prior to the sale at the courthouse in the county where the sale will take place. Such notice will describe each vehicle to be sold and specify the date, time, and place of the sale. In addition, if the vehicle was reported by a garagekeeper, he must be notified of the time and place of the sale.

2. Each vehicle to be sold will be checked for a stolen report within the five days immediately prior to its sale.

3. Several vehicles may be sold at the same time but each vehicle must be bid on separately. Each public auction will be conducted in such a manner that each bidder will submit an oral bid and will have an opportunity to raise his bid as often as he desires until no further bids are forthcoming.

4. It will be to the best interest of the legal owner or lienholder and the Department to ensure, as far as practicable, that public notice of a pending sale has been given. We are both morally and legally obligated to avoid private sales.

5. It is permissible to employ the services of an auctioneer if it appears that this will materially increase the receipts from these sales. The Department will be responsible for the fee charged by the auctioneer. It will be paid from the proceeds of the sale upon submission of a voucher properly executed by the auctioneer identifying each vehicle sold, its sale price, and the fee for that vehicle.

6. All vehicles sold at public auction must be paid for by certified check, cashier's check, or U.S. Postal Money Order made payable to the Texas Department of Public Safety.

7. The Department employee responsible for the sale will, after receiving payment, execute State Department of Highways and Public Transportation form MVD #71-1 and deliver it to the purchaser. The Comptroller of Public Accounts has advised that by completing this form, the Department will probably be relieved of the necessity of executing jointly with the purchaser an affidavit showing the sale price, but that an individual tax collector is within his rights if he demands such an affidavit.

8. Submission of the payment for vehicles sold may be accomplished in either of two ways.

a. The preferable way is to complete form THP-7 for each vehicle sold, attach the required check or money order covering the purchase price for that vehicle to the form, and deliver the form and check to the coordinator who will in turn transmit them as a part of the completed file in THP-4. This method requires a separate check or money order for each vehicle sold in the exact amount of the sale price, but allows a comparatively simple audit procedure.

b. An acceptable alternate method, to be used only when the cost and inconvenience of purchasing a large number of individual checks will substantially add to the total cost of administering the program, is as follows:

1) Secure one certified check, cashier's check, or U.S. Postal Money Order covering the total sale price for any number of abandoned motor vehicles processed by the Department and sold on any one

day at any one auction. Auctions conducted by the same person on the same date at more than one site may be regarded as one auction.

2) Complete form THP-7A for each vehicle sold.

3) Prepare a listing of all vehicles sold, the sale price of which is included in the check. This listing must be columnar in form, with the columns identified as:

YEAR	MAKE	MODEL	VIN	SALE PRICE
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A notation must be made on the list to describe the check or money order covering the total price of the listed vehicles, and must be signed by the Department employee responsible for the auction.

4) Deliver the check or money order, along with form THP-7A for each vehicle and the prepared list, to the coordinator, who will in turn file the individual forms with the proper THP-4. The coordinator will also send the check or money order and the prepared list to the Chief of Finance, Accounting and Budget Control, along with an appropriate memo.

#### **10.14 Final Reporting on Vehicles Not Completely Processed**

1. There will be instances in which, after the coordinator and Chief of Finance have been notified of an abandoned motor vehicle being processed, it becomes apparent that the processing will not proceed to the point where the vehicle will be sold at auction. These will include instances in which the owner recovers his vehicle from the Department or a reporting garagekeeper before the final sale.

a. Under these circumstances, the person who submitted form THP-1 or THP5 to the coordinator and the Chief of Finance will write a letter to the Chief of Finance, with a copy to the coordinator, stating the circumstances that make it unnecessary to complete the sale of the vehicle. All parties involved will then complete the necessary administrative procedure and forward the THP-4, complete with necessary attachments, to the Chief of Finance.

#### **10.15 Final Reporting on Vehicles Sold**

1. The coordinator will be responsible for maintaining a file for each abandoned motor vehicle reported. He will forward each file contained in form THP-4 to the Chief of Finances soon as practicable after the consummation of the sale of the vehicle concerned, and will make sure that form THP-4 is completed and that it contains all necessary forms correctly executed.

2. Persons who identify themselves as having an equity in a vehicle which has already been sold should be given the available facts concerning the impoundment and sale of the vehicle as well as the expenses incurred in disposing of the vehicle. These persons should be advised to contact the Chief of Fiscal Affairs, Accounting and Budget Control, Texas Department of Public Safety at Austin if they wish to submit a claim for any balance remaining from the proceeds of the sale of the vehicle. To be valid, this claim must be initiated within 90 days after the date of the sale.

#### **10.16 Records and Fiscal Control**

1. The Department is obligated to keep records and exercise fiscal control on any transaction involving disbursement or receipt of funds by the Department. It is necessary that the Chief of Fiscal Affairs be notified when the Department becomes involved in any transaction under the provisions of the Act that commits it to the expenditure or receipt of funds.



2. Every indebtedness incurred by the Department in the administration of this Act will be paid by a warrant based on a voucher submitted through the coordinator to the Chief of Fiscal Affairs. Each expenditure will be charged to the region in which it occurs.

### **10.17 Destruction of Controlled Substances**

Controlled substances seized by Department officers may be legally destroyed. See DPS Administrative Rules, Chapter 13, Subchapter H, for authority and instructions. Statutory authority is provided in the Health and Safety Code, Chapter 481, Subchapter E.

In cases involving controlled substances, where charges were filed, it shall be the responsibility of every Department officer to find out from the prosecutor or court when the case is closed, and to notify the crime laboratory in writing, at the earliest possible date, that the drug evidence may be destroyed.

# **INVESTIGATIVE HYPNOSIS**

## **01.25.00.00**

### **25.05.00 GENERAL**

The use of hypnosis as an investigative tool for law enforcement is a fairly recent development. Although it was used for this purpose at various times, there was no concentrated effort to develop it as a practicable working tool until about 1970 when the use of hypnosis in several major cases by the Los Angeles Police Department caused a number of other police agencies to examine the possibility of such use. Currently many major police agencies are using hypnosis to some degree in criminal cases.

**05.01** The Department recognizes that many myths and misconceptions have developed about hypnosis and that a number of people regard hypnosis with skepticism; however, it also recognizes the need to utilize new investigative tools when available. Some facts to counteract misconceptions are:

1. Hypnosis is not sleep (whatever sleep is). The subject is very aware of what is going on around and within their physical environment.

2. Hypnosis is not an unconscious state. It is a heightened state of consciousness and may be related to subconscious processes.

3. Hypnosis is not a mind-controlled state. The subject will not do anything against his/her will while in a state of hypnosis or after.

4. Hypnosis, although often intense, is not strenuous and the subject will not experience any adverse physiological or psychological aftereffects. Hypnosis is a very relaxing and comfortable experience.

5. The subject will not be asked any personal or embarrassing questions with the exception of those questions related directly to the investigation. The subject will not be asked to behave in an inappropriate or unusual manner.

6. There is no danger of a hypnotized person being unable to return to their waking state. The subject will not stay in a state of hypnosis following the hypnotic session. Even if the hypnotist were to leave the room, the subject would come back to a normal state in a short period of time, or would enter a refreshing natural sleep.

7. Investigative hypnosis is not a substitute for proper investigation. It is only one of the many diagnostic tools available to officers to assist in the investigation of criminal cases.

**05.02** These guidelines are designed to outline the criteria to be used in the selection and training of DPS personnel to use hypnosis and the use of hypnosis by Department personnel.

### **25.10.00 COMMITTEE**

A Hypnosis Oversight and Training Committee is established to monitor the Department's hypnosis program, review laws and court decisions relating to the use of hypnosis, recommend appropriate policies, develop necessary training programs, make appropriate recommendations regarding individual hypnotists, and perform other functions relating to hypnosis as desired by the Director. The committee membership shall be appointed each two (2) years and will consist

of a representative of Audit and Inspection, a representative of General Counsel, a representative of the Training Bureau, and at least three (3) active field investigative hypnotists.

## **25.15.00 TRAINING**

**15.01** Selection of the proper personnel to be trained in the use of hypnosis is fundamental to the success of the entire program. Requests for training in investigative hypnosis may be considered from personnel in investigative, legal, or training categories. Each such request should be evaluated by in-line supervisors as to the applicant's investigative background and expertise, attitude, performance, interest in and motivation for training, good interpersonal skills, and a liking for and consideration of other people. Personal competence should be the primary consideration with geographical locations also considered. Final approval of personnel to be trained will be made by the Director's Office with input from the Hypnosis Oversight and Training Committee.

**15.02** Personnel selected for training in investigative hypnosis will attend a basic course of training approved by the Department and by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Periodic in-service and advanced training will be scheduled. Department hypnotists will be encouraged to join state and/or national forensic hypnosis associations and to attend their training seminars. Future departmental training and use will comply with any state or national standards established.

## **25.20.00 AUTHORIZATION**

**20.01** Upon successful completion of an approved basic course of training and/or certification as an investigative hypnotist by TCLEOSE, the Director may authorize the employee as an investigative hypnotist.

**20.02** Department investigative hypnotists must be fully prepared to testify as expert witnesses if necessary. For this reason, they will be prepared to provide credentials whenever required. To maintain credentials and to enhance credibility, unless otherwise determined by the committee, each investigative hypnotist shall:

1. Conduct a minimum of one (1) investigative session or one (1) practice session each quarter of the calendar year.
2. Attend either an in-service or approved advanced hypnosis course at least once each two (2) years.
3. By February 1 of each calendar year, submit a copy of a videotaped hypnosis session for the previous calendar year to the committee chairman for review.

**20.03** The immediate supervisor of each Department investigative hypnotist shall annually review, evaluate, and recommend whether continued authorization should be maintained or denied. The evaluation should consider whether the investigative hypnotist has maintained an interest in hypnosis, sessions reported, continued training, and research. "Continued training" means at least 8 hours of in-service or advanced training in each calendar year. If less than 8 hours are received for any calendar year, the deficit must be made up the next year so that the total number of hours received in both years is at least 12.

In-line supervisors through the service commander will add their comments and recommendations to those of the immediate supervisor. The service commander will forward the evaluation and recommendations to the Hypnosis Oversight and Training Committee chairman for review no later than February 1. Recommendations to the Director for denial will be forwarded by the committee chairman.

**20.04** The Director may withdraw authorization from any Department investigative hypnotist as a result of the evaluation and review process or at any time continued authorization of an investigative hypnotist would adversely affect the Department.

#### **25.25.00 USE**

**25.01** The purpose of using investigative hypnosis is to provide additional information or clues that can be substantiated. Evidence gathered by hypnosis will be viewed as contributory evidence and shall be corroborated as fully as possible by other means of investigation.

**25.02** No employee of the Department shall use any hypnotic interview technique for any law enforcement agency unless authorized as an investigative hypnotist by the Director.

**25.03** Hypnosis may be used by members of this Department when requested by a Department investigator or other law enforcement agency. Department investigative hypnotists should exercise discretion to assure that their services are not being requested as a substitute for proper investigation or for cases in which hypnosis would be of minimal value.

**25.04** No person shall be placed under hypnosis in any case in which that person might be a defendant or suspect; nor shall any person be placed under hypnosis when the investigative hypnotist has reason to believe that the examination is intended to circumvent or defy the law.

**25.05** DPS investigative hypnotists will not use hypnosis for therapeutic or public entertainment purposes. Although there is a considerable difference of opinion as to what constitutes therapeutic use of hypnosis, DPS policy includes weight reduction, stopping smoking, and similar applications of hypnosis as prohibited activities.

**25.06** If a proposed subject is under treatment for a heart condition, epilepsy, diabetes, or other serious physical condition, or is taking stimulants or sedatives, consent of the attending physician must be obtained prior to hypnosis induction. If a proposed subject is under the care or treatment of a licensed mental health professional, consent of the attending licensed mental health professional must be obtained prior to hypnosis induction.

**25.07** Every hypnotic session conducted by a DPS investigative hypnotist will be recorded on audio or video tapes, including practice sessions.

**25.08** All recordings of any hypnotic session shall be retained by the Department the same as any other evidence in a criminal case for so long as the case for which it pertains has not resulted in an acquittal, a final conviction, or dismissal. In any case in which no charges are ever brought, the evidence shall be retained until the statute of limitation for the particular offense has run.

**25.09** When the investigative hypnotist is a polygraph operator, these additional restrictions will be imposed to separate the function of polygraph operator from that of the investigative hypnotist.

1. A polygraph examiner will never administer a polygraph examination to any individual that he has hypnotized.
2. A polygraph examiner will never administer a polygraph examination and conduct a hypnosis session on the same case or issue.
3. While using hypnosis, the polygraph examiner should refrain from implying or stating that he is a polygraph examiner unless specifically asked by the subject.

4. While conducting a polygraph examination, the polygraph examiner should refrain from implying or stating that he is a hypnotist unless specifically asked by the subject.

5. If the polygraph examination room is to be utilized in a hypnosis session, the polygraph instrument and its attachments shall be removed.

## **25.30.00 CONDUCTING THE INTERVIEW**

### **30.01 Preliminary Activity**

1. The investigative hypnotist should never hypnotize subjects connected with a case in which he/she is the principal investigator as the investigative hypnotist must remain unbiased.

2. Get background information and check on any physical or emotional problems of the subject. Also determine any hearing or speech problems.

3. Arrange for a time and location for the hypnosis session. This may be at a police facility, subject's home, or other place where environment is as relaxing as possible.

4. Arrange for consultant, interpreter, or another investigative hypnotist to be present, if desirable, as backup or for communication. Investigative hypnosis will be conducted with a witness present.

5. Arrange to have only necessary personnel at the session. For eyewitness identifications, the hypnotist should try to have an artist on hand who is experienced in police identification work. If assisting another agency, the hypnotist may have someone from that agency present. In the event that another person (other than the subject or hypnotist) is present during the hypnosis session, attention should be given to positioning of the subject and the other person or persons so as to avoid any influencing of the subject being hypnotized.

6. Make a brief outline of the areas of information sought: vehicle, conversations, descriptions of suspects, weapons, etc.

7. If subject is a juvenile, obtain written parental consent.

### **30.02 Hypnosis Session**

1. Have tape recording equipment on from first contact with the subject so that the entire contact between the hypnotist and the subject will be recorded. The equipment should be in plain sight and the need for it explained to subject. Record date and location of the hypnosis session on tape. Video tape should be used if available.

2. Introduce those present and explain the role of each person - artist, investigator, etc.

3. Exclude family members or friends unless the subject insists they stay.

4. Check on physical comfort: lights, temperature, etc. Complete checklist, form HQ-124 (Annex #1), to determine any reason why session should not be continued.

5. The investigative hypnotist will explain hypnosis to the subject and answer any questions. After the explanation and before inducing hypnosis, the investigative hypnotist will obtain written consent, form HQ-125 (Annex #2), from the witness/victim authorizing the session and will also obtain verbal authorization on tape. For juveniles, the written consent of the parent is also required.

6. The investigative hypnotist should use his/her own judgment as to a practice session, type of induction technique, and conduct of the interview.

7. Upon the conclusion of the interview, remove all temporary suggestions. Leave only those suggestions intended to remain in effect post-hypnotically. Bring the subject out of the hypnotic state feeling relaxed and refreshed.

8. Answer subject's questions and make arrangements for repeat session if needed.

### **30.03 Follow-up**

1. Review the tapes with the investigator. Try to determine if subject was confabulating; review information obtained with previous evidence gathered. Make sure that investigator is aware of all new evidence uncovered so that it may be corroborated. Maintain proper chain of evidence as in any criminal case.

2. Complete and forward required reports.

### **25.35.00 SPECIAL REPORTS**

In addition to any case reports or other reports, the following special reports are required for cases in which hypnosis is used:

**35.01** Within 10 days after conducting a hypnosis session, the investigative hypnotist shall submit the "Investigative Hypnosis Data Report," form HQ-123 (Annex #3), to his/her supervisor. This report is for statistical data gathering.

**35.02** Within 10 days after the end of each month, the supervisor of each Department investigative hypnotist shall submit, by memorandum to their respective service commander, a listing of hypnosis activity for each investigative hypnotist under his/her supervision to include (1) hypnosis sessions conducted, (2) hypnosis sessions assisted, (3) practice sessions conducted, and (4) no sessions. A copy of the "Investigative Hypnosis Data Report," form HQ-123, for each hypnosis session conducted and for each session where the DPS investigative hypnotist assisted a hypnotist of another agency must be attached. Upon receipt, the service commander shall forward all hypnosis data to Texas Ranger headquarters.

**35.03** The Texas Ranger Division will compile the statistical data reported by the investigative hypnotists and shall periodically provide to the Director and proper supervisory personnel a summary of the activities of the investigative hypnotists in sufficient detail to determine the extent and effectiveness of hypnosis use and to point out any possible abuses.

## **INFORMATION MANAGEMENT SERVICE**

### **01.26.00.00**

#### **26.05.00 Purpose**

Information Management Service (IMS) of the Texas Department of Public Safety (Department) manages and protects the Department's information resources in accordance with the policies of this Chapter 26, "Information Resource Policy," of the Department's General Manual.

These policies are based on requirements contained in the Texas Administrative Code, Title 1, Part 10, Chapter 202 and other reference material. These policies apply equally to all personnel including, but not limited to, the Department's employees, agents, consultants, and all other authorized users granted access to the Department's information resources. Furthermore, these policies apply to all information generated by the Department's information resource functions, through the time of its transfer of ownership to any entity outside the Department or its proper disposal/destruction.

Violation of these policies may result in disciplinary action contained in Chapter 7A of the General Manual which may include termination for employees or a termination of employment relations in the case of contractors or consultants. Additionally, individuals may be subject to loss of access to the Department's information resources, as well as civil and criminal prosecution.

"Information" is defined as any and all data, regardless of form, that is created, contained in, or processed by the Department, or the Department's communications networks or the Department's storage devices.

"Information resources" includes any and all computer printouts, online display devices, magnetic storage media, and all computer-related activities involving any device capable of receiving email, browsing websites, or receiving, storing, managing, or transmitting electronic data. These devices include, but are not limited to, mainframes, servers, personal computers, notebook computers, hand-held computers, personal digital assistants (PDAs), smart phones, pagers, distributed processing systems, network-attached and computer-controlled laboratory equipment (such as embedded technology), telecommunication resources, network environments, telephones, fax machines, and printers. Additionally, information resources includes the procedures, equipment, facilities, software, and data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

The discipline of information resources governance deals primarily with the connection between the business focus and information resources management of an organization. This discipline highlights the importance of information resources related matters in organizations and states that strategic information resources management decisions should be made by the executive management of the organization, rather than by the Chief Information Officer or other information resources managers.

The primary goals of information resources governance are to (1) assure that the investments in information resources bring value to the organization, and (2) mitigate the risks that are associated with information resources projects. These goals are accomplished by the Department's IT Board comprised of the executive management of the Department. The IT Board is responsible for the management of information, business processes, applications, and infrastructure.

#### **26.10.00 DEFINITIONS, KEY ROLES, AND RESPONSIBILITIES**

**10.01 Abuse of privilege.** When a user willfully performs an action prohibited by Department policy or law, even if technical controls are insufficient to prevent the user from performing the action.

**10.02 Backup.** Copy of files and applications made to avoid loss of data and facilitate recovery in the event of a system crash.

**10.03 Custodian.** Guardian, caretaker, or the holder of data; the agent charged with implementing the controls specified by the data's owner. The custodian is responsible for the processing and storage of information. For mainframe applications, IMS is the custodian; for micro and mini applications the owner or user may retain custodial responsibilities. The custodian is normally a provider of services.

**10.04 Electronic mail system.** Any computer software application that allows electronic mail to be communicated from one computing system to another.

**10.05 Email.** Abbreviation for electronic mail, which consists of messages sent over any electronic media by a communications application. Any message, image, form, attachment, data, or other communication sent, received, or stored within an electronic mail system.

**10.06 Information Management Service (IMS).** The service within the Department that is responsible for computers, networking, and data management.

**10.07 Information Resources Manager (IRM).** The individual within a state agency who is responsible to the State of Texas for management of that agency's information resources. The designation of an agency IRM is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the state agency's information activities, and ensure greater visibility of such activities within and between state agencies. The IRM has been given the authority and the accountability by the State of Texas to implement security policies, procedures, practice standards, and guidelines to protect the information resources of the agency. If an agency does not designate an IRM, the title defaults to the agency's Executive Director, and the Executive Director is responsible for adhering to the duties and requirements of an IRM.

The Department's Executive Director has designated the IMS Chief as the IRM for the Department. The IMS Chief has designated the Assistant IMS Chief, Strategic Initiatives, as the Assistant IRM.

**10.08 Information Security Officer (ISO).** The individual responsible to IMS executive management for administering the information security function within the agency. The ISO is the agency's internal and external point of contact for all information security matters.

**10.09 Internet.** A global system interconnecting computers and computer networks. The computers and networks are owned separately by a host of organizations, government agencies, companies, and colleges. The Internet is the present "information super highway."

**10.10 Intranet.** A private network for communications and sharing of information like the Internet but is accessible only to authorized users within an organization. An organization's Intranet is usually protected from external access by a firewall.

**10.11 IT Board.** The IT Board is comprised of the major Division Chiefs and is responsible for implementing information resource governance for the Department. The IT Board is responsible for the management of information, business processes, applications, and infrastructure. The IT Board ensures that management within the Department understands the overall architecture of the Department, what information resources exist and which are owned by the Department, the condition of the Department's information resources, and that all stakeholders have the necessary input into the decision making process with regards to information resources. The IT Board also determines the system by which the



current and future use of information resources is directed and controlled. This involves evaluating, prioritizing, directing, and monitoring the plans for the use of information resources to support the Department and the Department's strategic goals.

Although a project change request is first approved by the project's Project Change Board, if the request may have an adverse impact on the project's schedule, resources, or cost, the request must also be approved by the IT Board.

**10.12 Local Area Network (LAN).** A data communications network spanning a limited geographical area, a few miles at most. It provides communication between computers and peripherals at relatively high data rates and relatively low error rates.

**10.13 Offsite backup storage.** Based on data criticality, offsite backup storage should be in a geographically different location from the Department's campus so that a single disaster could not destroy both the production data and the backup data. For less than critical data, removing the backup media from the building and storing it in another secured location on the Department's campus may be appropriate.

**10.14 Owner.** The manager or agent responsible for the function supported by the information resources. The owner administers the program that uses the resources, making the owner responsible for both business results of that system and for establishing controls that provide for resource security. Where appropriate, ownership may be shared by managers of different Department Divisions.

**10.15 Password.** A string of characters which serves as authentication of a person's identity, which may be used to grant, or deny, access to private or shared data.

A "strong password" is a password that is not easily guessed. It is normally constructed of a sequence of characters, numbers, and special characters, depending on the capabilities of the operating system. Typically the longer the password the stronger it is. It should never be a name, dictionary word in any language, an acronym, a proper name, a number, or be linked to any personal information about you such as a birth date, social security number, and so on.

**10.16 Project Change Board.** Group for a particular project that approves (or denies) project change requests regarding changes in previously approved project requirements, schedule, resources, vendor contract, and so forth. The group consists of that project's:

- a) IMS Project Manager
- b) Division Project Manager
- c) Project Sponsor
- d) Project Management Office
- e) IMS Assistant Chief

However, if a project change request that has been approved by the project's Project Change Board may have an adverse impact on the project's schedule, resources, or cost, the project change request must also be approved by the IT Board.

**10.17 Project Management (PM).** The discipline of organizing and managing resources (such as people) in such a way that the project is completed within defined scope, quality, time, and cost constraints. A project is a temporary and one-time endeavor undertaken to create a unique product or service, which brings about beneficial change or added value.

**10.18 Project Management Office (PMO).** The organization within the Department that defines and maintains the standards of process, generally related to project management. The PMO standardizes and introduces economies of repetition in the execution of projects. The PMO is the source of documentation, guidance and metrics on the practice

of project management and execution. The PMO bases project management principles on accepted, industry standard methodologies. PMO tasks include monitoring projects until completion, and reporting to management.

**10.19 Portable Computing Devices (PDAs).** Any easily portable device that is capable of receiving and/or transmitting data to and from information resources. These include, but are not limited to, notebook computers, handheld computers, Personal Digital Assistants (PDAs), pagers, and cell phones.

**10.20 Production system.** A computer application that has been implemented for business use, as contrasted to a test system, which is a computer application using test data that has not been implemented. When addressing the security of a production system, the hardware, software, physical, procedural, and organization components must be considered.

**10.21 Program Manager.** Assigned information resources ownership; responsible for the information used in carrying out program(s) under their direction and provides appropriate direction to implement defined security controls and procedures. The Division Chief is generally designated as the Program Manager.

**10.22 Security Administrator.** A person charged with monitoring and implementing security controls and procedures for a system. Whereas each agency will have one Information Security Officer, IMS technical management may designate a number of Security Administrators.

**10.23 Security Incident.** An assessed event of attempted entry, unauthorized entry, or an information attack on an automated information system. It includes unauthorized probing and browsing; unauthorized disruption or denial of service; unauthorized altered or destroyed input, processing, storage, or output of information; or unauthorized changes to information system hardware, firmware, or software characteristics with or without the users' knowledge, instruction, or intent.

**10.24 Server.** A computer program that provides services to other computer programs in the same, or another, computer. A computer running a server program is frequently referred to as a server, though it may also be running other client (and server) programs.

**10.25 Service Level Agreement (SLA).** A Service Level Agreement is a formal negotiated agreement between the application or system owners and IMS. It records the common understanding about services, priorities, and responsibilities with the main purpose to agree on the level of service committed to a system or application within the Department. For example, it may specify the levels of availability, serviceability, performance, operation or other attributes of the service IMS provides to the application or system owners.

**10.26 System Administrator.** Person responsible for the effective operation and maintenance of information resources, including implementation of standard procedures and controls to enforce the Department's information resource policy.

**10.27 System Development Life Cycle (SDLC).** A set of procedures to guide the development of production application software and data items. A typical SDLC includes design, development, quality assurance and acceptance testing, implementation, and maintenance.

**10.28 Technical Manager.** An assigned IMS employee who is both a custodian of information resources and provider of technical facilities and support services to owners and users of information; assists the Program Manager in the selection of cost effective controls to be used to protect information resources; is responsible for executing the monitoring techniques and procedures for detecting, reporting, and investigating breaches in the security of information resources.

**10.29 Trojan Horse.** Destructive programs, usually viruses or worms, that are hidden in an attractive or innocent-looking piece of software, such as a game or graphics program. Users may receive a Trojan horse by email or on a diskette,

often from another unknowing user. Also, a user may be urged to download a file with a Trojan horse from a website or bulletin board.

**10.30 User.** The user is any person who has been authorized to read, enter, or update information by the owner of the information. The user has the responsibility to (1) use the information resource only for the purpose specified by the owner, (2) comply with controls established by the owner, and (3) prevent disclosure of confidential or sensitive information. The user is the single most effective control for providing adequate security.

**10.31 Vendor.** A company or individual that contracts with the Department to provide information resources (goods or services).

**10.32 Virus.** A program that attaches itself to an executable file or vulnerable application and causes problems that range from annoying to extremely destructive. It could also be a surreptitious program to quietly gather and forward sensitive or financial information, passwords, or compromise other information critical to the operational integrity of the system without being detected. A file virus executes when an infected file is accessed. A macro virus infects the executable code embedded in Microsoft Office programs that allow users to generate macros.

**10.33 World Wide Web (WWW).** A system of Internet hosts that supports documents formatted in HTML (HyperText Markup Language). These documents contain links to other documents (hyperlinks) and to audio, video, and graphic images. Users can access the Web with special applications called browsers, such as Netscape, Navigator, and Microsoft Internet Explorer.

**10.34 Worm.** A program that makes copies of itself elsewhere in a computing system. These copies may be created on the same computer or may be sent over networks to other computers. Some worms are security threats, disrupting networks by overloading them. A worm is similar to a virus in that it makes copies of itself, but different in that it need not attach to particular files or sectors.

## **26.15.00 ACCEPTABLE USE**

**15.01 Purpose.** Under the provisions of the Information Resources Management Act, information resources are strategic assets of the State of Texas that must be managed as valuable state resources. Thus this "Acceptable Use Policy" is established to achieve the following:

1. To ensure compliance with applicable statutes, regulations, and mandates regarding the management of information resources.
2. To establish prudent and acceptable practices regarding the use of information resources.
3. To educate information resource users of their responsibilities regarding the use of information resources.

**15.02 Acceptable Use Policy.** Following constitutes the "Acceptable Use Policy" for the Department's information resources. For more details see 26.110.02 "Email Acceptable Use Policy" and 26.115.03 "Internet and Intranet Acceptable Use Policy."

1. Electronic files created, sent, received, or stored on information resources that are owned, leased, administered by the Department, or otherwise under the custody and control of the Department are the property of the Department.

2. The Department's electronic files (see #1) are not private. The Department's electronic files may be accessed by authorized Department personnel at any time without knowledge of the file's user or owner, regardless of whether the file is encrypted, password protected, or marked as confidential.

Use of information resources constitutes consent by the user to access by authorized Department representatives.

Electronic file content may be accessed by appropriate personnel in accordance with the provisions and safeguards provided in the Texas Administrative Code 202, Information Resource Standards.

3. Computer systems and electronic files are subject to inspection at any time.

4. Storage devices that are connected to Department's information resources are subject to inspection for compliance with Department policy at any time. The connection of a portable storage or computing device to the Department's information resources constitutes consent by the user to the inspection of the device, even if that device is not owned by the Department.

5. The Department's information resources are Department property and are made available to employees and select third parties for authorized State of Texas business use.

6. All persons granted access to the Department's information resources will complete an orientation and will adhere to the following requirements:

a) Users must report any weaknesses in the Department's computer security, any incidents of possible misuse or violation policy to the proper authorities by contacting the appropriate management.

b) Users must not attempt to access any data or programs contained on the Department's systems for which they do not have authorization or explicit consent of the Department.

c) Users must not divulge dial-up or dial-back modem phone numbers to anyone.

d) Users must not share their Department account(s), passwords, Personal Identification Numbers (PIN), Security Tokens (for example, Smartcard), Internet Protocol (IP) address, computer name or similar information or devices used for identification and authorization purposes. Users must not make unauthorized copies of copyrighted software.

e) Users must not use shareware or freeware software without the IMS approval unless it is on the Department's standard software list.

f) Users must not purposely engage in activity that may harass, threaten or abuse others; degrade the performance of information resources; deprive an authorized Department user access to a resource; obtain extra resources beyond those allocated; or circumvent computer security measures.

g) Users must not download, install or run programs or utilities that reveal or exploit weaknesses in the security of a system. For example, Department users must not run password cracking programs, packet sniffers, or port scanners or any other non-approved programs on information resources (other than in the course of an official investigation where this aspect of the investigation has the explicit approval of the Department or in the course of network management by an authorized IMS employee).

h) Department information resources must not be used for personal benefit.

i) Users must not intentionally access, create, store or transmit material that the Department may deem to be offensive, indecent or obscene (other than in the course of an official investigation where this aspect of the investigation has the explicit approval of the Department).

j) Access to the Internet from a Department-owned, home-based, computer must adhere to all the same policies that apply to use from within Department facilities. Employees must not allow family members or other non-employees to access Department-owned computer systems.

k) Users must not otherwise engage in acts against the objectives, mission, or programs of the Department as specified in its governing documents or in its rules, regulations and procedures.

l) Users are responsible for changing their password in compliance with the Department's password policy.

7. As a convenience to the Department's employees, incidental use of information resources may be permitted by a group's management as a privilege (not a right). The following restrictions apply:

a) Incidental personal use of electronic mail, Internet access, fax machines, printers, copiers, and so on, is restricted to the Department's approved users; it does not extend to family members or other acquaintances.

b) Incidental use must not result in direct costs to the Department.

c) Incidental use must not interfere with the normal performance of an employee's work duties, as defined by the employee's supervisor. Incidental use should not exceed a time period comparable to reasonable daily lunch and break times.

d) Incidental personal use of Department resources is permitted but must not be excessive or inappropriate as determined solely by the Department. Inappropriate use includes hacking, pirating software, disrupting others' work activities, using Department resources for non-Department commercial activities, soliciting or distributing literature for outside entities, disclosing confidential information of the Department or third parties, sending inappropriate email, accessing inappropriate websites (such as those advocating hate or violence, posting or sharing any racist, sexist, threatening, illegal or otherwise objectionable material such as those containing sexually explicit material, gambling, or promoting illegal activities), or using Department resources in a way that violates Department policies contained in the General Manual or state law.

e) No files or documents may be sent or received that may cause legal action against, or embarrassment to, the Department.

f) Storage of personal email messages, voice messages, files and documents within the Department's information resources must be kept to a minimum.

g) All messages, files and documents – including personal messages, files and documents – located on Department information resources are owned by the Department, may be subject to open records requests, and may be accessed in accordance with this policy.

## **26.20.00 ACCOUNT MANAGEMENT**

**20.01 Purpose.** The purpose of the Department's "Account Management Security Policy" is to establish the rules for the creation, monitoring, control and removal of user accounts. Computer accounts are the means used to grant access to Department information resources. These accounts provide a means of providing information resources accountability,

a key to any computer security program. This means that creating, controlling, and monitoring all computer accounts is extremely important to an overall security program.

**20.02 Account Management Security Policy.** The Department account management policy shall consist of the following:

1. All accounts created must have an associated request and approval that is appropriate for the Department system or service.

2. All users must sign the Department's Computer Security Statement-Notice to Employee before access is given to an account.

3. If a user needs a remote access account, the user and their Chief or Assistant Chief must sign the Department's Remote Access User Policy Statement and submit it to an IMS Security/System Administrator in addition to other requirements of the account management process.

4. All accounts must be uniquely identifiable using the assigned user name.

5. All default passwords for accounts must be constructed in accordance with the Department's password policy.

6. All accounts must have a password expiration that complies with the Department's password policy. Process accounts may be exempted from this policy with the approval of the IMS Chief.

7. Any account that has not been accessed within 30 days of creation will be disabled.

8. System Administrators, Security Administrators, or other designated staff:

a) Are responsible for removing the no longer authorized accounts of individuals that change roles within the Department or are separated from their relationship with the Department.

b) Must have a documented process to modify a user account to accommodate situations such as name changes, accounting changes, and permission changes.

c) Must have a documented process for periodically reviewing existing accounts for validity.

d) Are subject to independent audit review.

e) Must provide a list of accounts for the systems they administer when requested by authorized Department management.

f) Must cooperate with authorized Department management who are investigating security incidents.

## **26.25.00 ADMINISTRATIVE AND SPECIAL ACCESS**

**25.01 Purpose.** The purpose of the Department's "Administrative and Special Access Policy" is to establish the rules for the creation, use, monitoring, control and removal of accounts with special access privilege. Technical support staff, security administrators, system administrators and others may have special access account privilege requirements that differ from everyday users. The fact that these administrative and special access accounts have a higher level of access means that granting, controlling and monitoring these accounts is extremely important to an overall security program.

**25.02 Administrative and Special Access Policy.** The Department's administrative and special access policy shall consist of the following:

1. Department Division Chiefs must submit, to IMS, a list of personnel requiring a special access account for their systems that are connected to the Department's network.

2. All users must sign the Department's Computer Security Statement-Notice to Employee before access is given to an account.

3. All users of administrative/special access accounts must have account management instructions, documentation, training, and authorization.

4. Each individual that uses administrative/special access accounts must refrain from abuse of privilege and may only do investigations under the direction of the ISO.

5. Each individual that uses administrative/special access accounts must use the account privilege most appropriate with work being performed (for example, user account vs. administrator account).

6. Each account used for administrative/special access must meet the Department's password policy.

7. The password for a shared administrator/special access account must change when an individual with the password leaves the section or the Department, or upon a change in the vendor personnel assigned to the Department contract.

8. In the case where a system has only one administrator there must be a procedure in place so that someone other than the administrator can gain access to the administrator account in an emergency situation.

9. When special access accounts are needed for internal or external audit, software development, software installation, or other defined need, they must be:

- a) Authorized by the IMS Chief or the Director.
- b) Created with a specific expiration date.
- c) Removed when work is complete.

## **26.30.00 CHANGE MANAGEMENT**

**30.01 Purpose.** Change management is the process of controlling modifications to hardware, software, firmware, and documentation to ensure that information resources are protected against improper modification before, during, and after system implementation.

A change can be any of the following ways the Department's information resources may be impacted:

- Implementation of new capabilities
- Interruption of service
- Repair of existing capabilities
- Removal of existing capabilities

The purpose of the Department's "Change Management Policy" is to manage changes in a rational and predictable manner so that staff and clients can plan accordingly. Changes require serious forethought, careful monitoring, and follow-up evaluation to reduce negative impact to the user community and to increase the value of information resources. The Department's information resources infrastructure is expanding and continuously becoming more complex. There are more people dependent upon the network, more client machines, upgraded and expanded administrative systems, and more application programs. As the interdependency between information resources grows, the need for a strong change management process is essential. From time to time each information resource element requires an outage for planned upgrades, maintenance, or fine-tuning. Additionally, unplanned outages might occur that may also result in upgrades, maintenance or fine-tuning. Managing these changes is a critical part of providing a robust and valuable information resources infrastructure.

**30.02 Change Management Policy.** The Department's "Change Management Policy" shall consist of the following:

1. Every change to Department information resources (such as operating systems, computing hardware, networks, and applications) is subject to this "Change Management Policy" and must follow the Department's change management procedures.

2. All changes affecting computing environmental facilities (such as air-conditioning, water, heating, plumbing, electricity, and alarms) need to be reported to or coordinated with the IMS Assistant Chief responsible for the Department's change management process.

3. The Change Management Committee is composed of both IMS and Division representatives and a leader appointed by IMS management. The Change Management Committee meets regularly at Change Reviews to review (approve, deny, or delay) change requests, coordinate scheduling of changes, and to ensure that communications are being satisfactorily performed.

4. A formal written change request must be submitted for all changes.

Exception for an unauthorized emergency change: When an unauthorized immediate response is needed to prevent widespread service disruption, an "unauthorized emergency change" may be enacted. However, this change must be documented before the next Change Review as required by the Department's change management procedures.

Exception for authorized unscheduled change: If an emergency problem occurs, and there is no time to gather the Change Management Committee for a Change Review, but the leader of the Change Management Committee or the IMS Chief/Assistant Chief/designate approves the verbal change request, it is called an "authorized unscheduled change" and may be enacted. However, this change must be documented before the next Change Review as required by the Department's change management procedures.

5. All change requests must be submitted, (see #4 for exceptions), in accordance with the Department's change management procedures so that the Change Management Committee has time to review the request, assess risks, and make the decision to approve, deny, or delay the request.

6. Each change request, (see #4 for exceptions), must receive formal Change Management Committee approval before proceeding with the change. A change with the approval of the Change Management Committee, in advance of the change being enacted, is called a "scheduled change."

7. The leader of the Change Management Committee may deny a change request for reasons including, but not limited to, inadequate planning (no project implementation plan, no back out plan, and so forth) the timing of the change will negatively impact a key business process such as year-end accounting, or if adequate resources cannot be readily available. Adequate resources may be a problem on weekends, holidays, or during special events.



8. The IMS Chief and/or Assistant Chief will resolve any items that are escalated to them and will have veto power over all change requests.

9. Customer notification must be completed for each scheduled or authorized unscheduled change, (see #4 for exceptions) following the steps contained in the Department's change management procedures.

10. A Change Review must be completed within five (5) business days for each change.

11. If the scheduled change does not occur on the scheduled date, the Change Review committee must approve the new date.

12. A change management log must be maintained for all changes. The log must contain, but is not limited to:

- a) Date of submission and date of change
- b) Owner and custodian contact information
- c) Nature of the change
- d) Indication of success or failure

13. All Department information systems must comply with the Department's information resources change management process that meets the minimum standards outlined above.

## **26.35.00 DISASTER RECOVERY AND BUSINESS CONTINUITY**

**35.01 Purpose.** IMS is responsible for protecting information resources assets against unauthorized access, disclosure, modification or destruction, whether accidental or deliberate, as well as assuring the availability, integrity, utility, authenticity, and confidentiality of the Department's information.

The purpose of a disaster recovery plan is to facilitate the orderly and expeditious restoration and resumption of mission-critical automated systems services to DPS staff and clients in the event of a disaster or data processing disruption affecting Department's Mainframe Operations or any Department owned or managed networks. Mainframe Operations has critical operations located in various buildings at the Department's headquarters in Austin, Texas.

The purpose of a business continuity plan is to identify and document the processes and methods needed by each business entity (Division, Service, Bureau, and so forth) to continue key business operations during any adverse working situation, including building or floor specific power outages, weather events, chemical spill situations, and so forth.

**35.02 Disaster Recovery and Business Continuity Policy.** The IMS Assistant Chief, Strategic Initiatives, is responsible for developing, maintaining and updating the IMS Disaster Recovery Guide and will coordinate the development of each DPS Division's Business Continuity Handbook.

Disaster Recovery Guide + Business Continuity Handbook(s) = Recovery Program

In the event a major data processing disruption occurs at the Department's Mainframe, client server, or TLETS Network Operations, the disaster recovery plan scope is limited to the restoration of mission-critical data processing and data communications functions and processes within 48-72 hours. Mission critical applications will be identified in the Department's Disaster Recovery Guide and in each Division's Business Continuity Handbook. Those applications designated as mission critical will be reevaluated on a quarterly basis by the IMS Assistant Chief, Strategic Initiatives, and the Division Chief owning the application.

In the event of operational disruption within any business area at DPS, its Business Continuity Handbook will be used by the information resource IMS staff and Division's business area staff to facilitate the resumption of services in business priority order (Recovery Program). Each Business Continuity Handbook includes:

1. Identification of automated and manual processes and systems
2. Operational dependencies (people, resources, skills, knowledge)
3. Potential impact (public safety, regulatory, funding, etc.);
4. Assessed length of outage before impact is at a critical level
5. Identification of the "critical level" of each impact.

Following are IMS responsibilities with regards to disaster recovery and business continuity:

1. Creating, publishing and maintaining the Department's Disaster Recovery Guide and each Division's Business Continuity Handbook(s). Combined they are the Department's consolidated action plan for the recovery of services (Recovery Program).
2. Quarterly consultations with all Divisions to identify and maintain a list of mission critical systems and applications.
3. Scheduling periodic Recovery Program exercises.
4. Ensure backups of all data identified by the Disaster Recovery Guide and the Business Continuity Handbooks are stored off-site.
5. Ensure Recovery Program strategies have been implemented and tested as prioritized in the Disaster Recovery Guide and Business Continuity Handbook(s).
6. Report information resources Recovery Program status to agency management annually.

Following are responsibilities for each DPS Division (for each business area, Service, Bureau, Unit, and so forth) with regards to disaster recovery and business continuity:

1. Create and maintain a Business Continuity Handbook for each Division and operational area to include all designated responsibilities.
2. Identify a disaster recovery/business continuity person of responsibility for each business unit who will, in part, be required to coordinate with IMS in these efforts.
3. Coordinate with IMS to integrate ongoing business continuity efforts into the Recovery Program.
4. Update the Business Continuity Handbook quarterly in coordination with IMS.
5. Schedule periodic Business Continuity Handbook exercises and coordinate these exercises with IMS.
6. Coordinate with IMS in identifying strategic planning efforts for future Recovery Program efforts including all funding issues.

7. Publish a Division Business Continuity Handbook.
8. Provide staff administrative support for the Recovery Program.
9. Report business continuity status to IMS management annually.

## **26.40.00 SECURITY INCIDENT MANAGEMENT**

**40.01 Purpose.** The Department's "Security Incident Management Policy" describes the requirements for dealing with computer security incidents. Security incidents include, but are not limited to: detection of a virus, worm, or Trojan horse; unauthorized use of computer accounts and computer systems; and improper use of information resources as outlined in "Email Acceptable Use Policy," "Internet and Intranet Acceptable Use Policy," and "Acceptable Use Policy."

### **40.02 Security Incident Management Policy**

1. The Department's Computer Incident Response Team (CIRT), members have pre-defined roles and responsibilities that can take priority over normal duties.

2. Whenever a security incident, such as a virus, worm, hoax email, hacking tool, altered data, and so forth is suspected or confirmed, the appropriate security incident management procedures must be followed. An immediate notification must be made to the Information Security Office (ISO).

3. The ISO is responsible for notifying the IRM and the CIRT and initiating the appropriate incident management action including restoration as defined in the incident management procedures.

4. The ISO is responsible for determining the physical and electronic evidence to be gathered as part of the security incident investigation.

5. The appropriate technical resources from the CIRT are responsible for monitoring that any damage from a security incident is repaired or mitigated and that the vulnerability is eliminated or minimized where possible.

6. The ISO, working with the IRM, will determine if a widespread Department communication is required, the content of the communication, and how best to distribute the communication.

7. The appropriate technical resources from the CIRT are responsible for communicating new issues or vulnerabilities to the system vendor and working with the vendor to eliminate or mitigate the vulnerability.

8. The ISO is responsible for initiating, completing, and documenting the incident investigation with assistance from the CIRT.

9. The ISO is responsible for reporting the incident to the:

a) IRM and CRIT

b) Department of Information Resources as outlined in TAC 202

c) Local, state or federal law officials as required by applicable statutes and/or regulations

10. If it is determined that a user is engaged in unapproved activities that pose an immediate threat to the Department's network, the ISO may immediately suspend the user's access pending resolution of the threat. The ISO must notify the IRM immediately upon taking such action.

11. The ISO is responsible for coordinating communications with outside organizations and law enforcement.

12. In the case where law enforcement is not involved, the affected Division Chief will recommend disciplinary actions pursuant to Chapter 7A, General Manual.

13. In the case where an outside law enforcement agency is involved, the ISO will act as the liaison between any outside law enforcement agencies and the Department.

## **26.45.00 NETWORK CONFIGURATION SECURITY**

**45.01 Purpose.** The purpose of the Department's "Network Configuration Security Policy" is to establish the rules for the maintenance, expansion, and use of the network infrastructure. These rules are necessary to preserve the integrity, availability, and confidentiality of the Department's information.

### **45.02 Network Configuration Security Policy**

1. IMS owns and is responsible for the Department's network infrastructure and will continue to manage further developments and enhancements to this infrastructure.

2. To provide a consistent network infrastructure capable of supporting new networking developments, all cabling must be installed by the Building Program Bureau or an approved contractor.

3. All network connected equipment must be configured to a specification approved by IMS.

4. All hardware connected to the Department's network is subject to IMS management and monitoring standards.

5. The IMS Chief or designee must approve any changes to the configuration of active network management devices.

6. The Department's network infrastructure supports a well-defined set of approved networking protocols. IMS Chief or designee must approve any use of non-sanctioned protocols.

7. The networking addresses for the supported protocols are allocated, registered and managed centrally by the IMS Chief or designee.

8. All connections of the network infrastructure to external third party networks are the responsibility of the IMS Chief or designee. This includes connections to external telephone networks.

9. Firewalls must be installed and configured following the IMS Firewall Implementation Standard documentation.

10. The use of internal firewalls by individual entities is not permitted without the written authorization from the IMS Chief or designee.

11. Users must not extend or re-transmit network services in any way. This means you must not install a router, switch, hub, or wireless access point to the Department's network without the approval of the IMS Chief or designee.

12. Users must not install network hardware or software that provides network services without the approval of the IMS Chief or designee.

13. Users are not permitted to alter network hardware in any way.

**45.03 Vulnerability Assessment.** The ISO will be responsible for establishing an annual information resource vulnerability assessment and specific focus areas for the assessment will be based on the results of the security risk assessment.

## **26.50.00 PASSWORDS**

**50.01 Purpose.** User authentication is a necessary means to control who has access to an information resource system. Access gained by a non-authorized entity damages/breaches information confidentiality, integrity, and availability, which may result in the loss or revenue, data, or trust, and/or may cause a liability or embarrassment to the Department. The purpose of the Department's "Password Policy" is to establish the rules for the creation, distribution, safeguarding, termination, and reclamation of the Department's user authentication mechanisms.

### **50.02 Password Policy**

The following Department password policy must be followed unless permission is granted by the Department's ISO or the IMS Chief or designate.

1. All passwords, including initial passwords, must be constructed and implemented according to the following Department information resource rules:

a) A password must be routinely changed.

b) A password must adhere to a minimum length as established by the Chief IMS.

c) A password must be a combination of alphabetic, numeric, and special characters.

d) A password must not be anything that can easily be tied back to the account owner such as: user name, social security number, nickname, relative's names, birth date, and so forth.

e) A password must not be dictionary words or acronyms.

f) A password history must be kept to prevent the reuse of a password within a year.

2. Stored passwords must be encrypted.

3. User account passwords must not be divulged to anyone. IMS and IMS contractors will not ask for user account passwords.

4. Security tokens (for example, Smartcard) must be returned on demand or upon termination of relationship with the Department.

5. If the security of a password is in doubt, the password must be changed immediately.

6. Administrators must not circumvent the Password Policy for the sake of ease of use.

7. Users cannot circumvent password entry with auto logon, application remembering, embedded scripts or hard-coded passwords in client software. Exceptions may be made for specific applications with the approval of the Department's ISO. For an exception to be approved, there must be a procedure to change the passwords.

8. Computing devices must not be left unattended without enabling a password protected screensaver or logging off of the device.

9. IMS Helpdesk password change procedures must include the following:

a) Authenticate the user to the helpdesk before changing password.

b) Change to a strong password.

c) The user must change password at first login.

10. In the event passwords are found or discovered, the following three steps must be taken:

a) Take control of the passwords and protect them.

b) Report the discovery to the Department's Help Desk.

c) Transfer the passwords to an authorized person as directed by the Department's ISO.

### **50.03 Password Guidelines**

1. Passwords must be changed at least every 35 days.

2. Accounts that have not been signed into within 90 days will be deleted.

3. Accounts will be locked after three unsuccessful logon attempts and the user will be required to answer challenge questions to reset the password.

4. Passwords must have a minimum length of 8 alphanumeric characters

5. Passwords must contain a mix of upper and lower case characters, numeric characters and special characters. Special characters must be included in the password where the computing system permits. The three special characters are @, #, and \$.

6. Passwords must not be easy to guess and they:

a) Should not be your username.

b) Should not be your employee number.

c) Should not be your name.

d) Should not be family member's names.

- e) Should not be your nickname.
  - f) Should not be your social security number.
  - g) Should not be your birthday.
  - h) Should not be your license plate number.
  - i) Should not be your pet's name.
  - j) Should not be your address.
  - k) Should not be your phone number.
  - l) Should not be the name of your town or city.
  - m) Should not be the name of your Division, Bureau or Service.
  - n) Should not be street names.
  - o) Should not be makes or models of vehicles.
  - p) Should not be slang words.
  - q) Should not be obscenities.
  - r) Should not be technical terms.
  - s) Should not be school names, school mascot, or school slogans.
  - t) Should not be any information about you that is known or is easy to learn (favorite - food, color, sport, etc.).
  - u) Should not be any popular acronyms.
  - v) Should not be words that appear in a dictionary.
  - w) Should not be the reverse of any of the above.
7. Passwords shall not be reused for a period of one year.
  8. Passwords shall not be shared with anyone.
  9. Passwords shall be treated as confidential information.

## **26.55.00 PHYSICAL ACCESS**

### **55.01 Purpose**

The granting, controlling, and monitoring of the physical access to information resources facilities is extremely important to an overall security program. The purpose of the Department's "Physical Access Policy" is to establish the rules for the granting, control, monitoring, and removal of physical access to information resource facilities.

## **55.02 Physical Access Policy**

1. All physical security systems must comply with all applicable regulations such as, but not limited to, building codes and fire prevention codes.
2. Physical access to all information resources restricted facilities must be documented and managed.
3. All information resources facilities must be physically protected in proportion to the criticality or importance of their function at the Department.
4. Access to information resources facilities must be granted only to Department support personnel and contractors whose job responsibilities require access to that facility.
5. The process for granting card and/or key access to information resources facilities must include the approval of the manager responsible for the facility.
6. Each individual that is granted access rights to an information resources facility must receive emergency procedures training for the facility and must sign the appropriate access and non-disclosure agreements.
7. Requests for access must come from the applicable Department owner or custodian of the information resource that resides in the facility.
8. Access cards and/or keys must not be shared or loaned to others.
9. Access cards and/or keys that are no longer required must be returned to the appropriate manager for return to security. Cards must not be reallocated to another individual bypassing the return process.
10. Lost or stolen access cards and/or keys must be reported to the manager responsible for the information resources facility.
11. All information resources facilities that allow access to visitors will track visitor access with a sign in/out log.
12. A replacement charge may be assessed for access cards and/or keys that are lost, stolen, or are not returned.
13. Card access records and visitor logs for information resources facilities must be kept for routine review based upon the criticality of the information resources being protected.
14. The manager responsible for the information resources facility must ensure the removal of the card and/or key access rights of individuals that change roles within the Department or are separated from their relationship with the Department.
15. Visitors must be escorted in card access controlled areas of information resources facilities.
16. The manager responsible for the information resources facility must review access records and visitor logs for the facility every one hundred and eighty days and investigate any unusual access.



17. The manager responsible for the information resources facility must review card and/or key access rights for the facility every ninety days and ensure removal of access for individuals that no longer require access.

## **26.60.00 SECURITY TRAINING**

**60.01 Purpose.** Understanding the importance of computer security and individual responsibilities and accountability for computer security are paramount to achieving organization security goals. This can be accomplished with a combination of general computer security awareness training and targeted, product specific training. The philosophy of protection and specific security instructions needs to be taught, and reinforced, to computer users. The security awareness and training information needs to be continuously upgraded and reinforced. The purpose of the Department's "Security Training Policy" is to describe the requirements that ensure that each user of the Department's information resources receives adequate computer security training.

### **60.02 Security Training Policy**

1. All new users must complete an approved security awareness training class prior to, or at least within 30 days of, being granted access to any Department information resources.

2. All users must sign an acknowledgement stating they have read and understand the Department's requirements regarding computer security policies and procedures.

3. All users (employees, consultants, contractors, temporaries, and so forth.) must be provided with training and supporting reference materials to assist them in protecting the Department's information resources.

4. IMS shall prepare, maintain, and distribute one or more information security manuals that concisely describes the Department's information resource security policies and procedures.

5. All users must complete an annual computer security training class and pass the required examination.

6. IMS must develop and maintain a communications process to be able to communicate new information resource security program information, security program information, security bulletin information, and security items of interest.

## **26.65.00 SOFTWARE LICENSING**

**65.01 Purpose.** End-user license agreements are used by software and other information resource companies to protect their valuable intellectual assets and to advise information resource users of their rights and responsibilities under intellectual property and other applicable laws. The purpose of the Department's "Software Licensing Policy" is to establish the rules for licensed software use on Department owned information resources.

### **65.02 Software Licensing Policy**

1. The Department provides a sufficient number of licensed copies of software such that workers can get their work done in an expedient and effective manner. Management must make appropriate arrangements with the involved vendor(s) through IMS for additional licensed copies if and when additional copies are needed for business activities.

2. Third party copyrighted information or software that the Department does not have specific approval to store and/or use must not be stored on Department systems or networks. Systems administrators will remove such information and software unless the involved users can provide proof of authorization from the rightful owner(s).

3. Third party software in the possession of the Department must not be copied unless such copying is consistent with relevant license agreements and prior management approval of such copying has been obtained, or copies are being made for contingency planning purposes.

4. A list of software authorized for installation on Department owned computers may be found on the Intranet. Any specialized software not appearing on this list must be approved by the Division Chief where the software will be utilized and kept on file with IMS.

5. All employees utilizing Department owned software must read and understand the Department's "Software Licensing Policy."

## **26.70.00 COMPUTER VIRUS DETECTION**

**70.01 Purpose.** The number of computer security incidents and the resulting cost of business disruption and service restoration continue to escalate. Implementing solid security policies, blocking unnecessary access to networks and computers, improving user security awareness, and early detection and mitigation of security incidents are some of the actions that can be taken to reduce the risk and drive down the cost of security incidents. IMS is responsible for determining which virus detection software will be installed and used on the Department's computer equipment. The purpose of the Department's "Computer Virus Detection Policy" is to describe the requirements for dealing with computer virus, worm, and Trojan Horse prevention, detection and cleanup.

### **70.02 Computer Virus Detection Policy**

1. All workstations, whether connected to the Department's network or standalone, must use the Department's IMS approved virus protection software and configuration. The virus detection software should be executed every time the workstation is turned on. All diskettes will be virus checked before data is loaded from the diskette to the workstation.

2. The virus protection software must not be disabled or bypassed.

3. The settings for the virus protection software must not be altered in a manner that will reduce the effectiveness of the software.

4. The automatic update frequency of the virus protection software must not be altered to reduce the frequency of updates.

5. Each file server attached to the Department's network must use IMS approved virus protection software and setup to detect and clean viruses that may infect file shares.

6. Each email gateway must use IMS approved email virus protection software and must adhere to the IMS rules for the setup and use of this software.

7. Every virus that is not automatically cleaned by the virus protection software constitutes a security incident and must be reported to the IMS Help Desk. If an employee thinks there is a virus on their workstation, they should call and advise the Help Desk. The Help Desk will inform the ISO and support the ISO with IMS Help Desk staff if necessary.

8. To minimize any confusion, only email alerts concerning viruses that originate from the Information Security Officer shall be considered bona fide.

9. IMS shall be responsible for keeping the most current version of the approved virus detection software installed on the Department's computer equipment.

## **26.75.00 NETWORK ACCESS**

**75.01 Purpose.** The Department's network infrastructure is provided as a central utility for all users of Department information resources. It is important that the infrastructure, which includes cabling and the associated "active equipment," continues to develop with sufficient flexibility to meet the Department's demands while at the same time remaining capable of exploiting anticipated developments in high speed networking technology to allow the future provision of enhanced user services. The purpose of the Department's "Network Access Policy" is to establish the rules for the access and use of the network infrastructure. These rules are necessary to preserve the integrity, availability, and confidentiality of the Department's information resources.

### **75.02 Network Access Policy**

1. Users are permitted to use only those network addresses issued to them by IMS.
2. All remote access (dial in services or VPN) to the Department will be either through an approved modem pool or Internet Service Provider (ISP).
3. Remote users may connect to Department owned information resources only through an ISP and using protocols approved by the Department.
4. Users inside the Department firewall may not be connected to the Department's network at the same time a modem is being used to connect to an external network.
5. Users must not extend or re-transmit network services in any way. This means you must not install a router, switch, hub, or wireless access point to the Department's network without IMS approval.
6. Users must not install network hardware or software that provides network services without IMS approval.
7. Non-Department owned computer systems that require network connectivity must be approved by the IMS Chief and must conform to IMS Standards.
8. Users must not download, install, or run security programs or utilities that reveal weaknesses in the security of a system. For example, Department users must not run password cracking programs, packet sniffers, network mapping tools, or port scanners while connected in any manner to the Department's network infrastructure.
9. Users are not permitted to alter network hardware in any way.

## **26.80.00 PORTABLE COMPUTING DEVICES**

**80.01 Purpose.** Portable computing devices are becoming increasingly powerful and affordable. Their small size and functionality are making these devices ever more desirable to replace traditional desktop devices in a wide number of applications. However, the portability offered by these devices may increase the security exposure to groups using the devices. The purpose of the Department's "Portable Computing Devices Security Policy" is to establish the rules for the use of mobile computing devices and their connection to the network. These rules are necessary to preserve the integrity, availability, and confidentiality of Department's information resources.

## **80.02 Portable Computing Devices Security Policy**

1. Only Department approved portable computing devices may be used to access the Department's information resources.

2. Portable computing devices must be password protected.

3. Department information should not be stored on portable computing devices. However, in the event that there is no alternative to local storage, all sensitive Department owned information must be encrypted using approved encryption techniques.

4. Department owned information must not be transmitted via wireless to or from a portable computing device unless IMS approved wireless transmission protocols and approved encryption techniques are utilized.

5. All remote access (dial in services) to the Department must be either through an approved modem pool or Internet Service Provider (ISP).

6. Non-Department owned computer systems that require network connectivity must conform to IMS standards and must be approved in writing by the IMS Chief.

7. Unattended portable computing devices must be physically secure. Portable computing devices shall not be left unattended in vehicles unless the portable computing device is secured in the Department installed locking mechanism during the employee's tour of duty. After the employee's tour of duty, the portable computing device may be secured in the locked trunk of the automobile or in the locked tool box/bed cover of a pickup truck equipped with a lockable tool box/bed cover.

8. Portable computing devices will not remain in vehicles that have been left at a business for repairs or servicing.

## **08.03 Mobile Device Use**

This document outlines the conditions the Texas Department of Public Safety (TXDPS) requires for the use of mobile devices. By signing this agreement, the user agrees to abide by the TXDPS Rules of Behavior and Cyber Security Policies (ref. DPS General Manual, Chapter 26, *Information Management Service*) for the use of mobile devices. It is the user's responsibility to ensure they understand and follow the established policies for the protection, storage, and handling of all TXDPS Data. This includes Personally Identifiable Information (PII), Criminal Justice/Intelligence (CJIS), Health Insurance Portability and Accountability Act (HIPAA), and Payment Card Industry (PCI) data. In addition, the following rules apply to any mobile devices that access TXDPS information systems.

The user understands and agrees to the following:

- TXDPS will install a security profile on all mobile devices. The security profile may affect an application's usability, functions, or features. If the user experiences application issues, they must not attempt to remove, disable, or bypass any security settings enabled by TXDPS. The user must report the application issues to the helpdesk for troubleshooting.
- If any tampering with the mobile device security profile is attempted or it is discovered that the user has made unauthorized modifications, TXDPS will immediately wipe and disable the mobile device.
- The user will only purchase, download, or install applications on the mobile device that are for official work-related business. The user's supervisor must formally approve the purchase, download, or installation prior to the application being loaded on the device. If the user violates TXDPS policy and purchases, downloads, or installs any applications without approval, TXDPS will not be responsible for the cost and the application will be

removed when it is discovered.

- There is no expectation of privacy for any data processed, stored, or transmitted on the mobile device. TXDPS can access and audit all data on the mobile device at any time without any notice to the user.
- TXDPS may recall the mobile device for audit and accountability at any time. Mobile devices that are not returned by the required timeframe will be remotely wiped and disabled.
- The processing of government data on non-government devices is highly discouraged; however, it is understood that emergencies may necessitate this practice. The user will make every attempt to use TXDPS devices to process, download, or store government data. If an emergency arises that requires the user to process government data on a non-government device, the user is responsible for the protection, storage, and handling in accordance with TXDPS Policy.
- TXDPS can remotely wipe devices at any time with or without notice to the user, and they are not liable for any loss of data or applications resulting from a remote wipe.
- The user is prohibited from taking a TXDPS issued mobile device outside of the United States (US) for personal travel, unless the user's Deputy Assistant Director /Major approves the request. If a device is approved for use on personal travel outside the US, the user will send the following information via email to the Office of Cyber Security (CyberSecurity@dps.texas.gov) prior to leaving the country:
  - Dates of travel
  - Countries of travel including stopovers and layovers
  - Identification of any sensitive data that will be on the mobile device during travel
  - Copy of Deputy Assistant Director/Major Approval (approval via email is acceptable)
  - Compliance with additional security requirements such as maintaining possession of the device at all times, disabling WiFi and Bluetooth services, and any other security controls imposed by TXDPS

In addition, if the user extends their travel beyond the original travel dates an updated email with the new dates of travel must be sent to the above email address. Upon return to the US, the mobile device will be sanitized and re-imaged to protect the department's information. Travel outside of the US that is for official TXDPS business is exempt from this process.

## **26.85.00 SECURITY MONITORING**

**85.01 Purpose.** Security monitoring is a method used to confirm that the implemented security practices and controls are being adhered to and are effective. Security monitoring consists of activities such as the review of:

1. Automated intrusion detection system logs
2. Firewall logs
3. User account logs
4. Network scanning logs
5. Application logs
6. Data backup recovery logs

7. Help desk logs

8. Other logs and error files

The purpose of the Department's "Security Monitoring Policy" is to ensure that information resource security controls are in place, effective, and not being bypassed. One of the benefits of security monitoring is the early identification of wrongdoing or new security vulnerabilities. This early identification can help to block the wrongdoing or vulnerability before harm can be done, or at least to minimize the potential impact. Other benefits include: audit compliance, service level monitoring, performance measuring, limiting liability, and capacity planning.

### **85.02 Security Monitoring Policy**

1. Automated tools will provide real time notification of detected wrongdoing and vulnerability exploitation. Where possible, a security baseline will be developed and the tools will report exceptions. These tools will be deployed to monitor:

- a) Internet traffic
- b) Electronic mail traffic
- c) LAN traffic, protocols, and device inventory
- d) Operating system security parameters

2. The following files will be checked for signs of wrongdoing and vulnerability exploitation at a frequency determined by risk:

- a) Automated intrusion detection system logs
- b) Firewall logs
- c) User account logs
- d) Network scanning logs
- e) System error logs
- f) Application logs
- g) Data backup and recovery logs
- h) Help desk trouble tickets
- i) Telephone activity – call detail reports
- j) Network printer and fax logs

3. The following checks will be performed at least annually by assigned individuals:

- a) Password complexity requirements based on current industry standards (within limits of the operating systems)
  - b) Unauthorized network devices
  - c) Unauthorized personal Web servers
  - d) Unsecured sharing of devices
  - e) Unauthorized modem use
  - f) Operating system and software licenses
4. Any security issues discovered will be reported to the ISO for follow-up investigation.

## **26.90.00 SERVER HARDENING**

**90.01 Purpose.** Servers are depended upon to deliver data in a secure, reliable fashion. There must be assurance that data integrity, confidentiality and availability are maintained. One of the required steps to attain this assurance is to ensure that the servers are installed and maintained in a manner that prevents unauthorized access, unauthorized use, and disruptions in service. The purpose of the Department's "Server Hardening Policy" is to describe the requirements for installing a new server in a secure fashion and maintaining the security and integrity of the server and application software.

### **90.02 Server Hardening Policy**

1. A server must not be connected to the Department's network until it is in an IMS accredited secure state and the network connection is approved by the IMS Chief.
2. The server hardening procedures provide the detailed information required to harden a server and must be implemented for IMS accreditation. Some of the general steps included in the server hardening procedure include:
  - a) Installing the operating system from an IMS approved source.
  - b) Applying vendor supplied patches.
  - c) Removing unnecessary software, system services, and drivers.
  - d) Setting security parameters, file protections, and enabling audit logging.
  - e) Disabling or changing the password of default accounts.
3. IMS will monitor security issues, both internal to the Department and externally, and will manage the release of security patches on behalf of the Department.
4. IMS will test security patches against IMS core resources before release, where practical.
5. IMS may make hardware resources available for testing security patches in the case of special applications.

6. Security patches must be implemented by IMS within the specified timeframe by automated delivery such as System Management Server (SMS) or similar application.

## **26.95.00 SYSTEM DEVELOPMENT**

**95.01 Purpose.** The number of application software errors and the resulting cost of business disruption and service restoration continues to escalate world-wide. The purpose of the Department's "System Development Policy" is to describe the requirements for developing and/or implementing new software for the Department.

### **95.02 System Development Policy**

IMS is responsible for developing, maintaining, and participating in a System Development Life Cycle (SDLC) for the Department's system development projects. All software developed in-house which runs on production systems must be developed according to the SDLC. A typical SDLC includes design, development, quality assurance and acceptance testing, implementation, and maintenance. This methodology ensures that the software will be adequately documented and tested before it is used for critical Department information.

1. All production systems must have designated owners and custodians for the critical information they process. IMS must perform yearly risk assessments of production systems to determine whether the controls employed are adequate.

2. All production systems must have an access control system to restrict who can access the system as well as restrict the privileges available to these users. A designated access control administrator (who is not a regular user on the system in question) must be assigned for all production systems.

3. Where resources permit, there should be a separation between the production, development, and test environments. This will ensure that security is rigorously maintained for the production system, while the development and test environments can maximize productivity with fewer security restrictions. Where these distinctions have been established, development and test staff must not be permitted to have access to production systems. Likewise, all production software testing must utilize sanitized information.

4. All application-program-based access paths other than the formal user access paths must be deleted or disabled before software is moved into production.

5. All production systems must have a Service Level Agreement that specifies the levels of availability, serviceability, performance, operation or other attributes.

## **26.100.00 VENDOR ACCESS**

**100.01 Purpose.** Vendors play an important role in the support of hardware and software management, and operations for customers. Vendors authorized by the IMS Chief may remotely view, copy and modify data and audit logs, correct software and operating systems problems, monitor and fine tune system performance, monitor hardware performance and errors; modify environmental systems, and reset alarm thresholds. Setting limits and controls on what can be seen, copied, modified, and controlled by vendors will eliminate or reduce the risk of loss of data, loss of trust, and liability or embarrassment to the Department. The purpose of the Department's "Vendor Access Policy" is to establish the rules for vendor access to the Department's information resources and support services, vendor responsibilities, and protection of Department's information resources.

### **100.02 Vendor Access Policy**



1. Vendors must comply with all applicable Department policies, practice standards and agreements, including, but not limited to:

- a) Safety policies
- b) Privacy policies
- c) Security policies
- d) Auditing policies
- e) Software licensing policies
- f) Acceptable use policies

2. Vendor agreements and contracts must specify:

- a) The Department information that the vendor should have access to.
- b) How Department information is to be protected by the vendor.
- c) Acceptable methods for the return, destruction or disposal of Department information in the vendor's possession at the end of the contract.
- d) That the Vendor must only use Department information and information resources for the purpose of the business agreement.
- e) That any other Department information acquired by the vendor in the course of the contract cannot be used for the vendor's own purposes or divulged to others.

3. The Department will provide an IMS point of contact for the vendor. The point of contact will work with the vendor to make certain the vendor is in compliance with these policies.

4. Each vendor must provide the Department with a list of all employees working on the contract. The list must be updated and provided to the Department within 24 hours of staff changes.

5. Each on-site vendor employee must acquire a Department identification badge that will be displayed at all times while on Department premises. The badge must be returned to the Department when the employee leaves the contract or at the end of the contract.

6. Each vendor employee with access to Department owned sensitive information must be cleared to handle that information.

7. Vendor personnel must report all security incidents directly to the appropriate Department personnel.

8. If vendor management is involved in Department security incident management, the responsibilities and details must be specified in the contract.

9. Vendor must follow all applicable Department change control processes and procedures.

10. Regular work hours and duties will be defined in the contract. Work outside of defined parameters must be approved in writing by appropriate Department management.

11. All vendor maintenance equipment on the Department's network that connects to the outside world via the network, telephone line, or leased line, and all Department IR vendor accounts will remain disabled except when in use for authorized maintenance.

12. Vendor access must be uniquely identifiable and password management must comply with the Department's "Password Policy" and "Administrative and Special Access Policy." Vendor's major work activities must be entered into a log and available to Department management upon request. Logs must include, but are not limited to, such events as personnel changes, password changes, project milestones, deliverables, and arrival and departure times.

13. Upon departure of a vendor employee from the contract for any reason, the vendor will ensure that all sensitive information is collected and returned to the Department or destroyed within 24 hours.

14. Upon termination of contract or at the request of the Department, the vendor will return or destroy all Department information and provide written certification of that return or destruction within 24 hours.

15. Upon termination of contract or at the request of the Department, the vendor must surrender all Department owned Identification badges, access cards, equipment, and supplies immediately. Equipment and/or supplies to be retained by the vendor must be documented and authorized by Department management.

16. Vendors are required to comply with all State and Department auditing requirements, including the auditing of the vendor's work.

17. All Department owned software used by the vendor in providing service to the Department must be properly inventoried and licensed.

## **26.105.00 INFORMATION RESOURCE SECURITY POLICY DEVELOPMENT AND MAINTENANCE**

**105.01 Purpose.** The Department's information resource security policies provide the techniques and methodology to protect the Department's information resource assets. These security policies were developed by interpreting HIPAA, TAC 202 and other legislation and legal requirements, understanding business needs, evaluating existing technical implementations, and by considering the cultural environment. However, there will be valid reasons to develop and maintain the information resource security policies. For example, these security policies may be impacted by changing technology, threats, legislation, and business requirements. The purpose for the Department's "Policy for Developing and Maintaining the Information Resource Security Policies" is to explain why and how to create new and revise existing information security policies.

### **105.02 Policy for Developing and Maintaining the Information Resources Security Policies**

The following policy explains why and how to change information security policies.

1. **Changing Environment.** The business, technical, cultural, and legal environment of the Department, as it relates to information technology use and security, is constantly changing. The information resource security policies will be revised as needed to comply with changes in law or administrative rules or to enhance its effectiveness.

2. **Technology Neutral.** The information resource security policies are technology neutral and apply to all aspects of information resources. It is possible however, that emerging technologies or new legislation could impact these policies in the future.

3. **Change Drivers.** A number of factors could result in the need or desire to change the information resource security policies. These factors include, but are not limited to:

- a) Annual review of established policies
- b) New legislation
- c) Newly discovered security threat or vulnerability
- d) New technology
- e) Audit report
- f) Business requirements
- g) Cost/benefit analysis
- h) Cultural change

4. **Ownership and Approval.** The information resource security policies are owned by the Department's Executive Director. This responsibility has been delegated to the Information Resource Manager (IRM). The Executive Director, IRM, or designate, is the only authority that can approve modifications to the information resource security policies.

5. **Change Process.** Updates to the Department's information resource security policies, which include establishing new policies, modifying existing policies, or removing policies, can result from three different processes:

a) At least annually, the Information Security Officer (ISO), or designate, will review the information resource security policies for possible addition, revision, or deletion. An addition, revision, or deletion is created if it is deemed appropriate.

b) Every time new information resource technology is introduced into the Department a security assessment must be completed. The result of the security assessment could necessitate changes to the information resource security policies before the new technology is permitted for use at the Department.

c) Any user may propose the establishment, revision, or deletion of any practice standard at any time. These proposals should be directed to the ISO, who will evaluate the proposal and make recommendations to the IRM.

6. **Change Distribution and Notification.** Once a change to information resource security policies has been approved by the IRM, or designate, the following steps will be taken as appropriate to properly document and communicate the change:

- a) The appropriate information resource Web pages will be updated with the change
- b) Training and compliance materials will be updated to reflect the change
- c) The changes will be communicated using standard communication methods such as interoffice memorandum or newsletters.

**7. Policy Exceptions.** Policy exception provisions provide a methodology used to document variations from the rules of the information resource security policies. Following are examples:

a) Allowing a desktop modem if the information resource security policies states desktop modems are not permitted

b) Giving an individual elevated privileges in comparison to another individual with similar responsibilities

The steps for permitting and documenting an exception are:

a) Any user of the Department's information resources may apply for an exception through their chain of command to the ISO.

b) A request for an exception is received by the ISO along with a business case for justifying the exception.

c) The ISO analyzes the request and the business case and determines if the exception should be accepted, denied, or if it requires more investigation.

d) If more investigation is required, the ISO and IMS technical staff determine if there is a cost effective solution to the problem that does not require an exception.

e) If there is not an alternate cost effective solution, and the risk is minimal, the exception may be granted. The ISO maintains a file of all exceptions granted.

f) Each exception must be re-examined annually.

g) Any exception request that is rejected may be appealed to the IRM.

## **26.110.00 EMAIL**

**110.01 Purpose.** It is the policy of the Department to provide for the efficient, economical and effective management of electronic mail records in accordance with Texas Administrative Code (TAC), Chapter 13, Sections 6.91-6.97 (State Agency Bulletin Number One, Electronic Records Standards and Procedures). TAC Chapter 13, Section 6.92(c), provides that "the agency head or designated records management officer must administer a program for the management of records created, received, retained, used or disposed on electronic media." The Department has adopted this "Email Policy" for that purpose; and to prescribe guidelines and procedures for the management of electronic mail consistent with the Electronic Records Standards and Procedures; and in the interest of cost-effective and efficient record-keeping, including long-term records retention for the Archives of the State. Under the provisions of the Information Resources Management Act, information resources are strategic assets of the State of Texas that must be managed as valuable state resources. Thus this policy is established to achieve the following:

a) To ensure compliance with applicable statutes, regulations, and mandates regarding the management of information resources.

b) To establish prudent and acceptable practices regarding the use of email.

c) To educate individuals using email with respect to their responsibilities associated with such use.

The purpose of the Department's "Email Policy" is to establish the rules for the use of Department email for the sending, receiving, or storing of electronic mail. For more details, especially with regards to privacy, see 26.15.02 "Acceptable Use Policy" and 26.115.02 "Privacy" (Internet and Intranet).

### **110.02 Email Acceptable Use Policy**

1. The following activities are prohibited by policy:

- a) Sending email that is intimidating or harassing.
- b) Using email for any personal monetary interests or gain.
- c) Using email for purposes of political lobbying or campaigning.
- d) Violating copyright laws by inappropriately distributing protected works.
- e) Posing as anyone other than oneself when sending email, except when authorized to send messages for another when serving in an administrative support role.
- f) The use of unauthorized email software.

2. Personal email should not impede the conduct of state business; only incidental amounts of employee time—time periods comparable to reasonable lunch and break periods during the day—should be used to attend to personal matters. Racist, sexist, threatening, or otherwise objectionable language is strictly prohibited. Email should not be used for any personal monetary interests or gain. Employees should not subscribe to mailing lists or mail services strictly for personal use. Personal email should not cause the state to incur a direct cost in addition to the general overhead of email. The following activities are prohibited because they impede the functioning of network communications and the efficient operations of electronic mail systems:

- a) Sending or forwarding chain letters.
- b) Sending unsolicited messages to large groups except as required to conduct agency business.
- c) Sending excessively large messages.
- d) Sending or forwarding email that is likely to contain computer viruses.

3. All sensitive Department material transmitted over any external network will be encrypted utilizing an encryption standard established by IMS.

4. All user activity on Department information resource assets is subject to logging and review.

5. Electronic mail users must not give the impression that they are representing, giving opinions, or otherwise making statements on behalf of the Department or any unit of the Department unless appropriately authorized (explicitly or implicitly) to do so. Individuals must not send, forward or receive confidential or sensitive Department information through non-Department email accounts. Examples of non-Department email accounts include, but are not limited to, Hotmail, Yahoo mail, AOL mail, and email provided by other Internet Service Providers (ISP).

6. Individuals will send, forward, receive and/or store confidential or sensitive Department information only on mobile devices approved by the Department. Examples of mobile devices include, but are not limited to, Personal Data Assistants, two-way pagers and cellular telephones.

7. Personal use of email is a privilege, not a right. Abuse of the privilege may result in appropriate disciplinary action. Employees need to keep in mind that all email is recorded and stored along with the source and destination. Management has the ability and right to view employees' email. Recorded email messages are the property of the Department and therefore the taxpayers of the State of Texas. Thus, they are subject to the requirements of the Texas Public Information Act and the laws applicable to State records retention. Employees should be aware that when sending an email message of a personal nature, there is always the danger of the employees' words being interpreted as official agency policy or opinion. Therefore, when an employee sends a personal email, especially if the content of the email could be interpreted as an official agency statement, the employee should use the following disclaimer at the end of the message:

"This email contains the thoughts and opinions of (employee name) and does not represent official Texas Department of Public Safety's policy."

If the content of the email contains sensitive or confidential information the employee may use the following message at the end of the message:

"This message contains information which is confidential. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply email and delete the message."

8. Retention Requirements: All email sent or received by the Department is considered a state record. Therefore, all email messages must be retained or disposed of according to the Department's retention schedule. The Department's approved retention schedule lists the record series that agency records may be categorized under and the retention period for each series. It is the content and function of an email message that determines the retention period for that message. Email systems must meet the retention requirements found in TAC 6.94(e). Email generally (but not always, see the Texas State Records Retention Schedule for more information) fall into several common record series categories. These are:

a) Administrative Correspondence, 1.1.007. Incoming/outgoing and internal correspondence, in any format, pertaining to the formulation, planning, implementation, interpretation, modification, or redefinition of the programs, services or projects of the Department and the administrative regulations, policies and procedures that govern them. Only the administrative correspondence of executive staff, division directors, program heads and board or commission members require archival review. Retention: 4 years.

b) General Correspondence, 1.1.008. Non-administrative incoming/outgoing and internal correspondence, in any media, pertaining to or arising from the routine operations of the policies, programs, services, or projects of the Department. Retention: 2 years.

c) Transitory Information, 1.1.057. Records of temporary usefulness that are not an integral part of a records series of the Department, that are not regularly filed within the Department's record-keeping system, and that are required only for a limited period of time for the completion of an action by an official or employee of the Department or in the preparation of an on-going records series. Transitory records are not essential to the fulfillment of statutory obligations or to the documentation of Department functions. Examples of transitory information are routine messages (can be recorded on any medium, such as hard copy message slips or in an electronic format as voice mail); internal meeting notices; routing slips; incoming letters or memoranda of transmittal that add noting of substance to enclosures; and similar routine information used for communication, but not for the documentation, of a specific Department's transaction. Retention: AC (after purpose of record has been fulfilled).

9. User Responsibilities: It is the responsibility of the user of the email system, with guidance and training from the Records Management Officer, to manage email messages according to the Department's retention schedule. It is the responsibility of the sender of email messages within the agency's email system and recipients of messages from outside the Department to retain the messages for the approved retention period. Names of sender, recipient, date/time, as well as any attachments must be retained with the message. Except for listserv mailing services, distribution lists must be able to identify the sender and recipient of the message.

Examples.

Example 1: DPS supervisor sends an email describing a new major regulatory enforcement policy to DPS employees. The DPS supervisor who sent the email is responsible for retaining the email according to the record retention schedule. For the DPS supervisor, the email is "administrative correspondence" with a retention period of four years. The email may be kept in an electronic format or printed out. The recipient of the email has received a copy of the email and should keep the email for as long as it is useful, but it is not the original record subject to the retention law and should not be kept longer than the retention period of the official record.

Example 2: DPS employee sends an email to co-workers arranging transportation to an in-service training program. The email does not need to be kept at all. It is "transitory information" and may be deleted immediately.

Example 3: DPS supervisor sends an email regarding work schedules and procedures for the coming month to employees. The DPS supervisor who sent the email is responsible for retaining the email according to the record retention schedule. For the DPS supervisor, the email is "general correspondence" with a retention period of 2 years. The email may be kept in electronic format or printed out. The recipient of the email has received a copy of the email and should keep the email for as long as it is useful, but it is not the original record that is subject to the retention law and should not be kept longer than the retention period of the official record.

Example 4: DPS supervisor receives an email from a member of the public that is general correspondence. The DPS supervisor who receives the email is responsible for retaining the email according to the record retention schedule for general correspondence.

10. Maintenance of Electronic Mail: Records created using an email system may be saved for their approved retention period by one of the following:

- a) Print message and file in appropriate hard copy file.
- b) Place in folders and save on personal network drive or C: drive.
- c) Save to recordable media.
- d) Transfer to an automated records management software application.
- e) Managed at the server by an automated classification system.

11. Disposition of Electronic Mail: The process for the legal disposition of state records (including electronic mail) is subject to the same documentation requirements as any other format or medium. Agency personnel and RMLs should follow the same procedure in filling out a disposition log as with paper records to adequately document disposition and destruction of electronic records. See General Manual, Chapter 21.01.04 – Procedures (3) Final Disposition of Records. Section 6.95 of the Electronic Records Standards and Procedures (relating to the Final Disposition of Electronic State Records) states that:

a) b. "An electronic state record that is an archival record must be maintained by the agency through hardware and software migrations and upgrades as authentic evidence of the state's business in accessible and searchable form, except as otherwise determined by the state archivist."...And;

b) d. "A state agency must establish and implement procedures that address the disposition of an electronic mail record by staff in accordance with its approved records retention schedule and, specifically, must establish guidelines to enable staff to determine if an electronic mail record falls under transitory information (records series item number 1.1.057) on the agency's approved records retention schedule in order to encourage its prompt disposal after the purpose of the record has been fulfilled."...

12. Email standards for signature block and automatic reply message: An email signature is a block of text that is appended to the end of a sent email message. Generally, a signature block is used to provide the recipient with necessary contact information to include the sender's name, business contact information, or web site URL. An automatic reply is a message the user can have automatically sent out in response to every e-mail that comes into the account during a timeframe specified by the user.

All e-mail correspondence sent using the DPS system, sent both internally and externally, should be treated as an official form of communication and must present a professional image.

The signature block for any non-personal e-mails sent using the DPS system shall only contain necessary business related contact information regarding the sender or the agency and any necessary disclaimer language authorized under related policy.

Automatic Reply messages shall only contain pertinent, work related information.

The signature block and AutoReply messages shall not include any of the following: background images, animations, emoticons (i.e. smiley faces, hearts, etc.), logos (sport team, product logos, etc.), graphics with the exception of approved DPS related insignias, personal contact information (i.e. personal phone numbers, personal email addresses or websites), quotes, sayings, or other superfluous language.

Example One: The following is an example of an acceptable e-mail signature block:

Author's name  
Title (optional)  
Department or office  
Texas Department of Public Safety  
Your address (optional)  
Phone: (xxx) xxx-xxxx (optional)  
FAX: (xxx) xxx-xxxx (optional)  
Cell: (xxx) xxx-xxxx (optional)  
www.txdps.state.tx.us (optional)

Example Two: The following is an example of an acceptable auto reply message:

"I will be out of the office from December 23rd through January 2nd. If you need immediate assistance please contact my supervisor, Jane Doe, at (123)456-7890 or Jane.Doe@txdps.state.tx.us"



**115.01 Purpose.** Under the provisions of the Information Resources Management Act, information resources are strategic assets of the State of Texas that must be managed as valuable state resources. Thus the Department's "Internet and Intranet Policy" is established to achieve the following:

a) To ensure compliance with applicable statutes, regulations, and mandates regarding the management of information resources.

b) To establish prudent and acceptable practices regarding the use of the Internet.

c) To educate individuals who may use the Internet, the Intranet, or both with respect to their responsibilities associated with such use.

For more details, see 26.15.02 "Acceptable Use Policy" and 26.15.02 "Email Acceptable Use Policy."

**115.02 Privacy.** Electronic files created, sent, received, or stored on Information Resources owned, leased, administered, or otherwise under the custody and control of the Department are not private and may be accessed by Department employees at any time without knowledge of the information resource user or owner. Electronic file content may be accessed by appropriate personnel in accordance with the provisions and safeguards provided in the Texas Administrative Code 202, Information Resource Standards.

### **115.03 Internet and Intranet Acceptable Use Policy**

1. All software used to access the Internet must be part of the Department's standard software suite or approved by the ISO. This software must incorporate all vendor provided security patches.

2. All files downloaded from the Internet must be scanned for viruses using the approved IMS distributed software suite and current virus detection software.

3. All software used to access the Internet shall be configured to use the firewall http proxy server.

4. All sites accessed must comply with the Department's acceptable use policies. The Internet path record is the property of the Department and, therefore, the taxpayers of the State of Texas. Employees should be mindful that information concerning Internet use may be subject to disclosure under public information laws.

5. All user activity on Department owned information resource assets is subject to logging and review. Employees need to keep in mind that all Internet usage is recorded and stored, along with the source and destination within the computer's cache and registry. Employees have no rights to privacy with regard to Internet use. Management has the ability and right to view employees' usage patterns and take action to assure that Department Internet resources are devoted to maintaining the highest levels of productivity.

6. Supervisors should work with employees to determine the appropriateness of using the Internet for professional activities and career development (written permission needed).

7. Each employee using the Internet shall identify themselves honestly, accurately, and completely (including one's Department affiliation and function, where requested). However, criminal investigators, while performing assigned duties involved in a criminal investigation, are exempt from the identification requirement of this policy for security reasons.

8. Content on all Department websites must comply with the Department's acceptable use policies.

9. Divisions shall endeavor to make all public websites accessible and compliant with law and standards promulgated by the Department of Information Resources (DIR) and the World Wide Web Consortium. Each Division Chief will appoint a representative to review that Division's Web content every ninety days and provide any approved Web content changes to IMS for posting. In addition, the following policies shall govern all proposed changes to the Department's website:

a. All DPS employees (or contracted vendors) creating, making changes to, or requesting new or additional Web content, for both internal or external websites, must have their Division Chief's approval and will coordinate through the IMS Web team. Any approved changes to the Department's websites will be made by authorized IMS personnel only.

b. Any approved changes will conform to authorized design templates and programming standards approved by the IMS Chief.

c. All vendors contracted by the Department to create and maintain authorized Web pages will conform to established design templates and programming standards established by IMS and will make all public websites accessible and compliant with laws and standards promulgated by the DIR and the World Wide Web Consortium.

10. No offensive or harassing material may be made available via Department websites.

11. Business related purchases are subject to Department procurement rules.

12. No personal commercial advertising may be made available via Department websites.

13. Department Internet access may not be used for personal gain or non-Department personal solicitations.

14. No Department data will be made available via Department websites without ensuring that the material is available to only authorized individuals or groups.

15. All sensitive Department material transmitted over external network must be encrypted.

16. Users must be mindful that electronic files that are original records are subject to records retention rules just like paper documents.

17. The following addresses incidental use of Internet and Intranet.

a) Incidental personal use of Internet access is restricted to approved users; it does not extend to family members or other acquaintances.

b) Incidental use must not result in direct costs to the Department.

c) Incidental use must not interfere with the normal performance of an employee's work duties and will be defined by the employee's supervisor. Incidental use should not exceed a time period comparable to reasonable daily lunch and break times.

d) No files or documents may be sent or received that may cause legal liability for, or embarrassment to, the Department.

e) Storage of personal files and documents within the Department's information resources should be minimal.

f) All files and documents – including personal files and documents – are owned by the Department, may be subject to open records requests, and may be accessed in accordance with this policy.

g) Incidental personal use of Department resources is permitted but must not be excessive or inappropriate as determined solely by the Department. Inappropriate use includes hacking, pirating software, disrupting others' work activities, using Department resources for non-Department commercial activities, soliciting or distributing literature for outside entities, disclosing confidential information of the Department or third parties, sending inappropriate email, accessing inappropriate websites (such as those advocating hate or violence, posting or sharing any racist, sexist, threatening, illegal or otherwise objectionable material such as those containing sexually explicit material, gambling, or promoting illegal activities), or using Department resources in a way that violates Department policies contained in the General Manual or state law.

## **26.120.00 DATA CLASSIFICATION**

The purpose of data system classification is to help identify and label information systems that may need additional protection due to their sensitivity. Data systems classification accomplishes several objectives. It communicates the value of the data, it helps define the level of control necessary for its protection, and it helps to provide procedures to be followed in the event that security is compromised. The basic guidelines for classification of data systems are outlined in the following chart:

Type of Data: NONCLASSIFIED	Definition: Public access allowed and not essential for Department to do work. Information may be disclosed under the Texas Public Information Act.	Can be stored on: <u>PC:</u> • Any diskette, hard drive, or network drives. Mainframe' • Any Direct Access Storage Device (DASD)	Reason: This is information which is generated in the course of doing work, but which does not need to be retained for further business use.
CONFIDENTIAL (ONLY)	Information that is prohibited from disclosure by the Texas Public Information Act. Attorney General opinion should be sought.	<u>PC:</u> • Diskettes - Any network drives that have user-defined restrictions to access. Mainframe' • All confidential Resource Access Control Facility (RACF) protected files.	Because the dissemination of confidential information must be restricted, it must be stored on disks or drives where access can be controlled.
MISSION CRITICAL	Information critical for Department to do business, and may be disclosed through the Texas Public Information Act.	<u>PC:</u> • Any shared network drives except p:\transfer and t\transfer directories. Mainframe' • Shared DASD • Production database table	Because the data is necessary for Department to do business, it must be accessible to everyone who needs to use it. Information that is IMS confidential and sensitive must be protected from unauthorized disclosure by being maintained on media that has restricted access.
CONFIDENTIAL AND MISSION CRITICAL(includes EMD classifications FOR OFFICIAL USE ONLY AND US GOVERNMENT SECRET)	Information that is prohibited from disclosure by the Texas Public Information Act and critical for Department to do business. An Attorney General opinion should be sought.	<u>PC:</u> • Any shared network drives except p:\transfer and t\transfer directories. Mainframe' - Shared DASD- Production database table	Because the data is necessary for the Department to do business, it must be accessible to everyone who needs to use it (need to know basis). This information must be protected from unauthorized disclosure by being maintained on media that has restricted access.

The ISO is responsible for updating the Department's information classification schedule on an annual basis.

## 26.125.00 ELECTRONIC BACKUP

**125.01 Purpose.** Electronic backups are a business requirement to enable the recovery of data and applications in the case of events such as natural disasters, system disk drive failures, espionage, data entry errors, or system operations errors. The purpose of the Department's Backup/Disaster Recovery Plan Policy is to establish the rules for the backup and storage of electronic Department information.

### 125.02 Electronic Backup Policy

1. The frequency and extent of backups must be in accordance with the importance of the information and the acceptable risk as determined by the data owner.
2. The Department backup and recovery process for each system must be documented and periodically reviewed.
3. The vendor(s) providing offsite backup storage for the Department must be cleared to handle the Department's most sensitive classification category for the information stored.

4. Physical access controls implemented at offsite backup storage locations must meet or exceed the physical access controls of the source systems. Additionally backup media must be protected in accordance with the Department's most sensitive classification category for the information stored.

5. An automated process must be implemented to verify the success of the Department's electronic information backup. Also the automated process must have reports whose output

a) Describes the contents of any backup tape including the date(s) the system(s) was backed up and the retention period(s)

b) Lists the tape number(s) of any system for a particular backup date.

In the box with each set of offsite storage backup tapes will be a report listing the contents of each backup tape. IMS headquarters will keep a copy of this report until the tapes return to IMS for reuse.

6. Backups must be periodically tested to ensure that they are recoverable.

7. Signature cards held by the offsite backup storage vendor(s) for access to the Department's backup media must be reviewed annually or when an authorized individual leaves the Department.

8. Procedures between the Department and the offsite backup storage vendor(s) must be reviewed annually.

## **26.130.00 WIRELESS ACCESS**

**130.01 Purpose.** Wireless access to the Department's network must be secured properly to deliver data in a secure, reliable fashion. There must be assurance that data integrity, confidentiality and availability are maintained. One of the required steps to attain this assurance is to ensure that all wireless access devices are installed and maintained in a manner that prevents unauthorized access, unauthorized use, and disruptions in service. The IMS Chief will be responsible for implementing and maintaining the wireless access policy for the Department.

To ensure the technical coordination required to provide the best possible wireless network for the Department, IMS will be solely responsible for the deployment and management of 802.11 and related wireless standards access points on the Department's network. No other entity may deploy 802.11 or related wireless standards access points without authorization from the IMS Chief.

This policy provides the structure for a Department-wide solution for the implementation of wireless technology, which includes centralized determination of identity, authentication, and appropriate levels of security for access to and use of wireless technology.

Wireless in the Local Area Network using the IEEE 802.11 standard is a fast emerging technology. Current 802.11 wireless technologies are by nature easy to deploy, but they must be very carefully planned, deployed, and managed in a centralized fashion to ensure basic functionality, maximum bandwidth, and a secure network.

Current 802.11 wireless technologies deploy a very low power signal in a frequency band divided into only three (3) non-overlapping channels. The primary purpose of these channels is not so much to provide separate networks, but to ensure that adjacent access points with slightly overlapping areas of coverage do not interfere with each other. In the normal case, it is necessary to use all three channels in an integrated fashion as a single unified network to achieve an optimal design. It is therefore not feasible to allow individuals to install their own access points without centralized

coordination, due to the resulting signal interference and greatly degraded performance to the common wireless network.

The Wireless Policy provides guidelines regarding the following:

- a) The central deployment by IMS of 802.11 and related wireless standards access points.
- b) The provision of wireless service by IMS for the Department.
- c) The management by IMS of 802.11 and related wireless standards access.

### **130.02 Wireless Access Policy**

**1. IMS deployment of 802.11 and related wireless standards access points.** IMS will be solely responsible for the deployment and management of 802.11 and related wireless standards access points for the Department. No other entity may deploy 802.11 or related wireless standards wireless access points without approval from the Chief of IMS.

**2. Provision of wireless service by IMS.** IMS will offer a standard wireless deployment plan that will meet the needs of most Department information resource users wishing to construct and operate wireless services. The IMS Chief will work with the Division Chiefs to accommodate any special needs they may have within the technical constraints of the wireless technology, understanding that all requests may not be technically feasible.

**3. Management by IMS of 802.11 and related wireless standards access points.** IMS will ensure that all wireless services deployed by the Department will adhere to Department-wide standards for access control. IMS will manage the wireless spectrum in a manner that ensures the greatest interoperability and roaming ability for all information resource users wishing to use wireless technology, and, using the Enterprise Directory, will centralize the process of determining identity, authentication, and appropriate levels of security for access to and use of wireless technology. IMS reserves the right to minimize interference to the common wireless network, and will work with the Division Chiefs to reconfigure or shut down any Division's wireless networks that interfere with the common wireless network.

### **130.03 Procedures and Guidelines**

1. IMS will advise the IT Board on wireless plans, deployment strategies, and management issues.
2. Any Division wishing to work with IMS to deploy wireless access must contact IMS by phoning the IMS Help Desk to begin the process. The purchase must be approved by the IMS Chief or designate to ensure the hardware and software meet Department standards.
3. In the case of existing wireless technology deployments that use the same or interfering spectrums, IMS will work with the Divisions in question to minimize interference to the common wireless network.
4. All sensitive data being transmitted across a wireless network should be encrypted.

### **26.135.00 INSTANT MESSAGING POLICY**

1. Employees will not download/install any instant messaging software without specific authorization in writing from the Department's IRM or a Division Chief.

2. Employees authorized to use instant messaging technologies will not download any illegal and/or unauthorized copyrighted content. The IRM or Division Chief must approve in writing the use of instant messaging technology to download copyrighted material in writing. The Department must follow appropriate state and federal laws and guidelines when copying, storing, or transferring copyrighted material.

3. This policy applies to instant messaging used within the Department and instant messaging used conjointly with the Internet and does not supersede any state or federal laws, or any other agency policies regarding confidentiality, information dissemination, or standards of conduct.

4. Authorized state network users should keep in mind that all instant messaging can be recorded and stored along with the source and destination. Users have no right to privacy with regard to instant messaging. Management has the ability and right to view employees' instant messaging. Recorded instant messages are the property of the Department and may be subject to the requirements of the Texas Public Information Act and the laws applicable to state records retention.

5. Instant messaging is not authorized for personal use.

6. Generally instant messaging should be used only for legitimate state business; however, brief and occasional instant messaging of a personal nature may be sent and received if the use complies with this policy.

7. Use of instant messaging is a privilege, not a right. As such, the privilege may be revoked at any time and for any reason. Abuse of the privilege may result in appropriate disciplinary action.

8. If authorized for usage on state systems, instant messaging may be used for any routine official business communication that is not normally filed for recordkeeping, such as a communication that is temporarily needed only for an employee to complete an action.

9. Do not use instant messaging to conduct any state business that would require the content to be saved as a state record. Instant messaging may not be used to document a statutory obligation or Department decision, and instant messaging should not be used when the resulting record would normally be retained for record keeping purposes.

10. Accessing, viewing, downloading, uploading, transmitting, printing, copying, posting, or sharing any racist, sexist, threatening, sexually explicit, obscene, or otherwise objectionable material (for example, a visual, textual, or auditory entity) is strictly prohibited.

## **26.140.00 PEER-TO-PEER FILE SHARING**

**140.01 Purpose.** Peer-to-Peer File Sharing (P2P) programs can be used to share any type of electronic files. To accommodate these legitimate file downloads, the State of Texas does not ban P2P programs from its networks. However, the purpose of the Department's "Peer-to-Peer File Sharing Policy" is to avoid problems such as the following:

P2P programs is the primary channel for malware distribution. One of the primary misuses of P2P technology has been copying of commercial music, movies, and video games for personal enjoyment. These activities on state government systems generally violate the U.S. Copyright.

P2P file-sharing programs increase the connectivity between computers connected to a common P2P network. This heightened connectivity can expose computers to risks beyond those raised by other Internet activities. P2P programs also have a high incidence of being misconfigured to share more folders than the user originally intended. Because P2P file-sharing programs allow all types of electronic data sharing, every computer file in the shared space becomes accessible to every other user on the P2P network. A P2P user who chooses to share a folder containing a music

collection may not be aware that he or she is also sharing every personal document that might be stored in the same location.

Viruses and worms can multiply on these P2P networks and enter into a user's computer through a P2P file sharing program. The vast majority of viruses, adware, and Spyware use P2P networks as a primary distribution network. Moreover, free P2P client software often includes adware and backdoors that can be exploited by malware and hackers.

#### **140.02 Peer-to-Peer Policy.**

1. Employees of the Department will not download, install or use any P2P software on DPS computers, networks, or mobile devices (PDA) without specific written authorization from the Department's IRM.

2. Authorized P2P users will use P2P technologies for official state business only.

3. Authorized P2P users will be trained on P2P policy, monitoring, and enforcement.

4. State government computer systems or networks (as well as those operated by contractors on the government's behalf) must not be used to download illegal and/or unauthorized copyrighted content. Any of the following activities constitute violations of acceptable use policy, if done without permission of the copyright owner:

a) Copying and sharing images, music, movies, or other copyrighted material using P2P technology.

b) Making unlicensed copies of a CD or DVD for others.

c) Posting or plagiarizing copyrighted material.

d) Downloading any copyright-protected files which you have not already legally procured (for example, licensed copies of software, MP3s, movies).

5. Copyright law applies to a wide variety of works and covers much more than what is listed above.

#### **26.145.00 PROJECT MANAGEMENT**

**145.01 Purpose.** Information Technology project success is greatly enhanced when project management disciplines are used. The Project Management Office, which is managed and staffed by IMS, includes the development, communication, education, and management of the Department's information resource project management processes and portfolio. The Department will use project management discipline when identifying and developing information resource solutions for the Department's initiatives.

The Department's project management process is comprised of: business justification; project planning; solicitation and contracting; project implementation; benefits realization; and project closeout. Projects exceeding the minimum thresholds, as specified by the Texas Department of Information Resources (DIR), must comply with the additional requirements of the DIR Texas Project Delivery Framework (Framework). The DIR Framework requires executive sponsor and authorization by the director of the agency as well as additional project approval and reporting requirements.

To meet the standards required by the Department and DIR, IMS provides guidance for developing project management documentation. Request for project management assistance should be directed to the Project Management Office.



Sometimes it becomes necessary or advantageous to have changes in the approved project requirements, schedule, or resources. Also, sometimes a vendor contract needs changing. These project change requests must be approved (or denied) by that project's Project Change Board, which consists of:

- a) That project's IMS Project Manager
- b) That project's Division Project Manager
- c) That project's Project Sponsor
- d) Project Management Office
- e) IMS Assistant Chief

#### **145.02 Project Management Policy**

Following are IMS responsibilities related to project management:

1. Implementing Department project management processes and procedures as set forth under the guidelines established by the Department and the DIR.

2. Prior to each meeting of the IT Board, compiling, publishing, and updating the Department's project priority list, project status reports, project documentation needing approving, and project change requests that have been approved by the relevant Project Change Boards but still need IT Board approval because the requests may have an adverse impact on a project's schedule, resources, or cost.

3. Ensuring the Department is in compliance with DIR Framework requirements.

4. Assigning an IMS project manager to each information resource project approved by the IT Board.

5. Tracking IMS resource assignments for all projects formally approved in writing by the IT Board.

6. Notifying each Division project manager project of resource scheduling or assignment changes. If the changes are not within the scope of the approved project documentation, IMS will call a meeting of that project's Project Change Board to approve or deny the project change request. However, if a project change request that has been approved by the project's Project Change Board may have an adverse impact on the project's schedule, resources, or cost, the project change request must also be approved by the IT Board.

7. Developing information resource project management processes and procedures specific to the needs of the Department, while at the same time, incorporating the state-wide requirements on project management processes and procedures required by DIR.

8. Evaluating the impact of the information resource solution.

9. Ensuring information resource solutions are aligned with state's and the Department's information resource goals and objectives.

10. Identifying and documenting project risks (risk analysis).

11. Reporting project status to the relevant Division Chief(s) and the Project Management Office

12. Notifying Divisions and Project Change Board of any relevant project change requests initiated by IMS. Tracking all project change requests identified by IMS, customer Divisions, or, if applicable, vendors. Participating in the Project Change Board.

13. Establishing and maintaining security for all project related hardware, software and documentation.

14. Creating and maintaining project documentation library for resource information projects developed by IMS.

Following are Division responsibilities related to project management:

1. Adhering to Department process and procedures for project management.

2. Submitting new project request documentation.

3. Presenting project concept to IT Board for approval.

4. Provide a qualified Division (business) project manager.

5. Preparing business project documentation as required by the project management process.

6. Identifying the business problem.

7. Conducting a feasibility study.

8. Working with IMS to identify the best information resource solution for the design of the Division's new system or application.

9. Identifying the impact of not doing the project.

10. Working with the IMS project manager to evaluate an information resource solution.

11. Ensuring the business solution is aligned with state's and Department's business goals and objectives.

12. Identifying a return on investment (ROI).

13. Awareness of all legal requirements and constraints of their application and understanding any and all audit controls.

14. Evaluating impact on existing business rules and processes.

15. Specifying the requirements of who may have access to any given system.

16. Supplying examples of project deliverables such as records, forms, computer screens, on-line and printed reports and lists, and so forth.

17. Supplying controlled test data to verify the results of any testing of a new system or modified system.

18. Participating in walk-through sessions during the design to verify what has been accomplished is correct.

19. Notifying the IMS project manager and the Project Change Board of any project change requests initiated by the Division. Participating in the Project Change Board.

Following are responsibilities shared by each Division and the assigned IMS project manager:

1. Initiating a review process for selection and approval of a project.
2. Planning for project management and information resource related activities and deliverables.
3. Developing and managing of information resource solicitations.
4. Developing, testing, and installing based on project planning deliverables.
5. Reviewing and evaluating all project documentation, outcomes, including completion of Post-Implementation Evaluation Review (PIER) on all major projects.

The PIER is a review by IMS and the Division to assess product outcomes to verify whether the project achieved the desired results and met the strategic outcome measures predicted by the Department, within the planned costs and schedule. The PIER should be completed within three (3) to six (6) months after project implementation.

6. Participation on the Project Change Board as needed to approve or deny project changes. However, if a project change request that has been approved by the project's Project Change Board may have an adverse impact on the project's schedule, resources, or cost, the project change request must also be approved by the IT Board.

7. Authorizing the final recommendation on procurement decisions.

8. Coordinating procurement with Department Accounting/Procurement personnel.

9. Participating in and approving business case analysis, statewide impact analysis, project planning and procurement planning results.

10. Approving and denying of contract amendments and project change orders.

## **26.150.00 WORK REQUEST**

**150.01 Purpose.** IMS is constantly performing tasks requested by the Department's Divisions. Tasks that are part of a "project management" project, authorized by the IT Board, are governed by 26.145.02 "Project Management Policy." Tasks that are a direct response to a problem are governed by 26.155.02 "Problem Management Policy." Some tasks are routine tasks, not requiring work requests because the tasks are part of an established repeatable procedure, like an operator running a nightly job. Therefore, a "work request" pertains to a Division's requests for IMS work outside the scope of project management, problem management, and routine tasks.

Examples of work requests include:

- a) An ad hoc report using an already implemented database
- b) A technology refresh for ten workstations

The Department's "Work Request Policy" serves both the requesting Division and IMS by providing an automated methodology/tracking system that enables:

- a) A Division designate to request IMS to perform a task involving information resources.

b) IMS management to assign the task to the person in IMS who will do the work

c) Authorized Department staff (including the requestor) to view the work request to determine to whom the work has been assigned, the estimated completion date, and whether the work has been completed.

### **150.02 Work Request Policy**

Following are the IMS responsibilities:

1. Developing/publishing procedures for completing a work request.

2. Prioritizing work requests.

3. When a work request competes for the same resources as a project on the IT Board's priority list, IMS management determines if there are adequate resources to do both the work request and the project. If not, IMS contacts the requestor, and suggests that the requestor submit the request as a project request to the PMO, so the PMO will submit the project request to IT Board for prioritization. Then, IMS management closes the uncompleted work request, indicating that it was uncompleted.

4. Providing potential alternatives or suggesting existing possibilities as a solution.

5. Recommending information resource solutions to meet the customer's business requirements.

6. Evaluating and providing resources to complete work requests.

7. Tracking the progress of open work requests.

8. Providing an automated method of tracking work requests.

9. Creating and maintaining documentation of applications developed by IMS.

10. Ensuring confidentiality and security of the customer's data.

11. Providing customer notification on completed work requests.

12. Requiring written authorization from the customer prior to making changes to the production environment.

Following are the Division Chief's designate(s) responsibilities:

1. Following the IMS procedures when initiating work requests.

2. Ensuring that the Division approves any work request submitted to IMS.

3. Submitting work requests using the on-line services IMS provides for work requests.

4. Identifying required output (reports), if any.

5. Participating in the design and testing of the requested task, if applicable.

6. Supplying data elements of the records, examples of reports, lists, and totals, if applicable.

## **26.155.00 PROBLEM MANAGEMENT**

**155.01 Purpose.** Indications of information resource problems include outages, error messages, performance degradation, usability complaints, failure in procedures, unclear or missing procedures, wait states, missing or late output, poor quality output, erroneous output, undocumented messages, and customer questions/complaints. The purpose of the “Problem Management Policy” is to effectively and efficiently manage problems regarding the Department’s information resources, so that each Division receives the level of service agreed upon in their Service Level Agreement (SLA) with IMS. Therefore, the Department’s users can call the IMS 24-hour helpdesk to have their information resource problems immediately resolved, or escalated, tracked and resolved in an expeditious manner with an acceptable balance of risk, resource/service effectiveness, and minimal disruption to the user.

Some of the most important objectives of the Problem Management Policy are:

a) Establish procedures that provide for the timely response to customer requests for information and assistance with problems.

b) Establish procedures that enable customers to report all problems easily and accurately.

### **155.02 Problem Management Policy**

Following are the IMS responsibilities:

1. Staff a 24 x 7 IMS Helpdesk to provide professional and courteous assistance to information resource problems and questions. The phone number is for 424-5432 for calls local to Austin and 1-866-866-7700 for toll-free calls. During business hours (7am to 5pm) the IMS Helpdesk checks the e-mail address, Help Desk Issues.

2. Using appropriate methods, such as network monitoring, to determine information resource problems or potential problems before the users encounter the problems.

3. If a user’s question/problem cannot be immediately resolved, ensure that sufficient data is logged into the Department’s on-line problem software to define the problem, as well as to aid in cause determination, severity determination, escalation, notification, meaningful problem reporting, and statistical analysis.

4. IMS management must ensure that problems are handled with expedient escalation to relevant IMS staff, vendors, and contractors. IMS management must also ensure that timely notification is sent to the correct individuals and groups, both within and outside the Department.

Following are the Department’s user responsibilities with regards to placing IMS Helpdesk calls:

1. Identify yourself completely. Provide your first and last name, department, telephone number, location, and Access ID (ACID), for example, ab00088. Your information will be verified and entered into a problem tracking database so that your problem can be tracked to a satisfactory resolution.

2. Know as much as possible about the problem you are experiencing. The IMS HelpDesk technician will ask you to provide information such as error messages, the operating system, and the software application (for example, Word, Excel, Access, CICS, and so forth).

3. Be prepared to assist the IMS HelpDesk technician in basic troubleshooting. Be close to the computer screen or device to follow simple diagnostic steps. It is often possible to remedy problems over the phone, speeding up the resolution process for everyone.

4. The IMS HelpDesk technician will work with you to help resolve your problem. If necessary, a problem ticket will be generated and referred to a specialist who will contact you. Your problem will be assigned a number. Please retain this number for future reference.

5. When requesting a password reset, IMS HelpDesk technicians are required to speak to the owner of the account to verify personal information. If someone other than the owner (for example, supervisor, co-worker) calls, the technicians are instructed to not reset the password without authorization from the ISO. The ISO may choose to require written authorization from the user's Chief or a designate.

## **26.160.00 INFORMATION RESOURCE PROCUREMENT**

**160.01 Purpose.** The Department has initiated an effort to implement information resource governance as a key component in the establishment of a Department enterprise architecture. Enterprise architecture is the organizing logic for business processes and information resource infrastructure reflecting the integration and standardization requirements of the Department's operating model. An enterprise architecture should respond to the need to align information resource investments with the Department's strategic plan. The primary purpose of creating an enterprise architecture is to ensure that business strategy and information resource investments are aligned. As such, enterprise architecture allows traceability from the business strategy down to the underlying technology.

**160.02 Policy.** To ensure compatibility with the Department's enterprise architecture and ensure compliance with all Department of Information Resources (DIR) rules and regulations, all information resource purchases, excluding those made by the purchasing card, will require the IMS tracking form be completed. The form and all associated purchasing documents will be reviewed by IMS personnel and approved by the IMS Chief.

# **DETECTOR CANINE PROGRAMS**

## **01.27.00.00**

### **27.05.00 ADMINISTRATION**

The Assistant Director of Texas Highway Patrol is responsible for the overall coordination and functions of the Detector Canine Program, and may assign canines as appropriate. A State Canine Program Coordinator is assigned to direct the overall function of the Detector Canine Program. Administration of the Detector Canine Program shall be handled through the normal chain of command of the Highway Patrol and the Capitol Region.

1. The objective of the Drug Detector Canine Program (Narcotics) is to assist officers in locating and seizing illegal narcotics that might otherwise go undetected without the canine's drug detection capabilities.

2. The objective of the Explosive Detector Canine Program (Explosives) is to provide an effective "tool" which extends an officer's ability to conduct thorough and detailed examinations for explosives and weapons.

#### **05.01 Responsibilities of the State Canine Program Coordinator**

1. Manages the overall program operation.
2. Coordinates all drug and explosive detector canine in-service proficiency training.
3. Maintains certification standards through evaluation of performance of canine/handler teams.
4. Ensures that Department canines are properly cared for according to policies and procedures.
5. Assists in developing criteria for selection of canines and handlers.
6. Makes recommendations related to certification, decertification, and recertification of canine/handler teams.
7. Trains and directs the Explosive Detector Canine Program Coordinator and Regional Canine Training Coordinators in training policies and procedures.
8. Serves as liaison between the division assistant director and in-line supervisors.
9. Ensures that drug substances and explosive materials used for training are properly accounted for and replaced when needed.
10. Provides court testimony when required.

#### **05.02 Responsibilities of the Explosive Detector Canine Program Coordinator**

1. Manages the explosive detector canine program operation.
2. Coordinates all explosive detector canine training and certification schedules.
3. Ensures that explosive materials used for training are properly accounted for and replaced when needed.

4. Ensures that explosive materials used for training are properly stored and separated to prevent any scent contamination.
5. Provides immediate supervision and logistic support of explosive detector handler/canine teams.
6. Approves all appropriate requests made within the Security Program of the Intelligence and Counter Terrorism Division for handler/canine teams.
7. Supervises care and feeding of explosive detector canines when handler is unavailable.
8. Checks and routes all reports related to the Explosive Detector Canine Program through the proper channels.
9. Monitors care and well-being of all explosive detector canines.
10. Conducts performance evaluations of canines/handlers within the Capitol Region.

### **05.03 Responsibilities of Regional Drug Detector Canine Training Coordinator**

1. Serves as liaison between State Canine Program Coordinator and handler's in-line supervisors.
2. Conducts performance evaluations of canines/handlers within the region as specified in 27.50.03
3. Validates weekly drug detector canine proficiency training records to ensure adherence to the established training program, procedures, and guidelines.
4. Conducts inventory of canine handler training aids and vehicle equipment every 6 months.
5. Ensures that controlled substances used for training are properly stored and separated to prevent any scent contamination.
6. Checks and routes all reports related to the Drug Detector Canine Program through the proper channels. The original copy of the weekly Drug Detector Canine Report (THP-2A) and any other original copy of a canine report shall be kept at the district level.
7. After review of the canine handlers' weekly drug detector canine training record (THP-2A), a copy of the record will be forwarded to the State Program Coordinator.
8. Coordinates all drug detector canine training within the region.
9. Monitors care and well-being of canines within the region.
10. Coordinates training and certification schedules through the State Program Coordinator.

### **05.04 Responsibilities of District Commanders**

1. Shall ensure that program objectives are met.
2. Shall oversee training and deployment, evaluate reports, and recommend to the Regional Canine Training Coordinator or the State Canine Program Coordinator corrective action necessary to rectify any problems encountered.



3. Shall monitor their canine teams' activity to evaluate their effectiveness and ensure the most useful deployment of the teams.

#### **05.05 Responsibilities of District Lieutenant**

1. Provides immediate supervision and logistic support of handler/canine teams in the district.

2. Schedules handler assignments with allowances made for care and maintenance of canine, proficiency training, canine certification, special emphasis programs in district and region, CVE truck checks, and canine school assignments.

3. Ensures that canine teams are on patrol duties in the district when all other assignments and training have been met.

4. Approves all appropriate requests made for handler/canine teams.

5. Supervises care and feeding of canine when handler is unavailable.

#### **05.06 Responsibilities of Detector Canine Handler**

1. Maintains a reliable detection capability through ongoing proficiency training.

2. The handler presents training problems for the canine on a daily basis, when possible.

3. Reports any change or discrepancy in the performance of the canine to the Regional Canine Training Coordinator (or the Explosive Detector Canine Program Coordinator) and the State Canine Program Coordinator.

4. Ensures that the canine is kept in good physical condition.

5. Provides training to area personnel regarding safe conduct around the canine, as well as appropriate operational uses of the canine.

6. Maintains in good condition all canine-related equipment, including the canine vehicle.

7. Records all training and working activity of the canine, submitting this information as appropriate.

8. Maintains training aids in a secure location when not in use.

9. Attends the bi-monthly proficiency training and the yearly recertification training with the canine.

10. Ensures all searches with the canine are in compliance with the law and/or policies and procedures.

11. Maintains the canine first aid kit.

12. Maintains an appropriate level of control of the canine at all times to eliminate the possibility of biting incidents or the canine jumping on people.

13. Attends training courses and meetings regarding detector canines.

14. Submits all required reports to in-line supervisor (District Lieutenant), Regional Canine Training Coordinator (or the Explosive Detector Canine Program Coordinator) and the State Canine Program Coordinator.

15. Cleans the kennel and vehicle regularly to ensure a sanitary living and working environment for the canine.

a. The handler will clean the kennel daily. The kennel, canine vehicle, and canine carrier will be cleaned and sanitized weekly to ensure the control of fleas, parasites, and disease.

b. When kenneled, fresh water will be available to the canine at all times.

16. Maintains a stress free environment for the canine at home.

17. Grooms the canine daily.

18. Ensures that the canine receives all required vaccinations and regular medical checkups.

19. Complies with Department policy concerning the Detector Canine Program.

20. Reports to all scheduled assignments.

**05.07 Canine Handler Schedules and FLSA Guidelines.** The canine team's primary responsibilities will be canine support of special emphasis programs, special workdays, Commercial Vehicle Enforcement scale operations in the district or region, canine call out after duty hours, and proficiency training. When canine handlers are not on a specific assignment, they will perform routine patrol duties at their duty station or other location with emphasis on criminal interdiction. This policy does not relieve the handler of crash investigation duties or other emergency situations that may present themselves at their duty station or other location that they may be working.

Highway Patrol District Lieutenants should consider the following guidelines when scheduling drug detector canine handlers:

1. Due to the potential benefits from the deployment of a canine team, supervisors should consider flexibility in shift hours and days off with respect to their criminal interdiction efforts.

2. Canine handler schedules should reflect assignments supporting criminal interdiction efforts in the sergeant area, district, and region. Scheduling also includes high visibility workdays, assignments to Commercial Vehicle Enforcement truck checks, and assignments to support criminal law enforcement activities.

3. The canine handlers' primary responsibilities are to support sergeant areas, districts, and regions during special emphasis programs, special workdays, Commercial Vehicle Enforcement scale operations, Criminal Law Enforcement operations, and allied agency requests.

4. Certification, training, and veterinarian appointments will be scheduled on the handler's regular duty days. Advance coordination between the canine handler, and the District Lieutenant is important in order to maintain some continuity in the canine handler's schedule. Some adjustment of the handler's days off may be necessary.

Every canine handler shall be allowed thirty minutes overtime each day for care and maintenance of the canine. All care and maintenance time will be reflected on the handler's weekly report and any appropriate overtime reports.

It is understood that canine handlers may accumulate overtime due to call out for canine searches and other unscheduled events that involve the canine handler.

**05.08 Personnel Guidelines.** District Commanders are responsible to ensure all employees in their command are aware of the proper protocol when working near a Department canine.

To ensure minimum stress for the canine and a safe working environment for Department employees who come in contact with a Department canine, the following rules of conduct shall apply:

1. Department personnel shall not provoke, tease, harass, or abuse the canine.
2. Department personnel shall not reach into a canine unit with the canine inside except in emergency situations.
3. Department personnel shall not attempt to feed the canine or retrieve objects from the canine unless directed to do so by the canine's handler.
4. Department personnel other than the canine handler shall not give commands to the canine except in emergency situations.
5. Department personnel shall not engage in any activity which could be perceived by the canine as an assault upon the handler.
6. Department personnel shall not approach or pet the canine without the consent of the handler and only when the handler is present.
7. When the canine team is utilized in a specific tactical situation/search, Department personnel shall heed the directions of the canine handler as it relates to the canine. The handler shall make the final decision regarding utilization of the canine based upon the safety of the canine and everyone involved.

**05.09 Duty Status.** Handlers must keep in mind that all activities with their canine, whether on duty or off duty, reflect upon the credibility of the canine team, the Department's canine programs, and ultimately the Department. Therefore, the following shall apply:

1. Canines will be securely kenneled or under the supervision of their handler while off duty.
2. Department canines may not participate in any on-duty or off-duty presentations, demonstrations, competitions, or shows unless approved by the State Canine Program Coordinator.
3. Handlers are not to involve themselves in any off-duty activities, which may bring discredit upon the Department or the canine program.
4. Handlers shall not take the Department canine on vacation.

#### **27.10.00 HANDLER SELECTION CRITERIA**

To fully utilize the extensive training required for both the canine and the handler, and to provide consistency in the working relationship for the canine, candidates should make a voluntary commitment to the Canine Program for a minimum period of three years. Cases of promotions and transfers will be handled on a case-by-case basis.

Candidates should have a minimum of four years experience as a Highway Patrol or CVE Trooper, or achieved the rank of Trooper II. This guideline should not preclude Service Commanders from considering a candidate deemed to possess the best overall qualifications.

Candidates should possess exceptionally good work habits, a marked degree of resourcefulness, dependability, and patience. Candidates must be in good physical condition as the detector canine training and the deployment of the canine is physically demanding.

Candidates must maintain a suitable residence to accommodate a canine and kennel, and reside within a thirty (30) statute mile radius of their assigned duty station. No member will be considered who resides in an apartment complex, duplex, or trailer park, or cannot keep his/her canine at his/her home.

Consideration will be given to those candidates who are stationed at duty points along interstate highways or other major highways as designated by the State Canine Program Coordinator.

Candidates interested in the canine program and who meet the selection criteria should submit an interoffice memorandum through their chain of command. The chain of command will note their recommendations and forward the memorandum to the State Canine Program Coordinator.

The State Canine Program Coordinator will interview and test all applicants and make recommendations to the division chief based on the Department's need and the candidate's suitability.

All candidates will attend an interview board chaired by the State Canine Coordinator. Following, the board these candidates will run canine exercises and complete an agility course.

If needed, the family should also be interviewed to explain the requirements of the program and to determine the family's full cooperation in the program.

The Assistant Director of the THP Division will make the final selection of handlers.

#### **27.15.00 CANINE SELECTION CRITERIA**

In order to be utilized as a Department canine, the Texas Department of Public Safety must own the animal. Department canines will meet the following criteria:

1. Be at least middle-sized: 40 -100 pounds.
2. Have proportionate lines harmonious with a straight, solid back and shoulders.
3. Should be a minimum of 12 months of age, or a maximum of three years of age at adoption.
4. Possess good health, appearance, stamina, a self-right temperament, and a near frantic desire to retrieve.
5. Have a general physical examination to include a fecal examination, DHLPP, rabies boosters, and heart worm test.
6. Before any dog is considered for Departmental training it must be tested and evaluated as to its fitness for service.
7. The State Canine Program Coordinator will make the final selection of canines for the Department.

#### **27.20.00 KENNELING**

The importance of the care and boarding of the canine cannot be overemphasized. Unless otherwise stated, the guidelines outlined in this section are the responsibility of the canine handler.

**20.01 Home Kenneling.** The canine shall be housed at the home of the handler in the kennel provided by the Department.

1. The canine shall not be allowed to roam at will.

2. When the canine is kenneled, and the handler is not present, the kennel door shall be securely locked with a padlock or similar locking device.

3. The handler will ensure a safe and restful environment for the canine, safe from attack from other animals, and devoid of distractions that interrupt rest.

4. Conflicts with other family pets must be resolved in a reasonable period of time.

5. Unresolved conflicts or lack of a suitable living environment will be sufficient cause for removal of the canine and reassignment of the officer.

6. The Regional Drug Detector Canine Training Coordinator will conduct periodic inspections of the canine and the canine's living quarters.

7. Except for temporary and emergency kenneling addressed in this policy, no canine will be housed at another location, or under other conditions, unless approved by the State Canine Program Coordinator.

#### **20.02 Care of the Canine in the Handler's Absence**

1. If the handler is absent from his/her home for less than 12 hours, the canine may be left unattended, but securely locked within its own kennel.

2. If the handler is absent from his/her home for more than 12 hours, the canine may be left in the care of a responsible person at the handler's residence. If the handler is absent from his/her home for more than 12 hours and no responsible person is available to care for the canine, then with proper supervisory approval, the canine shall be housed at an approved kennel.

3. The kennel utilized should be approved by the canine handler's immediate supervisor and be either:

- a. A kennel provided by a licensed veterinarian; or

- b. A private kennel which (except in the case of an emergency), has been inspected and approved prior to placing canine in the kennel.

4. If at all possible, the kennel selected should provide for 24-hour access by the handler to the canine.

5. The kennel utilized should provide a weather-protected area for the canine to be housed and the canine should be placed in a kennel separate and, if possible, away from other animals.

6. The canine handler's immediate supervisor will be notified of the canine's status whenever the circumstances outlined in items 2 and 3 above are applicable.

## **27.25.00 EQUIPMENT**

**25.01** In addition to the canine vehicle and kennel, the handler will be responsible for the care and condition of the following:

1. Leather equipment
  - a. 5-foot leather leash
2. Fabric equipment
  - a. 360-inch web leash
  - b. Nylon collar
3. Metal equipment
  - a. Choke chain collar
  - b. Steel canine comb
  - c. Slicker brush
  - d. Shedding blade
  - e. Grooming brush
  - f. Stainless steel feed pan
  - g. Three & one half (3-1/2) gallon galvanized or stainless steel water bucket
  - h. (1) steel safe or drug storage cabinet (Drug Detector Canine Program ONLY)
4. Polypropylene canine house or equivalent
5. Air freight carrier or equivalent
6. Digital Camera

## **27.30.00 CARE AND MAINTENANCE**

**30.01 Care.** It is the responsibility of the handler to keep his/her canine in such physical condition that the canine is able to perform the duties expected of a drug detector canine.

1. Any indication of poor health or physical condition shall be reported immediately to the canine handler's immediate supervisor, and the Regional Coordinator.

2. The canine should be groomed daily by the handler. Upon completion of grooming, the canine will be thoroughly examined by the handler. The canine shall not be taken to a professional groomer.

3. The canine shall not be clothed or adorned in any manner solely for cosmetic purposes (Le., painted nails, bandanas, bows, etc.).

4. Breeding of Department canines is prohibited.

**30.02 Maintenance.** The selection of a well-trained and experienced veterinarian is critical to the well-being of the canine. Each handler should be selective as to whom they employ to care for the canine. A well established veterinarian in the community, one who understands not only canines but also law enforcement canines, should be employed.

The veterinarian should be available 24 hours a day in case of an emergency, provide individual instruction to the handler on canine nutritional needs and disease recognition, and be willing to maintain separate medical records for the canine. Additionally, the veterinarian's place of business should be located within reasonable distance of the handler's residence.

Upon selection of the local veterinarian the canine handler should notify his/her immediate supervisor, the Regional Canine Training Coordinator, and the State Canine Program Coordinator of the name, address, and telephone number of the veterinarian selected.

Upon taking possession of a canine, the canine handler will arrange to have the canine thoroughly examined by a veterinarian. The selected veterinarian will update any inoculations that are needed. At this examination, the veterinarian should prescribe the monthly or daily medication needed to prevent heartworm or hookworm infections. Any deviation from this policy will require justification from the attending veterinarian and approval of the State Canine Program Coordinator. Any medical records and x-ray accompanying the canine should be turned over to the veterinarian and kept in the canine's medical file. All medical records, excluding x-ray, will be copied and one copy kept by the canine handler in his office, one copy will be kept in the canine vehicle at all times, and a copy will be forwarded to the State Canine Program Coordinator to be placed in the canine's permanent file.

After the initial visit with the veterinarian, it is anticipated that, except for any necessary emergency care, the canine's veterinary needs will be limited to a general checkup every four months and a complete physical each year.

1. During every four-month visit to the veterinarian, the canine should be examined to determine its general state of health and run complete blood chemistries.

2. During a yearly visit to the veterinarian, the canine should be examined to determine its general state of health. A blood analysis to determine any evidence of disease and feces examination to determine parasite infestation should be conducted during the examination. Inoculation for rabies, parvo, DA2PPPL4 and DHL shall all be kept current. Dental prophylaxis will be completed as needed.

3. X-rays should only be taken when there is suspicion of a specific type of injury. Excessive X-rays, combined with medication administered to anesthetize the canine may jeopardize the canine's health. Whenever possible, anesthesia should be avoided.

4. The canine handler will coordinate all veterinary care, not of an emergency nature, with the canine handler's immediate supervisor.

5. Veterinary care of an emergency nature may be performed by any available licensed veterinarian. The canine handler's immediate supervisor will be notified as soon as practical of the emergency.

a. At the first opportunity following the emergency, the handler's immediate supervisor, Regional Training Coordinator (or Explosive Detector Canine Program Coordinator) and State Canine Program Coordinator will be advised of the nature of the injury, how it occurred, diagnosis, and the treating veterinarian.

b. The appropriate in-line supervisor of the canine handler will notify the State Canine Program Coordinator of any emergency care or treatment of the canine by telephone, by the next business day.

6. Each drug detector canine handler will be furnished two (2) 1ml syringes and two (2) 0.4 mg per ml ampoules of Narcan. The syringes and ampoules should be checked periodically by the handler to ensure that they have not been damaged and that they are not beyond their expiration date. One syringe and ampoule should be carried in the canine vehicle at all times for emergency use. The other syringe and ampoule should be stored in a cool secure place in the handler's office until needed.

7. All veterinary care will be documented by the canine handler; a copy will be mailed to the State Canine Program Coordinator.

8. Department canines will be licensed within the communities of residence, if required.

### **30.03 Feeding**

1. In order to maintain a good state of health, the daily diet of the Department detector canines must be strictly controlled. The normal nutritional requirements necessary to maintain a canine functioning under the stress of detector work environment are provided by any dry commercial canine food. The food should have a protein content from 27 to 30 percent, fat content from 20 to 23 percent, and its main ingredient is chicken (such as Purina Performance, Eukanuba, ProVisions Pro Plan or Science Diet) and should be fed to all Department canines unless a special diet is prescribed by a veterinarian to meet the needs of a particular canine.

If the veterinarian prescribes a special diet, the handler's in-line supervisor and State Canine Program Coordinator will be notified.

2. Canine handlers are responsible for ensuring that an adequate supply of approved canine food is on hand at the kennel. The State Canine Program Coordinator must approve any change of approved canine food. The canine handler is also responsible to ensure that a food stock level rotation procedure is established that ensures the oldest food is fed first. All canine food will be stored in rodent proof containers.

**30.04 Transportation of the Canine.** While conducting state business, the canine shall be transported in the canine patrol vehicle. While in transport, the canine will remain in the canine carrier. Because the canine is not secured in the vehicle, the handler should consider the welfare of the animal before participating in pursuits or other emergency driving situations. This is not, however, intended to prevent canine handlers from taking the appropriate enforcement actions necessary to perform their duties.

When the canine is left unattended in the vehicle and out of the handler's immediate view, the handler will ensure that the canine has water, the vehicle is locked, and, if equipped, the anti-theft device activated. The vehicle's climate control system should be set at an appropriate temperature and the temperature monitor must be activated. The handler shall wear the temperature monitor pager any time the canine is left in the vehicle unattended.

### **30.05 Canine Bite and Injury Procedures**

All canine bites and injuries to canines, trainers, or anyone else having contact with the canine, must be reported immediately to the canine handler's supervisor.

The following procedures shall be followed when a canine bites or injures any person whether on or off duty:

1. Provide all necessary first aid and arrange for any necessary medical attention for the victim.



2. Contact the first-line supervisor immediately. The first-line supervisor will conduct an investigation into the incident.

3. The handler will prepare a detailed written memorandum explaining the incident. A Personal Injury or Property Damage Report (HQ-12) will also be completed.

4. Written statements from the victim and any witness shall be obtained.

5. If possible or practical, color photographs of the injured area as well as full body photographs of the victim are to be taken.

6. Copies of victim's medical treatment records shall be obtained, if possible.

7. The complete report package should be forwarded through channels with a copy to the State Canine Program Coordinator.

8. If the victim is a Department employee, all necessary Workers' Compensation forms shall be completed in accordance with instructions listed in the General Manual.

9. The handler shall send a teletype through channels with preliminary details of the incident.

**30.06 Damage as a Result of Canine Action.** When conducting canine searches, care should be taken to prevent damage to the property of any involved person. Should damage occur, the canine handler shall:

1. Notify his/her immediate supervisor who shall investigate the incident.

2. Photograph the damage and take statements from witnesses.

3. Complete a Personal Injury or Property Damage Report (HQ-12) as required by policy.

### **30.07 Injury to the Canine Handler**

1. Medical attention shall be requested immediately for a seriously injured canine handler. In instances where the canine is not secured, an untrained officer shall not approach the injured handler except:

a. When given clearance to so do by the injured handler.

b. When the canine can be called away from the injured handler and secured.

2. On-scene officers shall attempt the following procedures to secure a canine of an injured handler:

a. Attempt to call the canine to a secure location using a towel or retrieving dummy to attract the canine.

b. If necessary, contact another handler to secure the canine.

**30.08 Injury to the Canine.** In the event that emergency medical services are required, first aid shall be applied and the canine shall be transported to the canine's normal veterinarian, or if unable to contact the canine's normal veterinarian, the canine may be taken to any licensed veterinarian.

The in-line supervisor shall be notified as soon as possible after attending to the canine.

In non-emergency medical situations, the handler shall advise the in-line supervisor prior to transporting it to the veterinarian. No surgery except emergency surgery will be performed without prior notification of the State Canine Program Coordinator. If a canine dies unexpectedly or as a result of injuries that are unexplainable, the District Commander will determine if a necropsy (an animal autopsy) will be performed.

**30.09 Retirement of the Canine.** The average working life of a law enforcement canine is six to eight years. The Assistant Director of Texas Highway Patrol may retire a canine as he deems appropriate. If a canine is no longer productive or its health prevents it from performing its duties satisfactorily, the canine shall be retired.

The justification for retirement shall be documented on a memorandum from the canine handler with substantiation from the canine's veterinarian, or in-line supervisor, or Regional Drug Detector Canine Training Coordinator, Explosive Detector Canine Program Coordinator, and State Canine Program Coordinator.

1. The intended disposition of the canine shall be articulated in the memorandum.
  - a. The canine will normally be awarded to the canine's handler if the handler wishes to keep the animal.
  - b. In the event that the handler does not wish to keep the canine, the State Canine Program Coordinator shall make a determination of the most humane disposition. Generally, the Department would retire the canine to a good home, with an ownership liability transfer document, that consists of a letter from the Assistant Director of the THP Division.

#### **27.35.00 PROCEDURES FOR REQUESTING A DRUG DETECTOR CANINE TEAM**

**35.01** Canine teams may be requested by members of the Department when they have reasonable suspicion that criminal activity involving drugs, or drug-related currency or contraband exists. A team may also be requested under other circumstances as permitted by this policy.

It must be recognized that canine teams may not be able to respond for several reasons:

1. The canine is unavailable due to illness, training, overworked.
2. The handler is unavailable due to duty status: off, ill, in-service training, etc.

The safety and fatigue of the canine must be considered before making any assignment. The handler should consider the welfare of the animal before participating in pursuits or other emergency driving situations.

Troopers working in the vicinity will be notified anytime the canine unit is on routine patrol. Schedules will need to be coordinated with other services, and when requested and possible, the canine team will work with the Commercial Vehicle Enforcement Service at weigh strips.

This does not in any way alter the current policy of prohibiting the creation of a drug interdiction unit. All applicable laws and procedures concerning searches must be strictly adhered to and closely monitored by the District Commanders.

**35.02** One or more of the following conditions must be present prior to requesting a DPS or any other law enforcement agency canine team.

1. Articulate reasonable suspicion that a controlled substance is present, supported by consent to search from the owner or person in charge of the vehicle, building, or premises to be searched.

2. Probable cause to support a search, under circumstances dispensing with the requirement of a search warrant, such as probable cause to search a vehicle, probable cause under exigent circumstances, etc.

3. A valid search warrant.

4. A search that is made incident to an arrest.

5. A free air screen may be conducted on a vehicle without consent from the owner or person in charge of the vehicle provided the canine is close enough to arrive on the scene and conclude the free air screen before the officer concludes his original investigation.

6. A free air screen may be conducted on a vehicle without consent from the owner or person in charge of the vehicle provided that there is articulable reasonable suspicion that a controlled substance is present and the violator is not detained an unreasonable amount of time while waiting for the canine team to arrive on the scene. A free air screen may be conducted on a premises or building, without consent from the owner or person in charge provided there is articulable reasonable suspicion that a controlled substance is present and the areas searched are accessible to the public.

NOTE: Canines will not be used in the inventory process.

**35.03** The following should be considered by the handler before responding to a request for a canine search.

1. The time it will take for a canine team to respond.

2. The distance that a canine team will have to travel.

3. The circumstances of the search: i.e., traffic stop, safety checkpoint, and building search warrant.

When a canine team does deploy to a request for a search, the handler shall notify Communications of his/her status and give his/her estimated time of arrival to the search scene. The final decision on whether or not to respond is the responsibility of the canine handler. Department canine handlers will not be constrained by sergeant area, district, or regional boundary lines. Once the canine team has arrived at the search location, the canine handler will take charge of the canine search. The responsibility for the investigation remains with the originating officer.

When the canine team search results in the seizure of drugs, currency, and/or contraband, it is the requesting trooper's/investigator's responsibility to complete all investigative reports and file the proper charges. The canine handler will complete the Canine Search Report (HQ-56) and give the investigating officer a copy.

Requests for canine teams to assist with CID searches should be made to the canine handler's immediate supervisor who will make scheduling arrangements.

Requests for canine teams at traffic safety checkpoints, Commercial Vehicle Enforcement weigh strip assignments, and task force operations shall be made to the handler's supervisor. As these are normally planned events, sufficient notice shall be given to the canine teams in order to assist in scheduling. Canine teams should work routine patrol activities during traffic safety checkpoints or task force operations and will be utilized to search vehicles that meet the criteria of this policy.

Requests from other agencies for canine teams will be directed to the canine handler's supervisor. The supervisor will determine whether or not to respond to other agency requests.

#### **27.40.00 UTILIZATION OF DRUG DETECTOR CANINES**

Techniques used to examine areas remain essentially the same as when executed without a drug detector canine. Regardless of size, each portion of the area to be examined should be thoroughly screened by the canine handler. Systematic employment procedures are essential for effectiveness and should be followed in the exact manner in which the canine was trained. Canines shall be employed "on leash" and under the direct control of the handler. This prohibits the canine from haphazardly wandering, and affords the handler the opportunity to direct the canine in his examination. When utilizing a canine team, the area to be searched should not be disturbed prior to the canine team's arrival and items should not be removed from the area, because this could contaminate the area to be searched.

The handler must use his/her initiative, never overlooking the obvious, and indicate to his canine each area which should be examined.

To ensure maximum effectiveness, the canine should be worked as long as he maintains his/her interest in a detection operation. This will normally vary from one canine to another, depending on the canine's attitude and complexity of the operation. There are various other facets such as climatic conditions, etc., that will be influencing factors which contribute to how long a canine may be continuously employed in an operation. Normally, a canine can be expected to work continuously for about twenty to thirty minutes, although this can vary significantly either way. When the handler notices that his/her canine is losing interest in an examination, a short rest will restore the canine's interest, or a task-related training exercise will stimulate toward further employment.

While drug detector canines have many times proven their value under actual working conditions, certain factors may often limit their successes. Among these factors are utilizing improper employment techniques, working the canine when he/she is fatigued or subjected to excessive distractions, and overestimating the canine's ability to perform a specific task. Proper planning, careful supervision, realistic employment, and adherence to basic principles can overcome most of these limitations.

Drug detector canines are particularly useful and should be fully utilized to search passenger vehicles and other conveyances, cargo, buildings, and premises. A detector canine team should not be restricted to anyone activity. When the canine is employed, the handler is responsible for the canine's safety and must not endanger his/her animal through careless or hazardous employment.

In order to be effective during drug detection operations, there must be cooperation, and never an atmosphere of competition, between the canine handler and his co-workers.

Department canines will not be used to search an area or a vehicle that has already been searched by another agency's canine.

#### **27.45.00 DEPLOYMENT CONSIDERATIONS**

The following is a discussion of operational areas in which a canine should or should not be employed.

**45.01 Vehicles.** The canine's capability should be used to the maximum in this particular area.

When a canine is employed to examine a vehicle for drug odors, it should be accomplished before being examined by another officer for the same purpose. This eliminates the possibility of freshly disturbed areas, in the vehicle, attracting the canine's attention, which in many cases may distract him/her from conducting a detailed examination.

The proper method for utilizing a canine to examine a vehicle is as follows: When a suspect vehicle is to be examined by the canine, all occupants must be removed from the vehicle. The vehicle shall be sealed by rolling up the windows and closing the doors. The vehicle occupants should be a safe distance away in order to allow the handler and canine to examine the vehicle without interference. The vehicle should be examined, using the appropriate vehicle examination sequence.

The handler must closely observe the canine's reaction when examining all vehicles. In some cases, the canine may indicate a "general interest" or "abnormal reaction" if he detects a drug odor but is unable to locate its source. The handler must pay particular attention to the canine's reaction and recognize the canine's detection indications in this type situation.

When examining vehicles with a canine, the handler must ensure that the canine does not soil or otherwise damage the upholstery of the vehicles.

**45.02 Cargo.** Detector canines should be utilized to examine freight on commercial vehicles, warehouses, and in other areas where cargo is held. When large containers are examined, they may have to be opened and the cargo separated. This permits the canine to conduct a close examination of the contents. When it is necessary for the canine to climb on stacks of cargo, caution must be exercised and appropriate accommodations made. When a canine is employed to examine a truckload of merchandise, the truck may have to be unloaded sufficiently to allow examination of all areas of the conveyance and merchandise.

**45.03 Open Area Searching.** A drug detector canine is an extremely effective aid to be used in a search for drugs in a large open area. In cases like this, the canine's ability to detect and respond to drug odors being carried through the air can be a timesaving factor that will greatly enhance the effectiveness of the operation of such a mission.

**45.04 Buildings.** The capability of a drug detector canine to assist in searching for drug odors inside buildings is of great value. Depending upon the size of the building, there can be literally hundreds of places drugs could be concealed. The canine's ability to assist in the examination will definitely prove effective in expediting the operation. In buildings, as in other such large areas, the handler must closely observe the canine for indications of an "abnormal reaction." In many situations, the air currents in those locations will make a drug odor available for the canine to detect, but will adversely affect the ability to trace and locate its source.

**45.05 Passengers/Individuals.** Positive trained detector canines shall not be employed to examine persons for drugs. However, if a canine breaks the search pattern in obvious pursuit of an airborne drug scent that leads to a person standing upwind, the canine should be allowed to proceed but stopped short of making physical contact with a suspected body carrier. The immediate area in which the canine is working should be cleared of all unnecessary persons. Since some people have an inordinate fear of canines or are allergic to them, canines should not be employed in extremely close proximity to people.

Detector canines may also be utilized to search small aircraft, boats, and mail facilities if required.

## **27.50.00 TRAINING**

**50.01 General.** Since the quality of proficiency training is the single most influencing factor affecting day-to-day performance reliability, its importance cannot be overemphasized. Proficiency training is divided into two categories, task and non-task related. Each compliments and supports the other and both must receive continuous attention.

Task-related training is concerned with the animal's attitude and performance in the normal Department work environment. It is through this medium that the animal's motivation is maintained and performance shortcomings are identified.

Non-task related training is concerned with response and must be conducted at locations other than the canine's normal work environment. Non-task related training is designed to correct employment shortcomings and maintain the detection/response capability.

Handlers must report any developing signs of canine aggression toward people. Appropriate remedial action must immediately be taken to dispel any aggressive tendencies toward humans.

**50.02 Proficiency Training.** Maintaining the proficiency of a detector canine is the primary responsibility of the individual handler. It must be strongly emphasized that for detector canines to maintain proper proficiency there must be continuous training with various amounts and all types of drug substances, which the canine possesses the capability to detect. To ignore proficiency training will result in total regression of the canine's detection capability. A minimum of eight (8) hours per week of proficiency training is required. This can be waived by the State Canine Program Coordinator in disasters, criminal investigations, and other such activities.

Proficiency training, and the procedure of rewarding the canine, must be conducted in the same manner as the basic sequence used to initially train the canine. Each exercise must be realistic and challenging to the canine. Training aids concealed in outer containers such as boxes, luggage, pipe, etc., should be prepared a minimum of twelve (12) hours prior to their use.

During proficiency training, the handler must use extreme caution to prevent contaminating the drug training aids with his/her odor. The handler shall always wear plastic gloves when working with training aids. Also, the handler should not always conceal drug training aids in exercises for his/her own canine. Nor should he/she always know where the drug training aid is concealed. This will result in a more realistic exercise and will eliminate the human factor of possibly influencing the canine to only examine the particular area of drug concealment.

Assistance to build training aids and conduct proficiency training exercises should be coordinated with the handler's immediate supervisor. The assistance can be solicited from coworkers in the handler's immediate area and adjoining areas. The handler is required to have assisted training every week. Every handler shall have a minimum of 10 assisted exercises per week. These exercises will be unknown hides for the handler and the canine.

A Department canine will NOT be trained to detect any odor except those approved by the State Canine Program Coordinator.

**50.03 Proficiency Training Evaluations.** Training evaluations of the drug detector canine teams will be conducted on the following schedule: February, June, August, October, December.

The Regional Canine Training Coordinator will conduct this evaluation. A minimum of eight (8) exercises including soft and hard narcotics will be used. Exercises must be realistic and challenging to the canine. If a canine team receives a rating less than satisfactory on a proficiency report, the State Canine Program Coordinator will be notified. The State Canine Program Coordinator will arrange for the canine team to receive remedial training.

All proficiency training evaluations will be documented on a Performance Evaluation Report (HQ-57) and forwarded to the immediate supervisor and State Canine Program Coordinator.

**50.04 Annual Certification.** Every Department handler/canine team will be required to certify annually in April. The performance standard to be applied will exceed or meet a strictly controlled duplication of the U.S. Customs Service Canine Enforcement Proficiency Certification System as outlined in U.S.C.S. Directive Number 3290-05 as amended. These standards relate to the detection of heroin, cocaine, marijuana, methamphetamine, and hashish.

## **27.55.00 CONTROLLED SUBSTANCE TRAINING AIDS**

The purpose of this section is to establish specific control procedures for the storage, use, destruction, and accountability of all controlled substances issued to the Department Canine Handlers, Regional Drug Detector Canine Coordinators, and the State Canine Program Coordinator for drug detector canine training. For the purpose of this policy, the reference to controlled substance training aids will include heroin, cocaine, marijuana, hashish, methamphetamine and other controlled substances as future needs dictate.

The State Canine Program Coordinator is responsible for implementation of this operating procedure. The Regional Canine Training Coordinators and individual canine handlers are responsible for complying with its provisions.

**55.01 Procurement of Controlled Substances.** The State Canine Program Coordinator will be responsible for approving the type and amounts of training aids utilized by the handlers and Regional Drug Detector Canine Coordinators. The State Canine Program Coordinator will work directly with the Headquarters Laboratory personnel and appropriate CID Drug Program personnel in developing a training aid issuance procedure.

The authorized handlers will be issued training aids for marijuana, pseudo cocaine, pseudo methamphetamine and pseudo heroin in the amounts approved by the State Canine Program Coordinator. The marijuana will be obtained from the headquarters of the CID Drug Program. The other aids will be obtained directly from the Headquarters Laboratory.

The authorized Regional Drug Detector Canine Coordinators will be issued marijuana, cocaine, heroin and methamphetamine in the amounts approved by the State Canine Program Coordinator. The marijuana will be obtained directly from the headquarters of the CID Drug Program. The other aids will be obtained directly from the Headquarters Laboratory.

The State Canine Program Coordinator may be issued marijuana, hashish, cocaine, heroin, and pseudo material for annual certification. The marijuana will be obtained directly from the headquarters of the CID Drug Program. The other aids will be obtained directly from the Headquarters Lab.

Laboratory personnel are responsible for keeping an audit log of the controlled substances issued by them. Each training aid package must be given an identification number for audit purposes. When making training aids other than marijuana for this program, one laboratory chemist must observe another chemist weigh the controlled substances that are placed in the scent packet. The Canine Training Aids Receipt for Controlled Substance Report (HQ-59), or other receipt that is approved by the headquarters laboratory, should be used for this purpose. Both chemists who were involved in weighing the substance should sign in the issuing officer section of the report. A copy of the Canine Training Aids Receipt for Controlled Substance will, for audit purposes, be forwarded to the State Canine Program Coordinator and the individual's Regional Canine Training Coordinator.

The headquarters CID Drug Program personnel will be responsible for ensuring the accountability of the marijuana issued under this program. The same procedure should be used in obtaining other controlled substances from the lab except no laboratory chemist will be involved unless the integrity of the substance is in question.

When the controlled substances can no longer be utilized for training purposes due to deterioration, age, etc., they will be returned to the Headquarters Laboratory or Headquarters of the CID Drug Program for disposal using the reverse procedure of the procedure utilized in obtaining the controlled substances.

The laboratory chemist will make any tests or examinations deemed necessary to ensure the integrity of the program that provides controlled substances for drug detector canine training.

### **55.02 Storage**

1. All drugs, including those in training aid form, when not in use will be secured in an appropriate safe or approved storage cabinet. The location of the safe or storage cabinet will be approved by the Regional Canine Training Coordinator. The locking device used must, at a minimum, be a three position combination lock. Only the canine handler and State Canine Program Coordinator will possess the combination and/or be allowed into the controlled substance safes or approved cabinet. Heroin, methamphetamine, cocaine and pseudo heroin and pseudo cocaine will not be stored in the same location as marijuana and hashish. Access to all controlled substance storage areas will be restricted.

2. A sufficient amount of controlled substances will be issued to each canine handler and Regional Drug Detector Canine Coordinator currently engaged in training drug detector canines. The drugs, when not in use, will be stored and secured in a separate safe or locked cabinet. When the canine handler or Regional Drug Detector Canine Coordinator no longer has need of the controlled substances, they will be inventoried, receipted, and returned to the issuing location.

3. The Regional Drug Detector Canine Coordinator is to be notified immediately of any changes in the storage area or security of storage area. The Regional Canine Training Coordinator will ensure that the handler has the appropriate safe location to store large training aids until they are used.

4. Training Aid Accountability Form (HQ58) will be kept at the location of the training aid storage. Anytime a controlled substance training aid is removed or replaced in the safe, the appropriate entries will be entered on the HQ-58. The HQ-58 form will be closed on December 31st of each year and copies forwarded to the Regional Canine Coordinator and the State Canine Program Training Coordinator.

### **55.03 Training Aids**

1. When any training aid is damaged, by whatever means, and any controlled substance is emitted from the aid, an attempt must be made to recover as much spillage as possible. Any substance that cannot be recovered must be destroyed or otherwise rendered unfit for use. The canine handler or Regional Drug Detector Canine Coordinator to whom it was issued will prepare a Canine Controlled Substance Training Aid Incident Report (HQ-60). The damaged aid belonging to a handler and the report will be turned over to the Regional Drug Detector Canine Coordinator as soon as practical or within 10 working days. The canine handler, in the presence of the Regional Drug Detector Canine Coordinator, will place the damaged aid in a plastic bag and seal the bag. The Regional Drug Detector Canine Coordinator and the canine handler will then sign their names across the seal with approval from the Regional Drug Detector Canine Coordinator. The handler may turn in the damaged aid and receive a replacement from the headquarters laboratory in Austin instead of turning the aid over to the Regional Drug Detector Canine Coordinator

2. Appropriate entries must be made in the Training Aid Accountability Report (HQ-58) to indicate any loss and/or reissue of controlled substances.

3. In the event a controlled substance training aid (marijuana, hashish, heroin, methamphetamine, or cocaine) is lost or cannot be accounted for, the canine handler or Regional Drug Detector Canine Coordinator responsible will immediately notify the State Canine Program Coordinator and the in-line chain of command.

4. All thefts of controlled substances and any unexplained loss of controlled substances are required to be reported and an investigation will be conducted by the District Commander, or his designee, of the canine handler or Regional Drug Detector Canine Coordinator.

5. Handlers will be responsible for conducting an inventory of all training aids used during training. This inventory must be conducted prior to leaving a training area or discarding any waste.

### **55.04 Training Aid Accountability**



1. An accounting of all controlled substance training aids issued to canine handlers will be inventoried on the Training Aid Accountability Report (HQ-58) by the Regional Drug Detector Canine Coordinator every six months and a copy of the report will be sent to the State Canine Program Coordinator. An accounting of all controlled substance training aids issued to the Regional Drug Detector Canine Coordinator will be inventoried in the same manner by the State Canine Program Coordinator annually.

2. All Training Aid Accountability Reports will be kept two years and then destroyed.

3. At the time of inventory, all controlled substance training aids will be checked by number and quantity of aids in possession and logged on the appropriate accountability record (HQ-58).

## **27.60.00 REPORTING**

**60.01** Canine handlers will normally charge all time spent caring for, and maintaining the canine to canine maintenance on the Texas Highway Patrol Canine Weekly Report. Training time will be shown under canine training on the Texas Highway Patrol Canine weekly report. Time spent searching should be charged to Criminal Activity. This includes en route to and from a search scene. Time spent at the veterinarian will be shown under veterinarian on the Texas Highway Patrol Canine weekly report. Time spent washing and rolling towels or building training aids will be shown under Training Aid Construction on the Texas Highway Patrol Canine weekly report. Time spent disinfecting the vehicle and kennel will be shown under disinfecting vehicle / kennel on the Texas Highway Patrol Canine weekly report.

In order to maintain an account of the canine's history, appropriate training and utilization reports must be accurately maintained. These field reports are analyzed and serve to assist in improving methods of training and utilizing drug detector canines.

Particular care must be exercised in the completion of these reports to ensure identification of canine, handler, and location of assignment and to ensure that all figures are accurate. The program reports are:

1. Texas Highway Patrol Canine Weekly Report (THP-2A)
2. Drug Detector Canine Search Report (HQ-56)
3. Drug Detector Canine Team Performance Evaluation (HQ-57)
4. Controlled Substance Training Aid Reports
  - a. Training Aid Accountability Report (HQ-58)
  - b. Canine Training Aids Receipt for Controlled Substance (HQ-59)
  - c. Canine Controlled Substance Training Aid Incident Report (HQ-60)

## **27.65.00 PROCEDURES FOR REQUESTING AN EXPLOSIVE DETECTOR CANINE TEAM**

Explosive detector canine teams may be requested by members of the Department when:

1. A bomb threat has been received.
2. VIP protective sweeps for explosives are needed.

A team may also be requested under other circumstances as permitted by this policy.

#### **65.01 Point of Contact and Approval for Deployment of an Explosive Detector Canine Team**

1. Requests by Department personnel for explosive detector canine teams to search/scan a location within the Capitol Complex for explosives should be directed to the Department's Austin Communications Center. Communications personnel have the on-call listing of canine handlers and can make notification.

2. Requests for explosive detector canine teams to assist the Executive Protection Bureau shall be made to the Explosive Detector Canine Program Coordinator who will make scheduling arrangements.

3. Requests for explosive detector canine teams to search locations outside of the Capitol Complex must be approved by the Capitol Region Commander or his designee.

4. Requests from other agencies for canine teams should be directed to the Explosive Detector Canine Program Coordinator who will evaluate the request and notify the Capitol Region Commander of the request for service.

**65.02** It must be recognized that canine teams may not be able to respond for several reasons.

1. Canine unavailable due to illness, training, overwork.
2. Handler unavailable due to duty status: off, ill, in-service training, etc.

The safety and fatigue of the canine must be considered before making any assignment. The handler should consider the welfare of the animal before participating in pursuits or other emergency driving situations.

**65.03** The explosive detector canine handler shall complete the following when responding to a canine search.

When an explosive detector canine team does deploy for a search, the handler shall notify Communications of his/her status and give his/her estimated time of arrival to the search scene. The handler shall notify or cause Communications to notify the Explosive Detector Canine Program Coordinator and the Capitol Region Commander that the canine team has deployed. The final decision on whether or not to respond is the responsibility of the Explosive Detector Canine Program Coordinator with the concurrence of the handler.

Once the canine team has arrived at the search location, the canine handler will take charge of the canine search. The responsibility for the investigation remains with the originating officer. The handler will ensure that while searching the area all personnel in the area to be searched have their portable radio and cell phones turned off. The handler shall not have a portable radio, Taser or cell on his person while searching or handling explosives.

Upon arrival/contact with a requesting official, the canine handler should fully investigate the circumstances of the request. The handler should make sure they ascertain the following information.

1. What is the request for?
2. Is it safe to conduct the search?
3. Is the canine trained to detect what they are being asked to search for?
4. Is the search within the physical capabilities of the team?

5. What is the urgency of the search?
6. What is the expected outcome of the search?

The canine handler should plan a concise course of action. The plan should include.

1. Prioritization of search areas
2. Search Sequence
  - a. outside to inside
  - b. bottom to top
  - c. left to right
  - d. Public to private
3. Planned breaks for canine
4. Planned placement of motivational aids
5. Brief officials on plan

The canine handler will complete the Explosive Detector Canine Search Report (HQ-56E) whenever the team conducts a search. Explosive Detector Canine Search Reports need NOT be completed for searches conducted during routine assignments to fixed posts unless explosive materials are found.

The handler will NOT declare a building/area/item safe or clear of explosives materials/devices.

## **27.70.00 UTILIZATION OF EXPLOSIVE DETECTOR CANINES**

Techniques used to examine areas for explosive materials or an improvised explosive device (IED) remains essentially the same as when executed without an explosive detector canine. Regardless of size, each portion of the area to be examined should be thoroughly screened by the canine handler. Systematic employment procedures are essential for effectiveness and should be followed in the exact manner in which the canine was trained. Canines shall normally be employed "on leash" and under the direct control of the handler. This prohibits the canine from haphazardly wandering, and affords the handler the opportunity to direct the canine in his examination.

The handler must use his/her initiative, never overlooking the obvious, and indicate to his canine each area that should be examined.

To ensure maximum effectiveness, the canine should be worked as long as he maintains his/her interest in a detection operation. This will normally vary from one canine to another, depending on the canine's attitude and complexity of the operation. There are various other facets such as climatic conditions, etc., that will be influencing factors which contribute to how long a canine may be continuously employed in an operation. Normally, an explosive detection canine can be expected to work continuously for about forty-five minutes to an hour, although this can vary significantly either way. When the handler notices that his/her canine is losing interest in an examination, a short rest will restore the canine's interest, or a task-related training exercise will stimulate the canine toward further employment.

While explosive detector canines have many times proven their value under actual working conditions, certain factors may often limit their successes. Among these factors is utilization of improper employment techniques, working the canine when he/she is fatigued or subjected to excessive distractions, and overestimating the canine's ability to perform a specific task. Proper planning, careful supervision, realistic employment, and adherence to basic principles can overcome most of these limitations.

Explosive detector canines are particularly useful when searching buildings, passenger vehicles and other conveyances, cargo, and open areas for the presence of explosive materials. A detector canine team should not be restricted to anyone activity. When the canine is employed, the handler is responsible for the canine's safety and must not endanger his/her animal through careless or hazardous employment.

When utilizing a canine team, the area to be searched should not normally be disturbed prior to the canine team's arrival and items should not be removed from the area, because this could contaminate the area to be searched. However, a good visual inspection of the area prior to the deployment of an explosive detector canine should always be conducted unless:

1. Time does not allow a visual search be conducted prior to the deployment of the canine team.
2. The canine handler specifically requests that the area not be disturbed prior to his/her arrival.

A suspicious package is any package, which based on the totality of the circumstances, may not belong in the environment in which it has been located. Furthermore, any action or circumstance that makes the package suspicious; e.g., packages that are witnessed to be purposely abandoned, backpack or bags left in secure areas and single items such as packages left unattended.

Unattended packages/ items are any item when looking at the totality of the circumstances, would normally be present in the environment in which it was found; e.g., a briefcase left in a conference room or a beverage cooler at a football game.

The canine handler shall make the distinction between suspicious items and unattended items.

#### 1. Suspicious Items

- a. There is a threat associated with the item and/or location.
- b. Suspicious circumstances or persons are affiliated with the items.
- c. There are outward signs of an explosive device, such as oily stains; discoloration; protruding wires; tinfoil; strange odors; or visual indicators.
- d. There is unusual or excessive exterior packaging.
- e. Another device has already been located and identified within the location or event.

#### 2. Unattended Items

- a. There is not a specific threat associated with the item.
- b. There is not a suspicious activity associated with the item.
- c. The "unattended item" is consistent with the particular venue.

d. There are no external indicators typically associated with an explosives device.

Any “suspicious” items that are detected during a visual or canine search and that are suspected of being an IED should not be disturbed. If a suspicious item is located, secure the area and contact your local bomb squad to investigate further. Explosive detector canine teams SHOULD NOT be utilized to search/scan any item believed to be an IED. (Note: Unattended items should not “automatically” be classified as “suspicious” or an IED.)

## **27.75.00 DEPLOYMENT CONSIDERATIONS**

The following is a discussion of operational areas in which a canine should or should not be employed.

**75.01 Buildings.** Explosive detector canine teams routinely scan/search the various state owned buildings for explosives. The capability of an explosive detector canine to assist in searching for explosive materials inside buildings is of great value. There can be literally hundreds of places explosives could be concealed depending upon the size of the building. The canine’s ability to assist in the examination will definitely prove effective in expediting the operation. In buildings, as in other such large areas, the handler must closely observe the canine for indications of an “abnormal reaction.” In many situations, the air currents will make an explosive odor available for the canine to detect, but will adversely affect the ability to trace and locate its source. For safety reasons, canine handlers should never move or manipulate anything in the area to be searched unless it is absolutely necessary.

**75.02 Vehicles.** When a canine is employed to examine a vehicle for explosive odors, it should be accomplished before being examined by another officer for the same purpose. This eliminates the possibility of freshly disturbed areas, in the vehicle, attracting the canine’s attention, which in many cases may distract him/her from conducting a detailed examination.

The handler must closely observe the canine’s reaction when examining all vehicles. In some cases, the canine may indicate a “general interest” or “abnormal reaction” if he detects an explosive odor but is unable to locate its source. The handler must pay particular attention to the canine’s reaction and recognize the canine’s detection indications.

When examining vehicles with a canine, the handler must ensure that the canine does not scratch the paint of vehicles, soil, or damage the upholstery of the vehicles.

**75.03 People/Individuals.** Passive response detector canines may be employed to examine areas for explosive materials where people are present. Individuals are not normally scanned by canine teams. However, if a canine breaks the search pattern in obvious pursuit of an airborne explosive odor that leads to a person, the canine should be allowed to proceed but stopped short of making physical contact with a suspected body carrier.

**75.04 Open Area Searching.** An explosive detector canine is an extremely effective aid to be used in a search for explosives in a large open area. In cases like this, the canine’s ability to detect and respond to explosive odors being carried through the air can be a time-saving factor which will greatly enhance the effectiveness of the operation of such a mission.

The immediate area in which the canine is working should be cleared of all unnecessary persons. Since some people have an inordinate fear of canines or are allergic to them, canines should not normally be employed in extremely close proximity to people.

**75.05 Cargo/Luggage.** Detector canines can be utilized to examine commercial vehicles, warehouses, and in other areas where cargo is held. Canines should not climb on stacks of cargo to search for explosive materials.

An explosive detector canine may also be utilized to search small aircraft, boats, and mail facilities if required.

## **27.80.00 TRAINING**

**80.01 General.** Since the quality of proficiency training is the single most influencing factor affecting day-to-day performance reliability, its importance cannot be overemphasized. Proficiency training is divided into two categories, task and non-task related. Each compliments and supports the other and both must receive continuous attention.

Task-related training is concerned with the animal's attitude and performance in the normal Department work environment. It is through this medium that the animal's motivation is maintained and performance shortcomings are identified.

Non-task related training is concerned with response and must be conducted at locations other than the canine's normal work environment. Non-task related training is designed to correct employment shortcomings and maintain the detection/response capability.

Handlers must report any developing signs of canine aggression toward people. Appropriate remedial action must immediately be taken to dispel any aggressive tendencies toward humans.

**80.02 Proficiency Training.** Maintaining the proficiency of a detector canine is the primary responsibility of the individual handler. It must be strongly emphasized that for explosive detector canines to maintain proper proficiency there must be continuous training with various amounts and all types of explosive materials, which the canine possesses the capability to detect. To ignore proficiency training will result in total regression of the canine's detection capability. At a minimum, training should be conducted daily. The training should be of a consistent quality with real world hides. This can be waived by the Explosive Detector Canine Program Coordinator in disasters, criminal investigations, and other such emergency activities.

Proficiency training, and the procedure of rewarding the canine, must be conducted in the same manner as the basic sequence used to initially train the canine. Each exercise must be realistic and challenging to the canine. Training aids concealed in outer containers such as boxes, luggage, pipe, etc., should be prepared a minimum of twelve (12) hours prior to their use.

During proficiency training, the handler must use extreme caution to prevent contaminating the training aids with his/her odor. The handler shall always wear plastic gloves when working with training aids. Also, the handler should not always conceal training aids in exercises for his/her own canine. Nor should he/she always know where the training aid is concealed. This will result in a more realistic exercise and will eliminate the human factor of possibly influencing the canine to only examine the particular area of concealment.

Assistance to build training aids and proficiency training exercises should be coordinated with the Explosive Detector Canine Program Coordinator. The handler should have assistance in conducting proficiency training a minimum of 75 percent of the time.

**80.03 Proficiency Training Evaluations.** On a bi-monthly basis, every odd numbered month each canine team is to be objectively evaluated to determine proficiency. This evaluation will be conducted by the Explosive Detector Canine Program Coordinator. If a canine team receives a rating less than satisfactory on a bi-monthly proficiency report, the State Canine Program Coordinator and the Capitol Region Commander will be notified. The team will not be deployed until they can meet satisfactory proficiency.

All bi-monthly proficiency training evaluations will be documented on an Explosive Detector Canine Performance Evaluation Report (HQ-57E) and retained by the Explosive Detector Canine Program Coordinator.

**80.04 Annual Certification.** Every Department explosive handler/canine team will be required to certify in May annually. The performance standard to be applied will be approved by the Explosive Detector Canine Program Coordinator and State Program Coordinator.

## **27.85.00 EXPLOSIVE TRAINING AIDS**

The purpose of this section is to establish specific control procedures for the storage, use, destruction, and accountability of all explosive materials used for explosive detector canine training.

For purpose of this policy, the reference to explosive training aids will include Smokeless Powder, Flash Powder, Black Powder, Blasting Fuse, Safety Fuse, Chlorates (Sodium/Potassium), and Ammonium Nitrate (not ANFO). This training also includes blasting slurries, water gels, Trinitrotoluene (TNT), Composition C-4, Detonator Cord, Nitroglycerin Dynamite, Ammonia Dynamite, PETN, RDX, Semtex, and other explosive materials as future needs dictate.

The Explosive Detector Canine Program Coordinator is responsible for implementation of this operating procedure.

**85.01 Procurement of Explosive Materials.** The Explosive Detector Canine Program Coordinator will obtain and be responsible for approving the type and amounts of training aids utilized by the handlers.

The Explosive Detector Canine Program Coordinator shall be responsible for keeping an audit log of the explosive training aids. When the explosives can no longer be utilized for training purposes due to deterioration, age, etc., they will be disposed of in compliance with Federal Law and Regulations regarding explosive materials.

**85.02 Storage.** All explosive materials, including those in training aid form, when not in use will be secured in an explosives magazine or other approved storage locations. Access to all explosive material storage areas will be restricted to the explosive detector canine handlers, the Explosive Detector Canine Program Coordinator, and the State Canine Program Coordinator.

**85.03 Explosive Safety Procedures Training Purposes.** The explosives used in training are relatively safe to handle as long as proper explosive safety precautions and procedures are complied with. All personnel must exercise prudent caution at all times when handling explosives in training exercises. The following safety requirements must be adhered to.

1. At no time will blasting caps, explosive detonators, or any initiating device ever be used with an explosive material during exercises.
2. Smoking, matches, open flames and spark producing devices will not be used within 50 feet of any explosive.
3. Explosives will not be placed near any heat producing equipment emitting a temperature higher than 150 degrees Fahrenheit.
4. Handlers will be issued the approved Class D uniform as their primary uniform to avoid any static electricity issues. The Class A, B and C will be worn only for special occasions and when not deploying their canine.
5. Personnel should wear plastic gloves when handling explosives for the following reasons.
  - a. Some of the explosives used are toxic and can be absorbed into the pores of the skin, thereby causing possible ill effects.

**85.04 Transportation of Explosives.** Transportation of Explosives - Code of Federal Regulation 49 -Transportation, along with all other appropriate federal, state, and local regulations must be complied with in the transportation of explosives. Also, the following should be adhered to:

1. Explosive laden vehicles will be equipped with two approved class B-C (CO2 or dry chemical) portable fire extinguishers.
2. Vehicles used to transport explosives will be inspected prior to use, to ensure that their mechanical condition and safety devices are in good working order.

#### **85.05 Accountability of Explosive Materials**

1. An accounting of all explosive training aids will be inventoried on the Explosive Training Aid Accountability Report (HQ58E) by the Explosive Detector Canine Program Coordinator every six months and a copy of the report will be sent to the State Canine Program Coordinator.

2. Explosive Training Aid Accountability Form (HQ-58E), will be kept at the location of the training aid storage. Anytime an explosive training aid is removed or replaced in the explosives magazine, the appropriate entries will be entered on the HQ-58E. The HQ-58E form will be closed on December 31 of each year and shall be retained by the Explosive Detector Canine Program Coordinator for a period of two years.

3. At the time of inventory, all explosive training aids and explosive materials not currently in training aid form will be checked by number and weight and logged on the appropriate accountability record (HQ-58E).

#### **85.06 Training Aids**

1. Appropriate entries must be made in the Explosive Training Aid Accountability Report (HQ-58E) to indicate any loss and/or reissue of explosive training aids.

2. In the event an explosive training aid containing high explosives is lost or cannot be accounted for, the canine handler or Explosive Detector Canine Program Coordinator responsible will immediately notify the State Canine Program Coordinator and the in-line chain of command.

3. All thefts of explosive materials and any unexplained loss of explosive materials are required to be reported and an investigation conducted by the Explosive Detector Canine Program Coordinator.

4. Handlers will be responsible for conducting an inventory of all explosive training aids used during training. This inventory must be conducted prior to leaving a training area or discarding any waste.

#### **27.90.00 REPORTING**

**90.01.** Canine handlers will normally charge all time spent caring for, and maintaining the canine to canine maintenance on the Texas Highway Patrol Canine Weekly Report. Training time will be shown under canine training on the Texas Highway Patrol Canine weekly report. Time spent searching should be charged to Criminal Activity. This includes en route to and from a search scene. Time spent at the veterinarian will be shown under veterinarian on the Texas Highway Patrol Canine weekly report. Time building training aids will be shown under Training Aid Construction on the Texas Highway Patrol Canine weekly report. Time spent disinfecting the vehicle and kennel will be shown under disinfecting vehicle / kennel on the Texas Highway Patrol Canine weekly report.



In order to maintain an account of the canine's history, appropriate training and utilization reports must be accurately maintained. These field reports are analyzed and serve to assist in improving methods of training and utilizing explosive detector canines.

Particular care must be exercised in the completion of these reports to ensure identification of canine, handler, and location of assignment and to ensure that all figures are accurate. The program reports are:

1. Texas Highway Patrol Canine Weekly Report (THP-2A)
2. Explosive Detector Canine Search Report (HQ-56E)
3. Explosive Detector Canine Team Performance Evaluation (HQ-57E)
4. Explosive Training Aid Accountability Report (HQ-58E)

# **AGENCY CONTRACTS & PROCUREMENTS**

## **01.28.00.00**

### **28.01.00 AGENCY CONTRACTS**

#### **01.01 Purpose**

This policy establishes responsibility and accountability for signatories and oversight of Departmental contracts. An authorized employee's signature on a contract will reflect that employee's representation that the contract has been properly submitted, reviewed, and approved in accordance with all Departmental policies and procedures and has been determined to be in the best interest of the State of Texas.

Except where specifically noted, this policy applies to all documents which purport to bind the Department regardless of whether they are labeled as contracts, purchase orders, agreements, grants, grant awards, statements of work, work orders, memoranda of understanding, etc. All such documents are referred to as contracts in this policy. \*\*

#### **01.02 Legal References**

State procurements and contracts are governed by numerous statutes, administrative rules, and other applicable law and procedures, including without limitation, Chapters 2054, 2151, 2155-2158 and 2161 of the Texas Government Code and by administrative rules adopted by the Comptroller of Public Accounts ([CPA](#)), the Department of Information Resources ([DIR](#)), the Legislative Budget Board and the Office of the Attorney General. This includes technology and non-technology procurements and contracts. DPS will also comply with all procurement and contract posting requirements, including without limitation those described by Sections 2157.0685, 2261.253, and 2261.256 of the Texas Government Code and Rider 7.12, Title IX, General Appropriations Act, 84<sup>th</sup> Regular Session.

#### **01.03 Contract Signature Authority and Approvals**

This policy establishes responsibility and accountability for signatories of Department contracts and purchase orders. An authorized employee's signature on a contract will reflect a representation that the contract has been properly submitted, reviewed and approved in accordance with all Department policies and procedures, and that the contract is in the best interest of the state.

The following individuals are authorized to sign contracts on behalf of the Department:

1. Director;
2. Deputy Director, Law Enforcement Operations, for contracts with a total estimated value of less than \$1 million; and
3. Deputy Director, Homeland Security and Services, for contracts with a total estimated value of less than \$1 million.

No other employee may sign a contract binding the agency without a delegation of authority to do so as set out in this policy. All contracts or other agreements that require signatures or otherwise bind the agency must be submitted through the Administration Division and approved by the Office of General Counsel (OGC).

#### **01.04 Delegation of Authority to Sign Contracts**

All contracts signed under this section must follow the agency's procurement process and are subject to review and approval before they may be signed.

### **1. Director's Delegation to Assistant Directors for Non-Financial Governmental Contracts**

The Director delegates to Assistant Directors authority to sign contracts with other governmental entities that involve no exchange of money from any source [for example, zero dollar Memoranda of Understanding (MOU), Memoranda of Agreement (MOA), interagency agreements, interlocal agreements, etc.]. This delegation does not include zero dollar agreements with vendors or other non-governmental entities.

### **2. Director's Delegation to Regional Commanders for Non-Financial Governmental Contracts**

The Director delegates to Regional Commanders authority to sign operational contracts with other governmental entities that involve no exchange of money from any source [for example, zero dollar Memoranda of Understanding (MOU), Memoranda of Agreement (MOA), interagency agreements, interlocal agreements, etc.]. This delegation does not include zero dollar agreements with vendors or other non-governmental entities.

### **3. Assistant Director Authority to Further Delegate for Non-Financial Governmental Contracts**

a. An Assistant Director may further delegate authority granted in Section 10.01.03(1) to a specific Department employee under the supervision of the Assistant Director through a written memorandum identifying the employee and the contracts.

b. Each proposed delegation memo, along with a copy of samples of the relevant contracts, must be submitted by the Assistant Director to the Office of General Counsel.

### **4. Assistant Director Requests for Director's Delegation of Authority for Other Specific Categories of Contracts**

An Assistant Director may request that the Director delegate authority to the Assistant Director to sign other specific categories of contracts.

a. An Assistant Director may request delegation from the Director through a written memorandum identifying the specific categories of contracts for which delegation is requested.

b. Each proposed delegation memo, along with a copy of samples of the relevant contracts, must be submitted by the Assistant Director to the Director through the Office of General Counsel.

### **5. Assistant Director Authority to Further Delegate for Other Specific Categories of Contracts**

a. An Assistant Director may further delegate authority granted by the Director in a memo under Section 10.01.03(3) to a specific Department employee under the supervision of the Assistant Director through a written memorandum identifying the employee and the contracts.

b. Each proposed delegation memo, along with a copy of samples of the relevant contracts, must be submitted by the Assistant Director to the Office of General Counsel.

## **01.05 Improperly Entered or Signed Contract is Unauthorized**

1. A contract signed by an employee not authorized to do so is not a valid and enforceable agreement against the Department. In addition to being subject to disciplinary action by the Department, a Department employee who signs a contract without authority may be personally liable under law for any obligations created by the unauthorized contract.

2. A purported oral contract or a contract otherwise not in compliance with all Departmental policies and procedures is not a valid and enforceable agreement against the Department. In addition to being subject to disciplinary action by the Department, a Department employee who purports to enter an oral contract or a contract otherwise not in compliance with all Departmental policies and procedures may be personally liable under law for any obligations created by the unauthorized contract.

#### **01.06 Contract Review Board & Executive Contract Review Board**

Proposed contracts, agreements or purchase orders meeting the criteria set by the Public Safety Commission must be reviewed prior to execution. The Commission established the Contract Review Board (CRB) to fulfill this oversight need. The CRB reviews significant procurements and contracts to help ensure efficiency, effectiveness, and best practices. Procurements meeting any of the following requirements must be reviewed by the CRB:

- New contracts valued at \$1 million or more, including all available renewal options;
- Contract amendments (excluding available, previously-reviewed renewal options) valued at \$100,000 or more that increase the value of the original contracts by 50% or more; or
- Contract amendments (excluding available, previously-reviewed renewal options) valued at \$500,000 or more.

The Executive Contract Review Board (ECRB) reviews the Department's proposed procurements and contracts with an estimated value of \$500,000 or more; any modifications to contracts with an estimated value of \$500,000 or more; and any staff augmentation services procurement requests, regardless of contract value. ECRB approval occurs prior to the item being routed to P&CS to be processed.

#### **01.07 Enhanced Oversight for Contracts Exceeding \$1 Million**

All contracts over \$1 million must be presented to and approved by a majority of Contract Review Board members before the contract may be signed on behalf of the Department.

The Contract Review Board charter can be found on SharePoint [here](#).

The Department may only enter into a contract over \$1 million if the Public Safety Commission or its designee, the Executive Director, approves and signs the contract.

The awarded vendor must submit a disclosure of interested parties in a format determined by the Texas Ethics Commission to the Department prior to the final execution of a contract with a total value of more than \$1 million.

The Department shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules;
- Corrective action plans required under the contract and the status of those plans;
- Any liquidated damages assessed or collected under the contract

The Department shall verify the accuracy of any information reported by a contractor and the delivery time of goods and services.

Contracts exceeding \$5 million and \$10 million have additional requirements. See the [User Guide](#) for more information.

#### **01.08 Contract Monitoring & Risk Assessment**

Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit to the agency governing body. Any member of the Contract Review Board or the P&CS Director shall immediately notify the agency's governing body, through the Assistant Director of Administration, of any serious issue or risk that is identified with respect to a contract monitored under this section.

The Public Safety Commission established the Contract Review Board to review contracts that have an estimated contract value over \$1 million. All procurements and contracts that meet the threshold of review by the Contract Review Board or the Executive Committee of the Contract Review Board will be considered to require enhanced contract or performance monitoring and those monitoring reports will be submitted to the Public Safety Commission by the Assistant Director of Administration.

The Department has developed a purchasing accountability and risk analysis procedure that provides for:

- assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions and payment and reimbursement rates;
- identifying contracts that require enhanced contract monitoring or immediate attention of the contract management staff; and
- establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

The DPS risk analysis procedures can be found on SharePoint [here](#).

### **01.09 Vendor Performance**

Completion of a Vendor Performance Form ([PPP-6](#)) is mandatory for procurements over \$25,000 and optional for procurements up to \$25,000. Completed submissions should be e-mailed to the [Procurement](#) e-mail account. For more information about vendor performance requirements, see the presentation [here](#).

### **01.10 Training**

P&CS has developed a DPS Procurement & Contracting Manual that establishes agency procurement and contracting practices. The manual can be found on SharePoint [here](#).

The agency offers a series of internal trainings for DPS employees who will be involved in the procurement process. For current information about the topics and dates of upcoming procurement and contracts training, submit a request to the [Procurement](#) e-mail account.

## **28.05.00 ROLES AND RESPONSIBILITIES**

The following sections provide a basic explanation of the parties involved in the procurement process. Some variations based upon contract value and complexity is to be expected.

### **05.01 Division Responsibilities**

Division personnel are responsible for identifying the needs of their division and ensuring that all requisitions are made in the best interest of the State. After identifying the product or service needed, the division will submit a requisition via the e-Procurement system. The requisition must include the following:

- Clear and concise description of the product or service;
- Estimated cost; and
- Supporting documentation, such as budgetary estimates, specification sheets, or statements of work when available.

The requestor must ensure all appropriate personnel are listed on the approval path for the requisition. The requestor and applicable division personnel will also be expected to actively participate in the solicitation process by providing timely feedback and assisting with the evaluation and award when appropriate.

The requesting division and all stakeholder divisions are prohibited from contacting vendors directly:

- To obtain quotes and bids;
- To negotiate pricing or other terms and conditions;
- To discuss products and services the agency may be pursuing within the next 6-9 month period;
- During an open solicitation; and
- To discuss or get assistance with requirements for a solicitation, planned or active.

These functions will be performed by P&CS. Requesting division personnel are not authorized to get or arrange for demos, testing, or product evaluations without discussing and getting approval from P&CS first. Failure to follow these guidelines might inadvertently disqualify a vendor.

Division Contract Monitors:

- must attend agency contract monitoring training prior to being listed as a contract monitor on a major contract;
- are expected to actively monitor the contract for the life of the contract;
- are required to review vendor performance and report the review through P&CS to the Comptroller at designated periods throughout the contract life and at the termination of the contract via the [PPP-6](#); and
- cannot delegate contract monitor duties to other personnel. Contract monitor changes must be formally requested by the requesting division's Assistant Director to the Assistant Director of Administration. A new contract monitor will not begin their duties until they have completed the required training.

Division personnel who serve as contract monitor of an active contract should refrain from discussing a planned or active solicitation with the vendor without coordination with P&CS.

#### **05.02 P&CS Responsibilities**

The assigned procurement lead will review each requisition to ensure all applicable information has been completed and submitted, and that the purchase is in compliance with Department policies. The purchaser will then determine the correct procurement method based on the procurement hierarchy, which includes obtaining necessary waivers and exemptions. Purchasers will oversee the solicitation process, including bids, quotes, evaluations and appropriate documentation. The purchaser will coordinate with the requestor to ensure the award is in the best interest of the state.

P&CS serves as the agency point of contact to current and potential vendors for active and upcoming solicitations. No other entity should make contact without the knowledge and consent of P&CS.

#### **05.03 Office of General Counsel (OGC) Responsibilities**

OGC provides support and guidance to ensure the Department is legally protected in contracts. OGC reviews all two party contracts, Requests for Offers (RFOs), Requests for Proposals (RFPs) and all solicitations that are provided to OGC by P&CS before P&CS posts them to the Electronic State Business Daily (ESBD). As requested, OGC provides support and guidance to assist the Department in ensuring that it enters into contracts which can be monitored and measured. As requested, OGC provides support and guidance to assist the Department in ensuring that solicitation and contract documents contain clearly defined responsibilities and expectations for deliverables.

### **28.10.00 STANDARD PROCUREMENT INFORMATION**

#### **10.01 Purchasing Timelines**

The procurement timeline depends on the value and complexity of the purchase. The timeframes provided are based on typical procurements. However, actual timeframes can differ depending on the specific circumstances surrounding a particular procurement, such as action required to obtain certain approvals, incomplete or missing information being submitted, or additional information being required from the requestor on the specifications. Current timelines can be found on the [P&CS SharePoint site](#).

## **10.02 Spot Purchase Orders & State Credit Card Purchases Not Related to Travel**

Spot purchase orders and state credit card purchases not related to travel are restricted to a very narrow category of items. For information on the circumstances and guidelines associated with these purchases, see the training material posted [here](#).

## **10.03 Emergency Purchases**

Emergencies occur as the result of unforeseeable circumstances and may require immediate response to avoid an actual or potential threat. If a situation arises in which compliance with normal procurement practices is impractical or contrary to the public interest, an emergency purchase may be warranted and should be requested through P&CS.

If a division believes that they have a purchase which qualifies as an emergency, the division should contact P&CS as soon as possible and submit a requisition in e-Procurement.

## **10.04 Internal Repairs**

1) When equipment breakdown results in repairs of an unknown nature, such repairs may be made without first obtaining bids. These repairs should be made by a firm or individual capable of performing the needed repairs.

2) A Purchase Order is to be issued when the repairs are ordered. The vendor is given a Purchase Order number to be placed on the work order or service request. The Purchase Order should be filled out, leaving the amount blank unless an amount has been quoted by the vendor making the repairs. When the repairs are completed, fill in the dollar amount and forward the blue copy to Accounting and Budget Control. If the repair is to take more than two to five days, the blue copy of the Purchase Order is to be forwarded to Accounting and Budget Control with an estimated repair cost. The Purchase Order should read "estimated repair cost." When the invoice is received by Accounting and Budget Control and the actual charges substantially exceed the estimate, the person approving the Purchase Order will be contacted before the invoice is processed for payment.

3) This procedure does not apply to the replacement of any parts or accessories or to repairs to any item where the cost of the repairs can be determined prior to disassembly. Such repairs require three bids before repairs can be made if the cost exceeds \$2,000. The bidding procedures will follow those in External Repairs below.

## **10.05 External Repairs/Wreck Damages**

1) Repairs for any external damages, such as wrecked automobiles, exceeding \$2,000 require bids. The CMBL must be used as a source for bidders. On those repairs between \$2,000 and \$5,000, the budgetary unit is to take informal (telephone or shop estimates) bids. On repairs in excess of \$5,000 a minimum of three formal written bids must be obtained by the budgetary unit. These bids must be secured on an ACT-117, Invitation to Bid, (Annex #16). The written bid procedure must be a formal bidding procedure, using a specified bid opening date and time. Bids are not to be opened and read before the specified date and time. Bids cannot be accepted after the specified opening date and time. (NOTE: If a vehicle is totally inoperable due to the extent of the damages, bids are not required. A statement must accompany the purchase memorandum. The statement must describe the extent of the damages and must include a statement that the vehicle is inoperable and obtaining bids was not feasible.)

2) After the appropriate bidding procedure is complete the budgetary unit will prepare a Purchase Memorandum (ACT-3). The Purchase Memorandum should contain the following and be forwarded to Accounting and Budget Control.

a) **Informal Bidding Procedure.** The Purchase Memorandum should contain any special instructions that were given to the bidder that are to become part of the Purchase Order that will be issued by Accounting and Budget Control. Attached to the Purchase Memorandum should be a bid tabulation showing the company name, address, telephone number, and the name of the person contacted for a bid.

b) **Formal Bidding Procedure.** The Purchase Memorandum may refer to the formal bids attached. All specifications shown thereon will become part of the Purchase Order issued by Accounting and Budget Control. Also attached to the Purchase Memorandum should be a list showing all persons and firms to whom an invitation to bid was sent.

3) No work should commence until a Purchase Order is issued.

4) Insurance payments for wreck damage may be paid directly to the repair shop by the insurance company, provided the check is made payable to the repair shop only. A copy of the check must be submitted through channels to the Department Fleet Safety Coordinator.

#### **10.06 Maintenance and Services**

Purchases of services of \$2,000 or less per year, and not on state contract or on a DPS contract, may be purchased without first securing bids. All personnel responsible for purchasing are encouraged to take informal bids and/or price surveys to ensure that the vendors are offering the lowest and best prices for the services to be secured.

Those services not on state contract or on a DPS contract may be secured locally where and when necessary. A Purchase Order is to be issued and the blue copy must be forwarded to Accounting and Budget Control immediately. Once the services have been completed, the pink (receiving copy) is forwarded to Accounting and Budget Control.

### **28.15.00 ETHICAL CONSIDERATIONS**

#### **15.01 Ethics & Conflict of Interest**

All DPS employees and officials who participate in the state procurement process shall adhere to the following ethical standards. Violation of these standards is subject to discipline, up to and including termination.

All DPS personnel involved in procurement or contract management must disclose to the agency any conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services. Any person that identifies a conflict of interest should immediately notify their chain of command and the assigned P&CS representative.

Additionally, Texas statute states that DPS cannot enter into a contract with a vendor if any of the following agency employees or officials has a financial interest:

- A member of the agency's governing body;
- The governing official, executive director, general counsel, chief procurement officer or procurement director of the agency;
- A family member related to an employee or official described above within the second degree by affinity or consanguinity;

Having a "financial interest" in this section is defined as a state agency employee or official that:

- Owns or controls, directly or indirectly, a least 1% in the person, including the right to share in profits, proceeds or capital gains or;
- Could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

A financial interest that is prohibited by this section does not include a retirement plan, a blind trust, insurance coverage or an ownership interest of less than 1% in a corporation.

#### **15.02 DPS Employees as Agency Vendors Prohibited**



Department employees or family members will not have, either directly or indirectly, any financial or other personal interest in a department (or a DPS) contract or subcontract of any kind. A contract may not be awarded to an entity that is owned in whole or in part by any DPS employee or immediate family member.

### **15.03 Employment of Former State Officers**

A former Department employee who participated in purchasing or contracting during their employment may not accept employment from a vendor who responded to a DPS procurement in which the employee participated before the second anniversary of their separation from the Department.

### **15.04 Negotiations**

P&CS and OGC employees are the only Department personnel authorized to negotiate agreements with parties outside DPS. Experts and/or management from the business area may participate in the negotiations as a resource, but they play a supporting role in the process. Communications with a vendor must go through P&CS to ensure procurement laws and rules are being observed. If these standards are not met, potential competing vendors could challenge the fairness of the process. These prohibited conversations could also be construed as negotiations with a vendor.

## **28.16.00 AGENCY EMPLOYEE CONTACT WITH POTENTIAL VENDORS**

### **16.01 Policy**

As a state agency, the Department must be transparent in its interactions with potential vendors. The agency has [procedures](#) in place to ensure compliance with state procurement laws and guidelines, but there are situations that fall outside the formal procurement process and it is imperative to avoid even the appearance of favoritism in our interactions with vendors. While the agency discourages contact with vendors outside the formal procurement process, we recognize that in certain circumstances, such contact may be necessary. In the event an agency employee wishes to make contact with a vendor prior to engaging in a competitive procurement process for a product or service provided by the vendor, the following guidelines shall apply:

1) The employee must prepare a request memorandum describing the requested contact and why the employee believes it is in the best interest of the agency. The requesting employee must forward the memo to the P&CS manager at [Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov) for approval. The contact must be approved in writing by the P&CS manager prior to its occurrence. If the P&CS manager determines that the purpose for the requested contact is unnecessary because the information may be obtained in a different manner consistent with applicable law and procedures, the P&CS manager will inform the employee in writing and advise how the information may be obtained.

2) Contact with vendors must be limited to the minimum number of employees necessary to conduct the required business and may not include any employee who would approve a future competitive procurement involving the vendor or the product or service being discussed.

3) An employee who is classified at the level of Deputy Assistant Director or above will have contact with potential vendors outside of the formal competitive procurement process only as described by 11), 12), and 13) below.

4) If the vendor contact will occur at an agency facility, the employee shall ensure all vendor representatives complete the facility's [SEC-1](#) security log sheet and have an opportunity to review and complete the [OGC-4](#) form for representation before a state agency.

5) The employee shall be aware of, and in compliance with, state law and agency policy regarding gifts to state agency employees. See General Manual **05.50.00 BORROWING MONEY AND ACCEPTING GIFTS.**

6) The employee shall ensure all vendor representatives read and sign the [OGC-5](#) form disclosing that the contact is not being made as part of a competitive procurement process and no agency procurement decisions will be made based on the contact.

7) During the contact, the employee shall not discuss or disclose any information that would provide the vendor with an unfair advantage in a future competitive bidding process, such as the cost of any product or service offered by the vendor, or otherwise make any representation regarding the agency's potential future procurement of any such product or service.

8) Employees who are required to have contact with current vendors as a function of their job duties shall not discuss or disclose any information that would provide the vendor with an unfair advantage in a future competitive bidding process. This does not limit an employee from having necessary discussions with a vendor regarding a current contract, as long as there is no discussion of potential future enhancement or expansion of the goods or service being provided that is outside the scope of the current contract.

9) If, as a result of a vendor contact under this section, the employee or the employee's chain of command determines the agency has a need for a product or service, the employee shall immediately cease communication with the vendor and the agency will begin the formal competitive procurement process.

10) Employees engaging in unauthorized contacts with vendors are subject to disciplinary action, including termination of employment.

11) Employees are not prohibited from attending product exhibits or other functions associated with training, conferences, or trade shows that are not designed solely for the purpose of making contact with agency employees, as long as there is no discussion of future potential agency procurements that would provide the vendor with an unfair advantage in a future competitive bidding process.

12) This section does not apply to incidental or purely personal interactions between employees and individuals who may be potential vendors, if they occur outside the scope of employment and there is no discussion of future potential agency procurements.

13) An employee who is classified at the level of Deputy Assistant Director or above but who is a subject matter expert in a particular area may have contact with a potential vendor when necessary to conduct the required business, provided the employee does not participate in the approval process for any future competitive procurement involving the vendor or the product or service discussed. In such a case, the request memorandum forwarded to the P&CS Manager under 1) will document that the employee is participating in the vendor contact and may not approve a future competitive procurement involving the vendor or the product or service.

## **28.20.00 ADDITIONAL PROCUREMENT AND CONTRACT INFORMATION**

### **20.01 Best Value Standard**

Statute permits state agencies to incorporate a best value standard when procuring goods and services. Situations where this standard may be applied include in the determination of lifecycle costs, quality of goods, and indicators of vendor performance. Before a best value standard can be used to make an award, the P&CS Director must:

- Affirm a contract is authorized to use the best value standard;
- Ensure the agency has clearly documented the best value standard used; and
- Acknowledge in writing that the agency complied with the DPS and CPA contract management guides for the procurement.

Best Value criteria must be included in the solicitation, and therefore must be identified and documented prior to soliciting goods or services.

P&CS must include the best value standard documentation with the Comptroller's vendor performance for any contract that uses the standard.

## **20.02 Electronic Procurement System**

Requisitions should be submitted in e-Procurement and routed through appropriate approvals. The [e-Procurement](#) system replaced the PPP-1 for most purchases. However, requisitions with an estimated total contract value in excess of \$500,000 require a thoroughly completed [PPP-1](#) be attached to the e-Procurement requisition. Additional information about e-Procurement can be found in the [P&CS e-Procurement Guide](#). DPS employees who require assistance with e-Procurement should contact the Internal Administrator at [eProcurementCustomerService@dps.texas.gov](mailto:eProcurementCustomerService@dps.texas.gov).

## **28.25.00 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM**

In accordance with statute and administrative rule, the Department shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs). A HUB is defined as a for-profit entity that has its principal place of business in Texas and is at least 51% owned by a minority or service disabled veteran and actively participate in the control, operations and management of the entity. The Department is committed to assisting and including HUB entities in its procurement opportunities either directly, as a prime contractor, or indirectly, through subcontracting opportunities. DPS encourages the use of HUB entities and promotes full and equal business opportunities for all businesses in state contracting.

The Department HUB Liaison is responsible for providing agency and vendor support to encourage HUB involvement. The HUB office tracks and monitors HUB utilization and provides reports to the Statewide HUB Program. A HUB liaison establishes and monitors consistent administration of the application, review, approval, tracking and performance reporting of all HUB activities within DPS. The HUB liaison also reviews all HSP submissions to ensure a good faith effort is made by respondents.